

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 August 2014

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

Public Redacted Version of "Decision on the admission into evidence of items deferred in the Chamber's previous decisions, items related to the testimony of Witness CHM-01 and written statements of witnesses who provided testimony before the Chamber" of 17 March 2014 (ICC-01/05-01/08-3019-Conf)

Decision 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 Peter Haynes
Ms Kate Gibson

Legal Representatives of the Victims

Ms Marie-Edith Douzima Lawson

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
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Mr Xavier-Jean Keïta

States Representatives

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REGISTRY

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Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* hereby issues the following Decision on the admission into evidence of items deferred in the Chamber’s previous decisions, items related to the testimony of Witness CHM-01 and written statements of witnesses who provided testimony before the Chamber (“Decision”).

I. Background and Submissions

Items deferred in the Chamber’s previous decisions

1. On 6 September 2012, the Office of the Prosecutor (“prosecution”) filed its “Request to Reject Admission into Evidence of Several Fraudulent Documents Disclosed by the Defence on 12 July 2012 and Submitted on 16 August 2012” (“Motion to Reject Allegedly Fraudulent Documents”),¹ in which it requests that the Chamber reject the admission of 11 “apparently fraudulent documents” tendered into evidence by the defence during the testimony of Witness D04-53.² The prosecution submits that the documents are plainly forgeries and, as such, have no probative value.³ Further, the prosecution alleges that the items fail to meet the threshold required by Article 69(4) of the Rome Statute (“Statute”) and that their admission into evidence would be highly prejudicial to a fair trial and to the fair evaluation of the testimony of witnesses.⁴ Finally, the prosecution details the results of its investigations into the authenticity of these 11

¹ Request to Reject Admission into Evidence of Several Fraudulent Documents Disclosed by the Defence on 12 July 2012 and Submitted on 16 August 2012, 6 September 2012, ICC-01/05-01/08-2301-Conf and Confidential Annex A, ICC-01/05-01/08-2301-Conf-AnxA.

² ICC-01/05-01/08-2301-Conf, paragraphs 1 and 17.

³ ICC-01/05-01/08-2301-Conf, paragraph 2.

⁴ ICC-01/05-01/08-2301-Conf, paragraph 2.

documents on which it bases its submissions that the documents are not authentic, have no probative value, and that their admission would be prejudicial to a fair trial.⁵

2. On 12 September 2012 and on 25 September 2012, the legal representative of victims Maître Edith Douzima-Lawson (“Me Douzima”) and the defence for Mr Jean-Pierre Bemba (“defence”) respectively, submitted their responses to the Motion to Reject Allegedly Fraudulent Documents.⁶ Me Douzima supports the prosecution’s motion adding that the documents’ admission would be prejudicial to the victims that she represents.⁷ The defence argues that the Motion to Reject Allegedly Fraudulent Documents (i) is inappropriate and premature; (ii) contravenes the Chamber’s established procedures for the admission of documents into evidence; (iii) is based upon no admissible evidence; and (iv) is based upon a number of false assertions.⁸

3. On 6 November 2013, the Chamber issued its “Third Decision on the prosecution and defence requests for the admission of evidence” (“Decision 2864”),⁹ in which it ruled on the prosecution’s request for the

⁵ ICC-01/05-01/08-2301-Conf, paragraphs 4 to 12 and 16.

⁶ Réponse de la Représentante légale des victimes Maître Douzima-Lawson sur la requête du Bureau du Procureur du 6 septembre 2012 tendant au rejet de 11 documents de la Défense argués de faux, 12 September 2012, ICC-01/05-01/08-2312-Conf; and Defence Response to the Prosecution’s Motion to Exclude CAR Documents, 25 September 2012, ICC-01/05-01/08-2326-Conf.

⁷ ICC-01/05-01/08-2312-Conf, paragraph 3.

⁸ ICC-01/05-01/08-2326-Conf, paragraph 2.

⁹ Third Decision on the prosecution and defence requests for the admission of evidence, 6 November 2013, ICC-01/05-01/08-2864-Conf.

admission into evidence of 95 items,¹⁰ and on the defence's request for the admission of 29 items.¹¹ The Chamber, however, deferred its decision with regard to items CAR-OTP-0069-0010, CAR-OTP-0069-0083_R01, [REDACTED], CAR-D04-0003-0128/CAR-D04-0003-0135,¹² CAR-D04-0003-0129, CAR-D04-0003-0130, CAR-D04-0003-0131, CAR-D04-0003-0132, CAR-D04-0003-0133, CAR-D04-0003-0134, CAR-D04-0003-0136, CAR-D04-0003-0137, CAR-D04-0003-0138, CAR-D04-0003-0139, CAR-D04-0003-0140, CAR-D04-0003-0141, CAR-D04-0003-0342, and CAR-D04-0003-0398 ("Deferred Items"), which were related to and/or mentioned in the Motion to Reject Allegedly Fraudulent Documents, deciding that these items would be dealt with separately.¹³

4. On 8 November 2013, Maître Marie-Edith Douzima-Lawson filed the "Requête de la Représentante légale de victimes en vue de soumettre des documents en tant qu'éléments de preuve selon l'article 64(9) du Statut de Rome", in which she requested the admission into evidence of 10 items pursuant to Articles 68(3) and 69(4) of the Statute and Rule 91 of the Rules of Procedure and Evidence ("Rules").¹⁴

¹⁰ Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, 22 April 2013, ICC-01/05-01/08-2596-Conf and Confidential Annex A, ICC-01/05-01/08-2596-Conf-AnxA.

¹¹ Defence submission in compliance with the *Third Order on the submission into evidence of materials used during the examination of witnesses*, 22 April 2013, ICC-01/05-01/08-2590 and Confidential Annex A, ICC-01/05-01/08-2590-Conf-AnxA.

¹² The Chamber notes that it only deferred its decision with respect to the document bearing ERN CAR-D04-0003-0128, but that subsequently a different copy of the same document was used in court under the ERN CAR-D04-0003-0135. For completeness of the record of this document's use in proceedings, the Chamber will refer throughout this decision to "document CAR-D04-0003-0128/CAR-D04-0003-0135".

¹³ ICC-01/05-01/08-2864-Conf, paragraph 18.

¹⁴ Requête de la Représentante légale de victimes en vue de soumettre des documents en tant qu'éléments de preuve selon l'article 64(9) du Statut de Rome, 8 November 2013, ICC-01/05-01/08-2866, with confidential annex ICC-01/05-01/08-2866-Conf-Anx.

5. On 29 January 2014, the Chamber issued its “Decision on Maître Douzima’s ‘Requête de la Représentante légale de victimes en vue de soumettre des documents en tant qu’éléments de preuve selon l’article 64(9) du Statut de Rome’” (“Decision 2950”),¹⁵ in which it, *inter alia*, postponed its decision on the admissibility of items [REDACTED], which, in the view of the Chamber, should be decided together with documents [REDACTED],¹⁶ which were among the Deferred Items.

Items related to the testimony of Witness CHM-01

6. On 15 November 2013, the Chamber issued its “Decision on the modalities of the presentation of additional testimony pursuant to Articles 64(6)(b) and (d) and 69(3) of the Rome Statute”,¹⁷ in which, *inter alia*, it ordered the parties and the participants to submit, by no later than 29 November 2013, any applications for the admission into evidence of material relevant to the testimony of Witness CHM-01.¹⁸ Any responses to such applications were to be filed within seven days of their notification.¹⁹
7. On 29 November 2013, the prosecution filed its “Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute”,²⁰ in which it requests the admission into evidence of 6

¹⁵ Decision on Maître Douzima’s « Requête de la Représentante légale de victimes en vue de soumettre des documents en tant qu’éléments de preuve selon l’article 64(9) du Statut de Rome », 29 January 2014, ICC-01/05-01/08-2950-Conf.

¹⁶ [REDACTED].

¹⁷ Decision on the modalities of the presentation of additional testimony pursuant to Articles 64(6)(b) and (d) and 69(3) of the Rome Statute, 15 November 2013, ICC-01/05-01/08-2898.

¹⁸ ICC-01/05-01/08-2898, paragraph 10.

¹⁹ ICC-01/05-01/08-2898, paragraph 10.

²⁰ Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, 29 November 2013, ICC-01/05-01/08-2909 and Confidential Annex A, ICC-01/05-01/08-2909-Conf-AnxA.

items from the “bar table” pursuant to Articles 64(9) and 69(2), (3) and (4) of the Statute and Rule 63(2) and (5) of the Rules.²¹

8. The prosecution submits that it tenders the proposed items for the truth of their content and in some cases without calling the authors of the materials, or the individuals who provided the information contained therein, to testify at trial.²² Nevertheless, the prosecution alleges that the items are relevant, probative of issues at trial, and bear sufficient indicia of reliability to outweigh any prejudicial effect.²³ According to the prosecution, the items satisfy the requirements of Articles 64(2) and 67(1) of the Statute by furthering the goal of expeditiousness without infringing on the Chamber’s obligation to ensure that the trial is fair.²⁴ In addition, the prosecution argues that the documents concerned were either disclosed to the defence in October 2008 or annotated in Court.²⁵ The prosecution further submits that its request will not unfairly prejudice the accused, given that the prosecution has put the defence on sufficient notice of its intention to request the admission of the proposed items by virtue of its lists of documents for the questioning of witness CHM-01, and subsequently use of these items during the hearings.²⁶ The defence was also afforded the opportunity to question the witnesses on these items.²⁷ Lastly, the prosecution submits specific arguments in support of

²¹ ICC-01/05-01/08-2909, paragraph 1.

²² ICC-01/05-01/08-2909, paragraph 4.

²³ ICC-01/05-01/08-2909, paragraph 4.

²⁴ ICC-01/05-01/08-2909, paragraph 5.

²⁵ ICC-01/05-01/08-2909, paragraph 5.

²⁶ ICC-01/05-01/08-2909, paragraph 5.

²⁷ ICC-01/05-01/08-2909, paragraph 5.

its assertion that each of the documents it tenders is admissible according to the three-part admissibility test.²⁸

9. On 6 December 2013, the defence filed its “Defence Response to the Prosecution’s Fourth Bar Table Motion” (“Defence Response”),²⁹ in which it opposes the admission into evidence of 4 out of the 6 items submitted by the prosecution.³⁰ The defence submits that the Chamber has taken an extremely broad approach to the admission of documents pursuant to Article 64(9) of the Statute, particularly with respect to press reports and media articles and recordings.³¹ Accordingly, the defence maintains its prior objections to the admission of press reports and media articles, as set out in its previous filings, and objects to each press report or media article submitted by the prosecution on the grounds set out in the confidential annex to the Defence Response.³²

10. On 29 November 2013, the late Maître Assingambi Zarambaud (“Me Zarambaud”) filed his “Requête du Représentant légal de victimes, Me. Zarambaud aux fins d’admission de trois documents en tant qu’éléments de preuve” (“Me Zarambaud’s Request”),³³ in which he requests the admission into evidence of three items pursuant to Articles 68(3) and 69(4) of the Statute and Rules 63(2) and 91 of the Rules.³⁴ Me Zarambaud noted that the documents submitted and their contents were reliable, relevant,

²⁸ ICC-01/05-01/08-2909, paragraphs 9 to 15 and ICC-01/05-01/08-2909-Conf-AnxA.

²⁹ Defence Response to the Prosecution’s Fourth Bar Table Motion, 6 December 2013, ICC-01/05-01/08-2916 and Confidential Annex A ICC-01/05-01/08-2916-Conf-AnxA.

³⁰ ICC-01/05-01/08-2916-Conf-AnxA.

³¹ ICC-01/05-01/08-2916, paragraph 6.

³² ICC-01/05-01/08-2916-Conf-AnxA.

³³ Requête du Représentant légal de victimes, Me. Zarambaud aux fins d’admission de trois documents en tant qu’éléments de preuve, 29 November 2013, ICC-01/05-01/08-2911.

³⁴ ICC-01/05-01/08-2911, paragraph 2.

probative, and would have no prejudicial effect on the proceedings.³⁵ He also submitted that the personal interests of the victims he represented were affected by the proposed documents.³⁶ Me Zarambaud further submitted that the documents corroborate the evidence already received by the Chamber during the hearings, and would thus contribute to the manifestation of the truth in the case.³⁷ According to Me Zarambaud, the admission of the documents would fully comply with Articles 67(1)(a) and (b) of the Statute, since the accused had the opportunity and sufficient time to examine the documents, which were cited in the list of documents for the questioning of Witness CHM-01.³⁸ Lastly, Me Zarambaud offered specific arguments in support of his assertion that each of the documents he submitted is admissible according to the three-part admissibility test.³⁹

11. Neither party filed a response to Me Zarambaud's Request.

12. On 13 December 2013, the Chamber issued its "Order seeking observations on the admission into evidence of written statement of Witness CHM-01" ("Order 2923"),⁴⁰ in which it ordered the parties and participants to file, by 10 January 2014, their observations on the possible admission into evidence, pursuant to Article 69(3) of the Statute, of the written statement of Witness CHM-01, document CAR-OTP-0008-0219_R01.⁴¹

³⁵ ICC-01/05-01/08-2911, paragraph 4.

³⁶ ICC-01/05-01/08-2911, paragraph 4.

³⁷ ICC-01/05-01/08-2911, paragraph 4.

³⁸ ICC-01/05-01/08-2911, paragraphs 8 and 9.

³⁹ ICC-01/05-01/08-2911, paragraphs 10 to 14.

⁴⁰ Order seeking observations on the admission into evidence of written statements of Witness CHM-01, 13 December 2013, ICC-01/05-01/08-2923.

⁴¹ ICC-01/05-01/08-2923, paragraph 6.

13. On 10 January 2014, the prosecution filed its "Prosecution's Observations on the admission into evidence of the written statement of witness CHM-01",⁴² in which it submits that the admission of the written statement of Witness CHM-01 does not appear necessary to evaluate the probative value and credibility of Witness CHM-01's evidence.⁴³
14. The prosecution submits that, pursuant to Articles 64(9)(a), 69(2) and 69(4) of the Statute and Rules 63 and 68 of the Rules, the Chamber has discretion to admit any type of evidence at trial, including prior recorded statements, provided that the evidence meets the legal requirements of Article 69(4) of the Statute.⁴⁴ Nonetheless, the prosecution submits that no apparent reason exists for the admission into evidence of the written statement of Witness CHM-01.⁴⁵ In particular, the prosecution submits that the testimony of Witness CHM-01 is more comprehensive, since it covered all material aspects of his prior statement and the witness provided clarifications as sought by the Chamber, the parties and the participants, all of whom used his written statement while examining him.⁴⁶ Moreover, Witness CHM-01 did not deny having provided the prior statement, nor contradict himself while testifying before the court, therefore, admission of the statement into evidence for the purpose of assessing the credibility of the witness is not necessary.⁴⁷

⁴² Prosecution's Observations on the admission into evidence of written statements of witness CHM-01, 10 January 2014, ICC-01/05-01/08-2930.

⁴³ ICC-01/05-01/08-2930, paragraph 1.

⁴⁴ ICC-01/05-01/08-2930, paragraph 7.

⁴⁵ ICC-01/05-01/08-2930, paragraph 11.

⁴⁶ ICC-01/05-01/08-2930, paragraph 11.

⁴⁷ ICC-01/05-01/08-2930, paragraph 11.

15. On 10 January 2014, the legal representatives of victims jointly filed their “Réponse conjointe des Représentants légaux des victimes à ‘Order seeking observations on the admission into evidence of written statement of witness CHM-01 – ICC-01/05-01/08-2913’”,⁴⁸ in which they submit that the testimony of Witness CHM-01 was corroborative of his prior statement,⁴⁹ and rely on the wisdom of the Chamber to decide on the admission of the statement into evidence.⁵⁰
16. On 13 January 2014, following the Chamber’s granting of an extension of the deadline,⁵¹ the defence submitted its “Defence Submission on the proposed admission of Witness CHM-01’s statement”,⁵² in which it submits that the prejudicial effect of the admission of Witness CHM-01’s statement to the fair trial of Mr Bemba outweighs any probative value or relevance of the statements to the proceedings and that the statement is therefore inadmissible as evidence in the present trial.⁵³ In the alternative, the defence submits that only those portions that were relied upon by the parties during the witness’s oral testimony should be admitted into the record as evidence in the case.⁵⁴

⁴⁸ Réponse conjointe des Représentants légaux des victimes à « Order seeking observations on the admission into evidence of written statement of witness CHM-01 – ICC-01/05-01/08-2913 », 10 January 2014, ICC-01/05-01/08-2934.

⁴⁹ ICC-01/05-01/08-2934, paragraph 4.

⁵⁰ ICC-01/05-01/08-2934, page 4.

⁵¹ Email from the Chamber’s Associate Legal Officer to the defence’s Lead Counsel, 13 October 2014 at 11.53 and Defence request for extension of time limit to submit observations on the admission of CHM-01’s written statement, 13 January 2014, ICC-01/05-01/08-2935.

⁵² Defence Submission on the proposed admission of Witness CHM-01’s statement, 13 January 2014, ICC-01/05-01/08-2936.

⁵³ ICC-01/05-01/08-2936, paragraph 21.

⁵⁴ ICC-01/05-01/08-2936, paragraph 21.

Written statements of witnesses who provided testimony before the Chamber not submitted by the parties

17. On 1 October 2013, the Chamber issued its “Order on the submission of final applications for the admission of material into evidence and seeking observations on the admission into evidence of witnesses’ written statements” together with an annex (“Order 2824”),⁵⁵ in which it noted that the written statements of 30 witnesses called by the prosecution as well as one witness called by the defence (“statements”), although used by the parties and the legal representatives of victims during their questioning were not submitted into evidence.⁵⁶ As such, the Majority of the Chamber, Judge Kuniko Ozaki dissenting, informed the parties and participants that it was “considering, pursuant to Article 69(3) of the Statute, requesting the submission as evidence of the statements listed in the Annex to this Order, subject to an assessment in accordance with its three-prong test” and ordered “the parties and legal representatives of victims to file any observations on the matter of the admission into evidence of the written statements of witnesses [...] by 11 October 2013”.⁵⁷

18. On 11 October 2013, the defence filed its “Defence Submissions on the proposed *proprio motu* admission of 100 transcripts of Prosecution witness interviews”,⁵⁸ in which it opposes the admission of the statements not submitted by the parties.⁵⁹ Although noting that Article 69(3) of the Statute

⁵⁵ Order on the submission of final applications for the admission of material into evidence and seeking observations on the admission into evidence of witnesses’ written statements, 1 October 2013, ICC-01/05-01/08-2824 and ICC-01/05-01/08-2824-Anx.

⁵⁶ ICC-01/05-01/08-2824, paragraph 10.

⁵⁷ ICC-01/05-01/08-2824, paragraphs 12 and 13 (iv) (footnotes omitted).

⁵⁸ Defence Submissions on the proposed *proprio motu* admission of 100 transcripts of Prosecution witness interviews, 11 October 2013, ICC-021/05-01/08-2833.

⁵⁹ ICC-01/05-01/08-2833, paragraph 1.

provides the Chamber with the authority to request the submission of all evidence that it considers necessary for the determination of the truth,⁶⁰ the defence submits that the statements have not been submitted and discussed at trial, as required by the Article 74(2) of the Statute.⁶¹ The defence further argues that the parties were not invited to make submissions as to the admissibility of the statements with reference to the three-prong test, nor did the timeframe set by the Chamber permitted this.⁶² The defence submits that the introduction of the statements will place a huge additional burden on the Chamber, which will lengthen the period of deliberations and delay the delivery of the Judgement.⁶³ In addition, the defence argues that the statements can only be tested by the defence through the questioning of the witnesses in question, under oath and before the Chamber, necessitating the recall of witnesses in order to be challenged on all aspects of the transcripts.⁶⁴ Lastly, the defence submits that the proposed admission violates the principle of orality and undermines the fairness of the proceedings and the rights of the accused.⁶⁵

19. On the same day, 11 October 2013, the prosecution filed its "Prosecution's Observations on the Admission into evidence of prior statements of trial witnesses",⁶⁶ in which it submits that pursuant to Articles 64(9)(a), 69(2) and 69(4) of the Statute and Rules 63 and 68 of the Rules, a Chamber has discretion to admit any type of evidence at trial, including prior recorded

⁶⁰ ICC-01/05-01/08-2833, paragraph 13.

⁶¹ ICC-01/05-01/08-2833, paragraph 14.

⁶² ICC-01/05-01/08-2833, paragraph 16.

⁶³ ICC-01/05-01/08-2833, paragraphs 27 and 28.

⁶⁴ ICC-01/05-01/08-2833, paragraphs 30 and 31.

⁶⁵ ICC-021/05-01/08-2833, paragraphs 32 to 35.

⁶⁶ Prosecution's Observations on the Admission into evidence of prior statements of trial witnesses, 11 October 2013, ICC-01/05-01/08-2834.

documentary and audio or video material provided that it meets the legal requirements.⁶⁷ However, the prosecution submits that the Chamber's discretion to admit all prior statements should be exercised cautiously, stressing that the potential prejudice of admitting all prior statements, rather than statements of selected witnesses, may outweigh their probative value.⁶⁸ The prosecution further submits that the admissibility of the statements does not appear necessary to evaluate their probative value and credibility of every witness and stresses that additional and more detailed submissions could only be made once specific reasons are advanced for seeking the admission of the statements.⁶⁹

II. Analysis

20. In accordance with Article 21(1) of the Statute, in making its determination, the Chamber has considered Articles 64(2), (6)(d), (9)(a), 67, 68, and 69 of the Statute, and Rules 63 and 64 of the Rules.

21. The Chamber recalls its general approach to the admission of evidence. In particular, for an item to be admitted into evidence it must satisfy the three-part test under which it must: (i) be relevant to the case; (ii) have probative value; and (iii) be sufficiently relevant and probative as to outweigh any prejudicial effect its admission may cause.⁷⁰ Further, the

⁶⁷ ICC-01/05-01/08-2834, paragraph 11

⁶⁸ ICC-01/05-01/08-2834, paragraph 16.

⁶⁹ ICC-01/05-01/08-2834, paragraph 17.

⁷⁰ Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011, 9 February 2012, ICC-01/05-01/08-2012-Red, paragraphs 13 to 16; and Public Redacted Version of "Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute" of 6 September 2012, 8 October 2012, ICC-01/05-01/08-2299-Red, paragraphs 7 to 9.

Chamber underlines once more that its determination on the admissibility into evidence of an item has no bearing on the final weight to be afforded to it, which will only be determined by the Chamber at the end of the case when assessing the evidence as a whole.⁷¹

22. The Chamber will consider the materials in accordance with the three-part test of relevance, probative value and potential prejudice, dividing them into the following categories: (i) deferred items; (ii) items related to the testimony of Witness CHM-01 submitted by the prosecution; (iii) items related to the testimony of Witness CHM-01 submitted by Me Zarambaud; (iv) written statement of Witness CHM-01; and (v) written statements of witnesses who provided testimony before the Chamber not submitted by the parties.

First category: Deferred Items

23. The items in relation to which the Chamber's admissibility assessment was deferred by Decision 2864 are the following:
- a. Items **CAR-OTP-0069-0010** and **CAR-OTP-0069-0083_R01**, written statements;
 - b. Items [REDACTED];
 - c. Items **CAR-D04-0003-0128/CAR-D04-0003-0135**, **CAR-D04-0003-0129**, **CAR-D04-0003-0130**, **CAR-D04-0003-0131**, **CAR-D04-0003-0132**, **CAR-D04-0003-0133**, **CAR-D04-0003-0134**, **CAR-D04-0003-0136**, **CAR-D04-0003-0137**, **CAR-D04-0003-0138**, **CAR-D04-0003-**

⁷¹ ICC-01/05-01/08-2012-Red, paragraph 18; and ICC-01/05-01/08-2299-Red, paragraph 11.

0139, CAR-D04-0003-0140, and CAR-D04-0003-0141, CAR internal documents; and

d. Items CAR-D04-0003-0342 and CAR-D04-0003-0398, Expert Reports.

24. In addition, the admissibility assessment of documents [REDACTED] was deferred by Decision 2950, wherein the Chamber found that their admission should be decided together with that of documents [REDACTED].⁷²

Written statements

25. At the time the prosecution submitted the items that were ruled upon in Decision 2864, the prosecution requested the admission into evidence of the statements of two individuals [REDACTED]: (i) document CAR-OTP-0069-0010 (**Confidential**), a statement [REDACTED]; and (ii) document CAR-OTP-0069-0083_R01 (**level of confidentiality not indicated**), a statement [REDACTED]. The prosecution alleges that these out-of-court statements are probative in demonstrating that documents relied upon by Witness D04-53 in his expert testimony, [REDACTED].⁷³ The prosecution further submits that the statements [REDACTED] are reliable because they were prepared in accordance with Rule 111 of the Rules and include the date, time, place of interview, and signatures of the interviewed individuals and other persons present.⁷⁴ The prosecution notes that these statements are relevant to the credibility of Witness D04-53 and tend to

⁷² [REDACTED].

⁷³ ICC-01/05-01/08-2596-Conf, paragraph 17.

⁷⁴ ICC-01/05-01/08-2596-Conf, paragraph 17.

prove that the witness relied on false documents when forming his opinions on command and control in this case.⁷⁵ The prosecution submits that Witness D04-53 relied upon documents [REDACTED] and that, therefore, the documents submitted by the defence are false. The prosecution submits that [REDACTED] also supports the belief that the documents submitted by the defence are false.⁷⁶ Both accounts, the prosecution alleges, are consistent with [REDACTED].⁷⁷ According to the prosecution, these statements not only expose the defence documents as forgeries but also undermine the opinions of the military expert Witness D04-53.⁷⁸ The prosecution claims that not considering these statements would be prejudicial to both a fair trial and a fair evaluation of [Witness D04-53's] testimony for the Chamber to not consider these documents in its determination of the truth.⁷⁹

26. The defence objects to the admission of both statements, arguing that they fall outside the statutory regime of the ICC because they do not comply with Rule 68 of the Rules.⁸⁰ The defence argues that, to challenge the credibility of Witness D04-53 through evidence from [REDACTED], the prosecutor would have to call them as rebuttal witnesses.⁸¹ The defence further alleges that relying on out-of-court statements as evidence precludes the Chamber, the parties, and the participants from questioning the witnesses to determine any motives for testifying, personal interest

⁷⁵ ICC-01/05-01/08-2596-Conf-AnxA, pages 10 and 11.

⁷⁶ ICC-01/05-01/08-2596-Conf-AnxA, page 10.

⁷⁷ ICC-01/05-01/08-2596-Conf-AnxA, pages 10 and 11.

⁷⁸ ICC-01/05-01/08-2596-Conf-AnxA, pages 10 and 11.

⁷⁹ ICC-01/05-01/08-2596-Conf, paragraph 17.

⁸⁰ Defence Response to the Prosecution's Second Application for Admission of Evidence from the Bar Table, 6 May 2013, ICC-01/05-01/08-2617-Conf, paragraph 41.

⁸¹ ICC-01/05-01/08-2617-Conf, paragraph 42.

that they may have in the outcome of the proceedings, or reasons for providing these statements to the prosecution.⁸²

27. In its reply, the prosecution avers that the statements are submitted solely to address the discrete issue of [REDACTED].⁸³ Thus, the prosecution alleges, the statements are not submitted to prove any aspect of the case or to directly challenge the testimony of the witness [REDACTED].⁸⁴ [REDACTED].⁸⁵

28. At the outset, the Chamber reiterates its consistent approach to the admission of prior recorded testimony of witnesses who testify at trial.⁸⁶ In addition, the Chamber notes that, [REDACTED]. In light of this, the Chamber will first analyse the admissibility of [REDACTED] in accordance with the three-part test of relevance, probative value, and potential prejudice, and then turn to the analysis of [REDACTED].⁸⁷

29. In relation to document CAR-OTP-0069-0010, [REDACTED],⁸⁸ [REDACTED];⁸⁹ [REDACTED].⁹⁰

⁸² ICC-01/05-01/08-2617-Conf, paragraphs 42 to 46.

⁸³ Prosecution's Reply to "Defence Response to the Prosecution's Second Application for Admission of Evidence from the Bar Table", 20 May 2013, ICC-01/05-01/08-2635-Conf, paragraph 18.

⁸⁴ ICC-01/05-01/08-2635-Conf, paragraph 18.

⁸⁵ ICC-01/05-01/08-2635-Conf, paragraph 18.

⁸⁶ Either video or audio recordings, transcripts of interviews or written statements, *see* ICC-01/05-01/08-2012-Red, paragraphs 134 to 136; Decision on the "Prosecution Application for Leave to Submit in Writing Prior-Recorded Testimonies by CAR-OTP-WWWW-0032, CAR-OTP-WWWW-0080, and CAR-OTP-WWWW-0108", 16 September 2010, ICC-01/05-01/08-886, paragraphs 5 to 6; in relation to *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the prosecution's application for the admission of the prior recorded statements of two witnesses, 15 January 2009, ICC-01/04-01/06-1603.

⁸⁷ ICC-01/05-01/08-2012-Red, paragraphs 13 to 16; ICC-01/05-01/08-2299-Red, paragraphs 7 to 9; Second Decision on the admission into evidence of material used during the questioning of witnesses, 14 June 2013, ICC-01/05-01/08-2688-Conf, paragraph 10.

⁸⁸ The Chamber notes that Rule 68 was amended by Resolution ICC-ASP/12/Res.7 but that the amended rule cannot be applied retroactively to the detriment of the person who is being investigated or prosecuted. For present purposes therefore, the Chamber will apply the unamended Rule 68:

30. As to the relevance of item CAR-OTP-0069-0010, the Chamber notes that [REDACTED] expresses his views on the authenticity of documents CAR-D04-0003-0136,⁹¹ CAR-D04-0003-0137,⁹² CAR-D04-0003-0140,⁹³ CAR-D04-0003-0130,⁹⁴ CAR-D04-0003-0131,⁹⁵ CAR-D04-0003-0132,⁹⁶ and CAR-D04-0003-0133,⁹⁷ [REDACTED].⁹⁸ In addition, the Chamber notes that [REDACTED] and presented his views as to the authenticity of the abovementioned documents [REDACTED].⁹⁹ The Chamber further notes that Witness D04-53 also referred to these documents during his oral testimony.¹⁰⁰ In light of the above, the Chamber is satisfied that

Rule 68

Prior recorded testimony

When the Pre-Trial Chamber has not taken measures under article 56, the Trial Chamber may, in accordance with article 69, paragraph 2, allow the introduction of previously recorded audio or video testimony of a witness, or the transcript or other documented evidence of such testimony, provided that:

- (a) If the witness who gave the previously recorded testimony is not present before the Trial Chamber, both the Prosecutor and the defence had the opportunity to examine the witness during the recording; or
- (b) If the witness who gave the previously recorded testimony is present before the Trial Chamber, he or she does not object to the submission of the previously recorded testimony and the Prosecutor, the defence and the Chamber have the opportunity to examine the witness during the proceedings.

⁸⁹ [REDACTED].

⁹⁰ [REDACTED].

⁹¹ CAR-OTP-0069-0010, at 0026-0032.

⁹² CAR-OTP-0069-0010, at 0032-0034.

⁹³ CAR-OTP-0069-0010, at 0034-0035.

⁹⁴ CAR-OTP-0069-0010, at 0035-0036.

⁹⁵ CAR-OTP-0069-0010, at 0036-0037.

⁹⁶ CAR-OTP-0069-0010, at 0037.

⁹⁷ CAR-OTP-0069-0010, at 0037-0039.

⁹⁸ CAR-OTP-0069-0010, at 0025-0026.

⁹⁹ [REDACTED].

¹⁰⁰ **Document CAR-D04-0003-0136:** transcript of hearing of 14 August 2012, ICC-01/05-01/08-T-229-CONF-ENG CT, page 59, line 7 to page 60, line 24; **document CAR-D04-0003-0137:** ICC-01/05-01/08-T-229-CONF-ENG CT, page 60, line 25 to page 62, line 4, transcript of hearing of 22 August 2012, ICC-01/05-01/08-T-234-CONF-ENG ET, page 33, lines 5 to 11; **document CAR-D04-0003-0140:** ICC-01/05-01/08-T-229-CONF-ENG CT, page 62, line 5 to page 63, line 19, transcript of hearing of 15 August 2012, ICC-01/05-01/08-T-230-ENG ET, page 40, line 15 to page 42, line 2, transcript of hearing of 16 August 2012, ICC-01/05-01/08-T-231-CONF-ENG ET, page 57, line 19 to page 58, line 17, ICC-01/05-01/08-T-234-CONF-ENG ET, page 33, line 15 to page 34, line 1; **document CAR-D04-0003-0130:** ICC-01/05-01/08-T-230-ENG ET, page 9, line 18 to page 12, line 6, ICC-01/05-01/08-T-234-CONF-ENG ET, page 34, lines 2 to 8; **document CAR-D04-0003-0131:** ICC-01/05-01/08-T-230-ENG ET, page 48, line 9 to

[REDACTED] Statement relates to matters that are properly to be considered by the Chamber, namely the assessment of Witnesses D04-53 [REDACTED] testimony and items CAR-D04-0003-0136, CAR-D04-0003-0137, CAR-D04-0003-0140, CAR-D04-0003-0130, CAR-D04-0003-0131, CAR-D04-0003-0132, and CAR-D04-0003-0133, submitted by the defence.

31. In terms of probative value, the Chamber notes that [REDACTED] Statement appears to have been taken in accordance with Rule 111 of the Rules. The document is signed by the interviewee, two members of the prosecution, and one interpreter. Moreover, the interviewee signed an attestation affirming that he had read his [REDACTED] Statement, that it was true to the best of his knowledge and belief, and that it had been given voluntarily. Further, the document contains the date, time, and place of the interview and the persons present during questioning.¹⁰¹ [REDACTED].¹⁰² In the view of the Majority, these factors provide [REDACTED] Statement with sufficient probative value for its admission as evidence.

32. In terms of potential prejudice, the Chamber notes that defence's main objection to the admission of item CAR-OTP-0069-0010 is that rather than requesting the admission of a written statement, the prosecution should have sought to call [REDACTED] as a rebuttal witness--allowing the Chamber, the parties, and the participants to question him in court.¹⁰³

page 49, line 10; document **CAR-D04-0003-0132**: ICC-01/05-01/08-T-230-ENG ET, page 20, line 19 to page 22, line 24, ICC-01/05-01/08-T-234-CONF-ENG ET, page 34, line 9 to page 36, line 12; document **CAR-D04-0003-0133**: ICC-01/05-01/08-T-230-ENG ET, page 25, line 3 to page 25, line 24.

¹⁰¹ CAR-OTP-0069-0010, at 0011-0012.

¹⁰² [REDACTED].

¹⁰³ ICC-01/05-01/08-2617-Conf, paragraphs 41 to 45.

[REDACTED]. In light of the above, the Majority sees no reason to believe that the admission of [REDACTED] Statement would have any prejudicial effect on, or be inconsistent with, the rights of the accused or the fairness of the trial. The Majority, Judge Ozaki dissenting, admits document CAR-OTP-0069-0010.

33. The Chamber now turns to document **CAR-OTP-0069-0083_R01**, a written statement of [REDACTED] in which he expresses his views on, *inter alia*, the authenticity of documents CAR-D04-0003-0139,¹⁰⁴ CAR-D04-0003-0138,¹⁰⁵ and CAR-D04-0003-0128/CAR-D04-0003-0135,¹⁰⁶ and in connection to this refers to [REDACTED].¹⁰⁷

34. [REDACTED].¹⁰⁸ The Chamber also notes the prosecution's submission that the statement of [REDACTED] is not submitted to prove "any aspect of [the] case" or to directly challenge the testimony of the witness [REDACTED]¹⁰⁹ and that it "would be prejudicial to both a fair trial and a fair evaluation of Witness D04-53's testimony for the Chamber to not consider [the statement of [REDACTED]] in its determination of the truth".¹¹⁰ However, in the view of the Majority, Judge Steiner dissenting, Rule 68(a), in its unamended version,¹¹¹ only authorises the Chamber to allow, in accordance with Article 69(2) of the Statute, the admission of a witness's written statement provided that "[i]f the witness who gave the

¹⁰⁴ CAR-OTP-0069-0083_R01, at 0096-0098.

¹⁰⁵ CAR-OTP-0069-0083_R01, at 0098-0100.

¹⁰⁶ CAR-OTP-0069-0083_R01, at 0100-0102.

¹⁰⁷ CAR-OTP-0069-0083_R01, at 0096.

¹⁰⁸ ICC-01/05-01/08-2012-Conf, paragraphs 132 to 135.

¹⁰⁹ ICC-01/05-01/08-2635-Conf, paragraph 18.

¹¹⁰ ICC-01/05-01/08-2596-Conf-AnxA, pages 10 and 11.

¹¹¹ The Chamber recalls once again that for the purposes of the present decision it is bound to apply the unamended Rule 68.

previously recorded testimony is not present before the Trial Chamber, both the Prosecutor and the defence had the opportunity to examine the witness during the recording". In the present instance, the defence did not have the opportunity to examine the witness while he gave the testimony that comprises the written statement. As such, the requirements of Rule 68(a) are not met. Having found that Rule 68(a) prohibits the admission of such statements into evidence, the Majority does not consider it necessary to analyse the statement in the context of the three-part admissibility test. Accordingly, the Majority, Judge Steiner dissenting, rejects the admission of document CAR-OTP-0069-0083_R01.

[REDACTED]

35. The prosecution submits that items [REDACTED] are probative of the fact that the documents relied upon by Witness D04-53, [REDACTED], are false documents [REDACTED].¹¹² In addition, the prosecution submits that [REDACTED].¹¹³ The defence objects to the admission of the documents contesting the prosecution's submissions as to their relevance to Witness D04-53's testimony and conclusions.¹¹⁴ In addition, the defence notes that the prosecution did not provide the Chamber with particularised submissions as to the reliability or provenance of the documents.¹¹⁵ Finally, the defence argues that the prosecution's attempt to have these two documents admitted without giving Witness D04-53 the

¹¹² [REDACTED].

¹¹³ [REDACTED].

¹¹⁴ [REDACTED].

¹¹⁵ [REDACTED].

opportunity to comment on them and explain their impact, if any, upon his testimony, is inherently unfair.¹¹⁶

36. Me Douzima submits documents [REDACTED], arguing that they will allow the Chamber to determine whether the *Mouvement de Libération du Congo* (“MLC”) troops deployed in the CAR were effectively under the command of the CAR authorities and will shed light over the identity of those responsible of the crimes committed in the CAR, which is of interest to the victims of those offences.¹¹⁷ In addition, Me Douzima submits that they are official documents, bearing signatures and stamps, publicly available from [REDACTED].¹¹⁸ Me Douzima submits that document [REDACTED] shows that [REDACTED].¹¹⁹ As to document [REDACTED], Me Douzima submits that it shows that [REDACTED].¹²⁰

37. The Chamber notes that the documents [REDACTED], submitted by Me Douzima, are almost exact copies of documents [REDACTED], submitted by the prosecution, the only difference being that documents [REDACTED] each include an attestation, [REDACTED], certifying that the copy corresponds with the original document. As such, the Chamber will only consider the admission of items [REDACTED] as the fuller versions of the documents.

38. The Chamber notes that document [REDACTED]. The Chamber further notes that both documents were discussed in Court by Witnesses D04-59

¹¹⁶ [REDACTED].

¹¹⁷ [REDACTED].

¹¹⁸ [REDACTED].

¹¹⁹ [REDACTED].

¹²⁰ [REDACTED].

and CHM-01, following questioning from the Chamber, the defence, and the legal representative of victims.¹²¹ As such, the Chamber is satisfied that the documents may be of relevance to matters that are properly to be considered by the Chamber; more specifically, the documents appear relevant to the Chamber's assessment of (i) the testimony of Witnesses D04-53, (ii) the authenticity and reliability of the documents relied upon by Witness D04-53 in forming his professional opinion on issues in the case, and (iii) the testimony of Witnesses D04-59 and CHM-01.

39. In terms of probative value, the Chamber is satisfied that the documents bear sufficient indicia of reliability – such as letter heads, dates, stamps, and signatures – and appear to have been produced in the ordinary course of operations within [REDACTED]. [REDACTED]¹²² [REDACTED].¹²³ The Chamber notes the doubts raised in-court by the defence as to the authenticity of the documents, based on the fact that Me Douzima – who is not a subject or recipient of the [REDACTED] – disclosed a copy of each of the documents in the proceedings.¹²⁴ The Chamber is however not persuaded by the suspicions raised by the defence in-court – relating to the orientation of the staples, the lack of initials on the first page of a two-page document, and whether signatures were crossed by stamps –¹²⁵ and finds the explanation [REDACTED] and placed on a public file to which everyone has access and can get a copy, to be a plausible one.¹²⁶ The Chamber further notes that the explanation [REDACTED] corroborates

¹²¹ [REDACTED].

¹²² [REDACTED].

¹²³ [REDACTED].

¹²⁴ [REDACTED].

¹²⁵ [REDACTED].

¹²⁶ [REDACTED].

that given by Me Douzima herself, [REDACTED], while questioning Witness D04-59.¹²⁷ As such, the Chamber is satisfied that the documents hold sufficient probative value to be admitted into evidence.

40. In terms of potential prejudice, the Chamber notes the defence's argument that to submit documents to challenge the credibility of Witness D04-53 without confronting the witness with the documents and giving him the opportunity to comment on them is unfair.¹²⁸ However, the Chamber notes that, although he was not shown the documents themselves, the witness commented on the fact allegedly proven by the documents in question.¹²⁹ In addition, the documents were shown to two witnesses in the case, Witness D04-59 and Witness CHM-01, who were both given the opportunity to comment on the documents' content. For the above reasons, the Chamber considers that any potential prejudice that may be caused by admitting these documents without them having been presented to Witness D04-53 does not outweigh their probative value. Documents [REDACTED] are therefore admitted into evidence.

CAR internal documents

41. The defence requests, through witness D04-53, the admission of twelve documents allegedly emanating from the CAR, documents CAR-D04-

¹²⁷ [REDACTED].

¹²⁸ [REDACTED]. The defence submits that "there is an inherent unfairness in seeking the admission of documents on the basis that they "go to the credibility of a witness" without having given the witness the opportunity to comment on the material at hand. If given the opportunity, the witnesses may well have been able to explain to the Chamber how these documents were not in fact inconsistent with their testimony or conclusions, or the witnesses may in fact have wished to revise or explain their evidence in light of the new information contained therein".

¹²⁹ [REDACTED].

0003-0128 (Public), CAR-D04-0003-0129 (Public), CAR-D04-0003-0130 (Public), CAR-D04-0003-0131 (Public), CAR-D04-0003-0132 (Public), CAR-D04-0003-0133 (Public), CAR-D04-0003-0134 (Public), CAR-D04-0003-0136 (Public), CAR-D04-0003-0137 (Public), CAR-D04-0003-0138 (Public), CAR-D04-0003-0139 (Public), CAR-D04-0003-0140 (Public) and CAR-D04-0003-0141 (Public), hereafter collectively referred to as “Contested Items”.

42. The defence generally argues that the Contested Items are relevant because they were created contemporaneously with the relevant events and address an issue central to the prosecution’s case, namely the question of effective control over the MLC troops.¹³⁰ In addition, the defence submits that the Contested Items were considered by Witness D04-53 in making his report and discussed during his testimony, and as such they will provide relevant context and assist the Chamber in understanding and assessing his evidence.¹³¹ Lastly, the defence submits that the Contested Items have “probative value, given sufficient indicia of reliability on [their] face, the accuracy of [their] contents when compared with the evidence heard in the case, [and the fact that they are] signed and stamped and dated”, and because some of them were discussed by the witness in his expert report or during his testimony.¹³²

43. The prosecution alleges that documents CAR-D04-0003-0128, CAR-D04-0003-0130, CAR-D04-0003-0131, CAR-D04-0003-0132, CAR-D04-0003-0133, CAR-D04-0003-0136, CAR-D04-0003-0137, CAR-D04-0003-0138, CAR-D04-

¹³⁰ ICC-01/05-01/08-2590-Conf-AnxA, pages 2 to 8.

¹³¹ ICC-01/05-01/08-2590-Conf-AnxA, pages 2 to 8.

¹³² ICC-01/05-01/08-2590-Conf-AnxA, pages 2 to 8.

0003-0139, and CAR-D04-0003-0140 are forged and as such have no probative value.¹³³ The prosecution submits that they fail to meet the threshold required by Article 69(4) of the Statute and that their admission into evidence would be highly prejudicial to a fair trial and the interests of justice.¹³⁴

44. In its Motion to Reject Allegedly Fraudulent Documents, the prosecution submitted that, after noting differences in a number of documents disclosed by the defence relating to, *inter alia*, their content, signatures, layout, headings, stamps, abbreviations and lists of recipients, it took steps to investigate their authenticity.¹³⁵ [REDACTED].¹³⁶ In its response to that submission, the defence requested that the Chamber reject the prosecution's motion as there was no evidentiary basis for the prosecution's allegations that the documents were forgeries or had been falsified.¹³⁷ The defence further argued that the allegations of forgery were unreliable, contrary to the record of the proceedings, and evidently self-serving.¹³⁸

45. The prosecution submits that documents CAR-D04-0003-0129, CAR-D04-0003-0134, and CAR-D04-0003-0141, are "very likely forgeries" and that they emanate from the same source as the other allegedly forged documents. In addition, the prosecution submits that the claims of intrinsic reliability asserted by the defence are unsupported by any other

¹³³ ICC-01/05-01/08-2616-Conf-AnxA, pages 3 to 6

¹³⁴ ICC-01/05-01/08-2616-Conf-AnxA, pages 3 to 6.

¹³⁵ ICC-01/05-01/08-2301-Conf, paragraph 9.

¹³⁶ ICC-01/05-01/08-2301-Conf, paragraph 9.

¹³⁷ ICC-01/05-01/08-2326-Conf, paragraph 46.

¹³⁸ ICC-01/05-01/08-2326-Conf, paragraph 47.

evidence and that, without legitimate explanation, the defence has failed to provide an original document that could be subjected to forensic testing.¹³⁹ The defence replies that these arguments completely ignore the established practice of the Chamber in the present case.¹⁴⁰

46. As to the relevance of the Contested Items the Chamber notes the following:

- b. Document **CAR-D04-0003-0128/CAR-D04-0003-0135** appears to be an *Autorisation Gouvernementale*, dated 17 January 2003, from the CAR's *Ministère de la Défense Nationale*, apparently signed on behalf of General Regonessa. The document states that the inter-ministerial commission of crisis, following a decision, authorises the MLC to be given weapons and identical uniforms and be allocated operational tactical radio frequencies, and authorises the implementation of a joint and integrated command between the *Forces armées centrafricaines* ("FACA") - *Unité de Sécurité Présidentielle* ("USP") and the MLC;
- c. Document **CAR-D04-0003-0129**, appears to be a *message-porté*, dated 2 February 2003, from the CAR's *Président de la République* addressed to the *General, Directeur l'Unité de Sécurité Présidentielle*, apparently signed by "President Ange-Félix Patassé". The message

¹³⁹ ICC-01/05-01/08-2616-Conf-AnxA, pages 3 and 5 to 7.

¹⁴⁰ Defence Reply to the Prosecution Response to the Defence Motion to Admit Materials pursuant to the Chamber's Third Order (ICC- 01/05-01/08-2565), 20 May 2013, ICC-01/05-01/08-2636-Conf, paragraph 3.

contains an urgent order to take command and organisation of the FACA and the MLC for all counter-offensive military operations;

- d. Document **CAR-D04-0003-0130** appears to be a *message-porté*, dated 20 January 2003, from the CAR's *Chef d'Etat-Major* addressed to the *Commandant de la Direction des Transmissions*, apparently signed by "*Général de Brigade Antoine Gambi*". The message regards changing and attributing new communication frequencies and indicates governmental authorisation for future operational cohesion between FACA, USP and other allied forces (the MLC and Libyan army);
- e. Document **CAR-D04-0003-0131** appears to be a *message-porté*, dated 7 January 2003, from the CAR's *Chef d'Etat-Major* addressed to the *Commandant de la Deuxième Bureau*, apparently signed by "*Général de Brigade Antoine Gambi*". The message contains an order to put at the disposal of the commander of the military security service of the Ministry of Defence the troops of the 2nd Bureau;
- f. Document **CAR-D04-0003-0132** appears to be a *message-porté*, dated 17 January 2003, from the CAR's *Chef d'Etat-Major* addressed to the *Commandant du Centre de Commandement Opérationnel*, apparently signed by "*Général de Brigade Antoine Gambi*". The message contains an urgent order assigning two MLC officers nominated by their commander to the team of the *Commandant du Centre de Commandement Opérationnel*;

- g. Document **CAR-D04-0003-0133** appears to be a *message-porté*, dated 7 January 2003, from the CAR's *Chef d'Etat-Major* addressed to the *Commandant de la Quatrième Bureau*, apparently signed by "*Général de Brigade Antoine Gambi*". The message contains an urgent order to provide the MLC with logistical resources (six vehicles for the transportation of troops and ten jeeps) and fuel;
- h. Document **CAR-D04-0003-0134** appears to be a *message-porté*, the date of which is illegible, from the CAR's *Ministère de la Défense* addressed to the *Directeur Général de l'Intendance*, apparently signed by "Jean-Jacques Demafouth". The message contains an order made on the instruction of the President to take over the *Prime Globale D'alimentation* ("PGA") of the MLC troops;
- i. Document **CAR-D04-0003-0136** appears to be a *message-porté*, dated 20 November 2002, from the CAR's *Chef d'Etat-Major* addressed to all unit commanders, apparently signed by "*Général de Brigade Antoine Gambi*". The urgent and confidential message informs all unit commanders that the MLC has been deployed with the FACA troops in counter-offensive operations in the centre and north of the country under the command and control of the *Chef d'Etat-Major*;
- j. Document **CAR-D04-0003-0137** appears to be a document sent from the CAR's *Chef d'Etat-Major des Armées* to the Commander of the MLC, dated 25 November 2002. The document contains a request to place the MLC's battalion at the disposal of the *l'Etat*

Major des Armées Centrafricaines for counter-offensive operations in the centre and north of the CAR;

- k. Document **CAR-D04-0003-0138** appears to be an *Autorisation Gouvernementale*, dated 19 January 2003, from the CAR's *Ministere de la Défense*, apparently signed by "General Maurice Regonessa". The document contains an instruction to General Yangongo and the commander of the *Battailon Amphibie* to organise, on the Central African side of the river, at Port Beach, the crossing of the Ubangi River by the MLC Battalion that is being sent as reinforcements;
- l. Document **CAR-D04-0003-0139** appears to be an *Autorisation Gouvernementale*, dated 19 January 2003, from the CAR's *Ministere de la Défense Nationale*, apparently signed by "General Maurice Regonessa". This document contains an authorisation for the MLC Battalion to set up their base in the Bégoa public school at the northern exit of Bangui. To this effect, the limits of the Bangui garrison are modified, and a roadblock for controls is set up and placed under the control of the USP;
- m. Document **CAR-D04-0003-0140** appears to be a *message-porté*, dated 8 November 2002, from the CAR's *Chef d'Etat-Major* addressed to the *Commandant du Génie Militaire*, apparently signed by "Général de Brigade Antoine Gambi". This message contains an urgent order to take all measures to ensure that sanitary facilities, electricity, sleeping facilities, storage, weapons, and ammunition are ready at the Bégoa school for the MLC battalion; and

n. Document **CAR-D04-0003-0141** is a *note de service*, dated 4 June 2001, from *l'Etat Major des Armées Centrafricaines*. The note states that the allied troops (Libyan and MLC) are engaged in supporting the FACA to liberate areas held by the rebels.

47. The Chamber notes that all the above-mentioned Contested Items were used during the questioning of Witness D04-53 who commented extensively on their content,¹⁴¹ and explained that his opinion on the case, as well as his Expert Report, was based, *inter alia*, on the documents provided to him by the defence – including the Contested Items.¹⁴² In addition, the Chamber notes that one of the Contested Items, document **CAR-D04-0003-0137**, was also used during the questioning of Witness D04-59, who testified that he was able to affirm – on the basis of this document – that [REDACTED] issuing orders to the MLC forces.¹⁴³ The

¹⁴¹ See, *inter alia*, document **CAR-D04-0003-0128/CAR-D04-0003-0135**: ICC-01/05-01/08-T-230-ENG ET, page 3, line 13 to page 7, line 1; document **CAR-D04-0003-0129**: ICC-01/05-08-T-230-ENG ET, page 7, line 2 to page 9, line 17; document **CAR-D04-0003-0130**: ICC-01/05-01/08-T-230-ENG ET, page 9, line 18 to page 12, line 6, ICC-01/05-01/08-T-234-CONF-ENG ET, page 34, lines 2 to 8; document **CAR-D04-0003-0131**: ICC-01/05-01/08-T-230-ENG ET, page 48, line 9 to page 49, line 10; document **CAR-D04-0003-0132**: ICC-01/05-01/08-T-230-ENG ET, page 20, line 19 to page 22, line 24, ICC-01/05-01/08-T-234-CONF-ENG ET, page 34, line 9 to page 36, line 12; document **CAR-D04-0003-0133**: ICC-01/05-01/08-T-230-ENG ET, page 25, line 3 to page 25, line 24; document **CAR-D04-0003-0134**: ICC-01/05-01/08-T-230-ENG ET, page 51, line 6 to page 52, line 7; document **CAR-D04-0003-0136**: ICC-01/05-01/08-T-229-CONF-ENG CT, page 59, line 7 to page 60, line 24; document **CAR-D04-0003-0137**: ICC-01/05-01/08-T-229-CONF-ENG CT, page 60, line 25 to page 62, line 4, ICC-01/05-01/08-T-234-CONF-ENG ET, page 33, lines 5 to 11; document **CAR-D04-0003-0138**: ICC-01/05-01/08-T-230-ENG ET, page 33, line 20 to page 36, line 9; document **CAR-D04-0003-0139**: ICC-01/05-01/08-T-230-ENG ET, page 46, line 4 to page 47, line 11; document **CAR-D04-0003-0140**: ICC-01/05-01/08-T-229-CONF-ENG CT, page 62, line 5 to page 63, line 19, ICC-01/05-01/08-T-230-ENG ET, page 40, line 15 to page 42, line 2, ICC-01/05-01/08-T-231-CONF-ENG ET, page 57, line 19 to page 58, line 17, ICC-01/05-01/08-T-234-CONF-ENG ET, page 33, line 15 to page 34, line 1; document **CAR-D04-0003-0141**: ICC-01/05-01/08-T-230-ENG ET, page 49, line 11 to page 50, line 18.

¹⁴² See list of references in the witness's Expert Report, in which the only documents allegedly emanating from governmental or military units are the above-referred documents, **CAR-D04-0003-0342**, at 0346 to 0350 and **ICC-01/05-01/08-T-232-CONF-ENG ET**, page 3, lines 1 to 14.

¹⁴³ Document **CAR-D04-0003-0137**: ICC-01/05-01/08-T-239-CONF-ENG ET, page 52, line 3 to page 53, line 10 and page 55, line 25 to page 56, line 16.

Chamber further notes that Witness CHM-01, [REDACTED], also referred to all the Contested Items during his oral testimony.¹⁴⁴

48. In light of the above, the Chamber is satisfied that the documents appear to be of relevance to matters that are properly to be considered by the Chamber, particularly in relation to the chain of command and control of the MLC troops in the CAR during the relevant time period. The Chamber further considers that the documents appear to be of relevance to its assessment of the testimony of Witnesses D04-53, D04-59, and CHM-01.

49. In terms of probative value, the Chamber notes that, on their face, the documents, when submitted and discussed bore some indicia of authenticity – such as letter heads, dates, stamps and signatures – and appeared to have been produced in the ordinary course of operations within the CAR’s Presidency and Defence Ministry. At the same time, the Chamber notes the prosecution’s allegations with regard to the

¹⁴⁴ See, *inter alia*, document CAR-D04-0003-0128/CAR-D04-0003-0135: ICC-01/05-01/08-T-353-CONF-ENG ET, page 72, line 24 to page 77, line 2, ICC-01/05-01/08-T-354-ENG ET, page 13, line 6 to page 14 line 23, ICC-01/05-01/08-T-356-CONF-ENG ET, page 39, line 9 to page 42, line 13; document CAR-D04-0003-0129: ICC-01/05-01/08-T-353-CONF-ENG ET, page 77, line 6 to page 78, line 21, ICC-01/05-01/08-T-354-CONF-ENG CT, page 3, line 11 to page 5, line 22, ICC-01/05-01/08-T-357-CONF-ENG ET, page 106, line 2 to page 107, line 5; document CAR-D04-0003-0130: ICC-01/05-01/08-T-353-CONF-ENG ET, page 24, line 23 to page 27, line 21; document CAR-D04-0003-0131: ICC-01/05-01/08-T-353-CONF-ENG ET, page 27, line 23 to page 28, line 23; document CAR-D04-0003-0132: ICC-01/05-01/08-T-353-CONF-ENG ET, page 28, line 24 to page 30, line 2; document CAR-D04-0003-0133: ICC-01/05-01/08-T-353-CONF-ENG ET, page 34, line 7 to page 35, line 24, ICC-01/05-01/08-T-357-CONF-ENG ET, page 55, line 17 to page 57, line 13; document CAR-D04-0003-0134: ICC-01/05-01/08-T-354-CONF-ENG CT, page 5, line 24 to page 9, line 13; document CAR-D04-0003-0136: ICC-01/05-01/08-T-353-CONF-ENG ET, page 36, line 1 to page 38, line 1, ICC-01/05-01/08-T-357-CONF-ENG ET, page 104, line 23 to page 105, line 23; document CAR-D04-0003-0137: ICC-01/05-01/08-T-353-CONF-ENG ET, page 38, line 3 to page 39, line 13, ICC-01/05-01/08-T-356-CONF-ENG ET, page 44, line 14 to page 47, line 17, ICC-01/05-01/08-T-357-CONF-ENG ET, page 102, line 17 to page 104, line 22; document CAR-D04-0003-0138: ICC-01/05-01/08-T-354-CONF-ENG ET, page 14, line 24 to page 20, line 24, ICC-01/05-01/08-T-357-CONF-ENG ET, page 49, line 6 to page 50, line 20; document CAR-D04-0003-0139: ICC-01/05-01/08-T-354-ENG ET, page 21, line 1 to page 25, line 9, ICC-01/05-01/08-T-357-CONF-ENG ET, page 52, line 8 to page 53, line 6; document CAR-D04-0003-0140: ICC-01/05-01/08-T-353-CONF-ENG ET, page 39, line 14 to page 41, line 3; document CAR-D04-0003-0141: ICC-01/05-01/08-T-354-CONF-ENG CT, page 26, line 4 to page 34, line 20.

authenticity of the Contested Items.¹⁴⁵ Specifically, when presented with the Contested Items, Witness CHM-01 stated that each of the documents was “a fabrication” or “a forgery”.¹⁴⁶ [REDACTED] documents CAR-D04-0003-0130,¹⁴⁷ CAR-D04-0003-0131,¹⁴⁸ CAR-D04-0003-0132,¹⁴⁹ CAR-D04-0003-0133,¹⁵⁰ CAR-D04-0003-0136,¹⁵¹ CAR-D04-0003-0137,¹⁵² or CAR-D04-0003-0140.¹⁵³ However, the Chamber notes that Witness D04-53 testified to the effect that he considered all documents presented to him by the defence to be accurate and did not assess their validity.¹⁵⁴ The Chamber also notes that the defence challenges Witness CHM-01’s contentions in relation to the Contested Documents.¹⁵⁵

¹⁴⁵ See ICC-01/05-01/08-2301-Conf, ICC-01/05-01/08-2596-Conf and ICC-01/05-01/08-2596-Conf-AnxA.

¹⁴⁶ As to **document CAR-D04-0003-0128/CAR-D04-0003-0135**: ICC-01/05-01/08-T-353-CONF-ENG ET, page 74, line 8 to page 75, line 16 and page 76, line 23 to page 77, line 2, ICC-01/05-01/08-T-354-ENG ET, page 14, lines 16 to 23, ICC-01/05-01/08-T-356-CONF-ENG ET, page 42, lines 2 to 13; **document CAR-D04-0003-0129**: ICC-01/05-01/08-T-353-CONF-ENG ET, page 77, line 21 to page 78, line 21, ICC-01/05-01/08-T-354-CONF-ENG CT, page 5, lines 17 to 22; **document CAR-D04-0003-0130**: ICC-01/05-01/08-T-353-CONF-ENG ET, page 25, line 20 to page 27, line 13; **document CAR-D04-0003-0131**: ICC-01/05-01/08-T-353-CONF-ENG ET, page 29, lines 14 to 23; **document CAR-D04-0003-0132**: ICC-01/05-01/08-T-353-CONF-ENG ET, page 29, lines 10 to 14; **document CAR-D04-0003-0133**: ICC-01/05-01/08-T-353-CONF-ENG ET, page 34, line 25 to page 35, line 24, ICC-01/05-01/08-T-357-CONF-ENG ET, page 56, line 4 to page 57, line 13; **document CAR-D04-0003-0134**: ICC-01/05-01/08-T-354-CONF-ENG CT, page 9, lines 8 to 12; **document CAR-D04-0003-0136**: ICC-01/05-01/08-T-353-CONF-ENG ET, page 36, line 10 to page 38, line 1, transcript of hearing of 22 November 2013, ICC-01/05-01/08-T-357-CONF-ENG ET, page 105, lines 8 to 23; **document CAR-D04-0003-0137**: ICC-01/05-01/08-T-353-CONF-ENG ET, page 38, lines 11 to 23, transcript of hearing of 21 November 2013, ICC-01/05-01/08-T-356-CONF-ENG ET, page 47, lines 11 to 17, ICC-01/05-01/08-T-357-CONF-ENG ET, page 102, line 17 to page 104, line 22; **document CAR-D04-0003-0138**: ICC-01/05-01/08-T-354-CONF-ENG ET, page 16, lines 3 to 19, page 17, lines 13 to 16 and page 20, lines 20 to 24, ICC-01/05-01/08-T-357-CONF-ENG ET, page 50, lines 13 to 20; **document CAR-D04-0003-0139**: transcript of hearing of 19 November 2013, ICC-01/05-01/08-T-354-ENG ET, page 24, line 4 to page 25, line 6; **document CAR-D04-0003-0140**: ICC-01/05-01/08-T-353-CONF-ENG ET, page 39, line 24 to page 41, line 3; **document CAR-D04-0003-0141**: ICC-01/05-01/08-T-354-CONF-ENG CT, page 28, lines 18 to 23, and page 33, line 2 to page 34, line 20.

¹⁴⁷ [REDACTED].

¹⁴⁸ [REDACTED].

¹⁴⁹ [REDACTED].

¹⁵⁰ [REDACTED].

¹⁵¹ [REDACTED].

¹⁵² [REDACTED].

¹⁵³ [REDACTED].

¹⁵⁴ ICC-01/05-01/08-T-232-CONF-ENG ET, page 3, line 22 to page 4, line 5.

¹⁵⁵ ICC-01/05-01/08-2326-Conf, paragraphs 23 to 37, and 39 to 41; and ICC-01/05-01/-8-2636-Red, paragraph 3.

50. In view of their use during proceedings and the reliance placed on them by Witnesses D04-53 and D04-59, the Chamber is of the view that the Contested Documents have relevance and probative value with respect to the Chamber's analysis of the testimonies of Witnesses D04-53, D04-59, and CHM-01, and its overall determination of the truth with respect to the chain of command and control of the MLC troops in the CAR during the relevant time period. In its final assessment of the evidence, the Chamber will consider all submissions and testimonial evidence related to the authenticity of the Contested Documents, as summarised above. Given that this approach will allow the Chamber to fully consider all arguments and relevant evidence, the Chamber is of the view that the potential for the admission of the Contested Documents to have a prejudicial effect on the fairness of the trial is minimal and outweighed by their relevance and probative value. Documents CAR-D04-0003-0128/CAR-D04-0003-0135, CAR-D04-0003-0129, CAR-D04-0003-0130, CAR-D04-0003-0131, CAR-D04-0003-0132, CAR-D04-0003-0133, CAR-D04-0003-0134, CAR-D04-0003-0136, CAR-D04-0003-0137, CAR-D04-0003-0138, CAR-D04-0003-0139, CAR-D04-0003-0140, and CAR-D04-0003-0141 are therefore admitted. With respect to document CAR-D04-0003-0128/CAR-D04-0003-0135, the Chamber considers that in order to retain a complete record of the document's use in proceedings, both versions should be admitted but under a single EVD-T number.

Expert Reports

51. The defence requests the admission of items (i) **CAR-D04-0003-0342 (Public)**, the expert report of its military expert, Witness D04-53;¹⁵⁶ and (ii) **CAR-D04-0003-0398 (Public)**, the expert report of its expert in politics and strategy, Witness D04-59,¹⁵⁷ hereafter collectively “Expert Reports”.

52. In terms of relevance, the defence submits that the Expert Reports are relevant given their “direct link to the subject matter of the present proceedings, and because [they] formed the basis of the expert witness[es]’ testimony”.¹⁵⁸ The defence submits that the Chamber has previously admitted expert reports on this basis.¹⁵⁹ The defence further submits that the Expert Reports have sufficient probative value as they were recognised and authenticated by the relevant expert witnesses during their testimony.¹⁶⁰ The defence avers that the admission of these reports will cause no prejudice as they were disclosed to the prosecution in advance of the expert witnesses’ testimony, and were used by the prosecution in its questioning of the witnesses.¹⁶¹

53. The prosecution objects to the admission of the Expert Reports on the basis that they are based in part on the expert witnesses’ analysis of a number of allegedly false documents provided to them by the defence.¹⁶²

¹⁵⁶ ICC-01/05-01/08-2590-Conf-AnxA, page 2.

¹⁵⁷ ICC-01/05-01/08-2590-Conf-AnxA, pages 9 and 10.

¹⁵⁸ ICC-01/05-01/08-2590-Conf-AnxA, pages 2, 9, and 10.

¹⁵⁹ ICC-01/05-01/08-2590-Conf-AnxA, pages 2, 9, and 10, referring to ICC-01/05-01/08-2012, paragraph 36.

¹⁶⁰ ICC-01/05-01/08-2590-Conf-AnxA, pages 2, 9, and 10.

¹⁶¹ ICC-01/05-01/08-2590-Conf-AnxA, pages 2, 9, and 10.

¹⁶² This objection relates to the prosecution’s Motion to Reject Alleged Fraudulent Documents.

The prosecution submits that the opinion of both experts is unreliable and that admission of their reports would be prejudicial to a fair trial and the interests of justice.¹⁶³ The prosecution further submits that, since neither expert provides citations in their reports to the specific evidence upon which they relied, it is impossible to discern the extent to which they relied on the false documents.¹⁶⁴ The prosecution therefore submits that both reports are inadmissible in their entirety as they have little to no probative value and their inclusion as evidence before the Chamber would be prejudicial to a fair trial and the interests of justice.¹⁶⁵ The prosecution further challenges the relevance of the expert report of Witness D04-59 submitting that most of the report deals with issues such as the “legitimacy” of the MLC’s intervention and the need to release the accused, which the prosecution submits are irrelevant to the case.¹⁶⁶

54. The defence rejects the Prosecution’s “unfounded allegation that the impugned CAR documents are ‘forgeries’ or ‘very likely forgeries’”.¹⁶⁷ In relation to document CAR-D04-0003-0342, the expert report of Witness D04-53, the defence submits that the “prosecution’s assertion that the expert report of Witness D04-53 is inadmissible because he considered these contemporaneous records in the making [of] his report is, similarly, without merit.”¹⁶⁸ The defence alleges that the prosecution’s position presupposes two findings of fact by the Trial Chamber; first that the allegedly fraudulent documents are not genuine, and secondly that the

¹⁶³ ICC-01/05-01/08-2616-Conf-AnxA, pages 2, 3, 7, and 8.

¹⁶⁴ ICC-01/05-01/08-2616-Conf-AnxA, pages 2, 3, 7, and 8.

¹⁶⁵ ICC-01/05-01/08-2616-Conf-AnxA, pages 2, 3, 7, and 8.

¹⁶⁶ ICC-01/05-01/08-2616-Conf-AnxA, page 8.

¹⁶⁷ ICC-01/05-01/08-2636-Conf, paragraphs 1, 2, and 5.

¹⁶⁸ ICC-01/05-01/08-2636-Conf, paragraph 1.

review of the allegedly fraudulent documents as part of the materials considered in the preparation of the expert report undermines Witness D04-53's conclusions in their entirety.¹⁶⁹ The defence alleges that in so arguing the prosecution "is attempting to usurp the Chamber's role in making self-serving assertions and on questions that can only be decided by the Chamber itself."¹⁷⁰ The defence goes on to submit that the prosecution failed to raise timely objections to either the expert report or the impugned documents in question during the testimony of Witness D04-53.¹⁷¹ As such, according to the defence, the prosecution never put its theory that the allegedly fraudulent documents were forgeries to the witness, thus depriving him of the opportunity to revise his conclusions if necessary.¹⁷² The defence notes also that the prosecution has not sought to recall Witness D04-53 to determine the effect, if any, that its theories relating to the allegedly fraudulent documents would have on his conclusions or expert report.¹⁷³ The defence submits that in such circumstances the prosecution's objection to the admissibility of the report is procedurally impermissible and manifestly unfair to both the witness and the accused.¹⁷⁴ In addition, the defence submits that acceptance of the prosecution's arguments would establish a precedent whereby expert reports are inadmissible on the basis that one party challenges the authenticity or credibility of the underlying material, which, the defence submits, would leave the Chamber's earlier decisions open to review.¹⁷⁵

The defence disputes the prosecution's challenge to the admissibility of

¹⁶⁹ ICC-01/05-01/08-2636-Conf, paragraph 1.

¹⁷⁰ ICC-01/05-01/08-2636-Conf, paragraph 1.

¹⁷¹ ICC-01/05-01/08-2636-Conf, paragraph 2.

¹⁷² ICC-01/05-01/08-2636-Conf, paragraph 2.

¹⁷³ ICC-01/05-01/08-2636-Conf, paragraph 2.

¹⁷⁴ ICC-01/05-01/08-2636-Conf, paragraph 2.

¹⁷⁵ ICC-01/05-01/08-2636-Conf, paragraph 2.

CAR-D04-0003-0398, the expert report of Witness D04-59, on the same grounds as it does CAR-D04-0003-0342, the expert report of Witness D04-53.¹⁷⁶

55. In terms of relevance, the Chamber considers documents CAR-D04-0003-0342 and CAR-D04-0003-0398, the expert reports of Witnesses D04-59 and D04-53, to be relevant as they formed the basis of the witnesses' testimony. In terms of probative value, the Chamber is satisfied that the documents were authored by the witnesses, who were questioned by the parties in relation to their content.

56. The Chamber notes that the only objection on the part of the prosecution to the Expert Reports' admission concerns its allegations regarding the witnesses' reliance on allegedly fraudulent documents in forming their expert opinions. With regard to the defence's argument relating to the unfairness of the witnesses not having been confronted with the prosecution's allegations when they appeared before the Court, the Chamber notes that the question of the authenticity of the documents relied upon by the witnesses and the impact it may have had upon their conclusions did arise during the questioning of the experts by the prosecution and the legal representatives of victims.¹⁷⁷ The Chamber further notes that it has admitted the allegedly fraudulent documents in question allowing it to fully consider all arguments and relevant evidence in its assessment of the Expert Reports.¹⁷⁸ In light of the above, the

¹⁷⁶ ICC-01/05-01/08-2636-Conf, paragraph 5.

¹⁷⁷ ICC-01/05-01/08-T-232-CONF-ENG ET, page 3, line 1 to page 5, line 8; ICC-01/05-01/08-T-239-CONF-ENG ET, page 52, line 3 to page 57, line 10; ICC-01/05-01/08-T-240-CONF-ENG ET, page 2, line 17 to page 12, line 17.

¹⁷⁸ See paragraphs 41 to 50 above.

Chamber considers that the potential for the Expert Reports' admission to cause prejudice to the fairness of the trial is minimal, and does not outweigh the relevance and probative value that the reports have, in light of their having formed the basis of the witnesses' testimony. For these reasons, the Chamber admits into evidence documents CAR-D04-0003-0342 and CAR-D04-0003-0398.

Second Category: Items related to the testimony of Witness CHM-01 submitted by the prosecution

57. The prosecution requests the admission into evidence of six items from the "bar table": four contemporaneous press articles from *Le Citoyen* and two maps of the CAR and Bangui respectively.¹⁷⁹

Media articles

58. The prosecution requests the admission of four media articles emanating from *Le Citoyen* which were used during the questioning of Witness CHM-01, documents (i) CAR-OTP-0013-0052 (Public), (ii) CAR-OTP-0013-0090 (Public), (iii) CAR-OTP-0013-0113 (Public), and (iv) CAR-OTP-0013-0115 (Public),¹⁸⁰ (collectively "Media Articles").

¹⁷⁹ ICC-01/05-01/08-2909, paragraph 7.

¹⁸⁰ ICC-01/05-01/08-2909-Conf-AnxA, pages 2 and 3.

59. In relation to these documents, the Majority of the Chamber, Judge Ozaki dissenting,¹⁸¹ recalls its position on the admission of media articles, the admissibility of which will be treated with caution.¹⁸² In line with this approach, the Majority has held that such articles may be admitted for limited purposes to be determined on a case-by-case basis. Accordingly, each tendered media article will be cautiously assessed to determine its relevance, its probative value, and whether any prejudice to the fairness of the trial may be caused by its admission.

60. The prosecution generally submits that the four Media Articles are relevant to and probative of the chapeau elements of Article 7 of the Statute, the chapeau elements of Article 8 of the Statute, and the accused's knowledge pursuant to Article 28(a).¹⁸³ The prosecution further states that the Media Articles contain information on allegations of the commission of crimes by the MLC against the civilian population in the areas where they were deployed in the CAR and that they are press articles issued by a local newspaper in Bangui during the relevant events.¹⁸⁴ The prosecution further adds that the Media Articles show that such allegations were published contemporaneously in the press and therefore available in Bangui at the time of the events as similarly averred by Witness CHM-01.¹⁸⁵ The prosecution submits that the documents' admission "is sought to supplement the evidence on record and as proof that MLC crimes were

¹⁸¹ Partly Dissenting Opinion of Judge Ozaki on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 69(4) of the Rome Statute, 6 September 2012, ICC-01/05-01/08-2300, paragraph 4.

¹⁸² ICC-01/05-01/08-2299-Red, paragraph 95.

¹⁸³ ICC-01/05-01/08-2909-Conf-AnxA, pages 2 and 3.

¹⁸⁴ ICC-01/05-01/08-2909-Conf-AnxA, pages 2 and 3.

¹⁸⁵ ICC-01/05-01/08-2909-Conf-AnxA, pages 2 and 3.

widely broadcast by the media, which is relevant to the Accused's knowledge of the alleged crimes".¹⁸⁶

61. The prosecution submits that document **CAR-OTP-0013-0052** contains allegations of crimes including murder, pillage, and rape in Bossembélé, Yaloke, and Damara by the "Nyanyamulengues", a term which, according to Witness CHM-01, was used as a pseudonym by *Le Citoyen* to refer to the MLC troops, based on their conduct during operations.¹⁸⁷ The prosecution submits that document **CAR-OTP-0013-0090** contains allegations of crimes of murder, pillage and rape committed in locations confirmed through CHM-01's testimony, after the alleged date of withdrawal of the MLC troops from the CAR.¹⁸⁸ The prosecution submits that document **CAR-OTP-0013-0113** "contains detailed information about MLC soldiers taking pillaged property from the CAR back to Zongo (DRC), and corroborates witness CHM-01's testimony to this effect".¹⁸⁹ The prosecution submits that document **CAR-OTP-0013-0115** "contains detailed information about pillaging committed in Mongoumba by MLC soldiers, and corroborates witness CHM-01's testimony to this effect".¹⁹⁰

62. In terms of relevance, the Chamber notes that document **CAR-OTP-0013-0052** appears to be copy of a page of the CAR newspaper *Le Citoyen*, dated 21 January 2003, containing one full article entitled "*Les Nyamulengués sévissent à Bossembélé, Yaloké et Damara*". The article provides details of incidents of pillaging, murder, rape, hostage-taking, beatings, and other

¹⁸⁶ ICC-01/05-01/08-2909-Conf-AnxA, pages 2 and 3.

¹⁸⁷ ICC-01/05-01/08-2909-Conf-AnxA, page 2.

¹⁸⁸ ICC-01/05-01/08-2909-Conf-AnxA, page 2.

¹⁸⁹ ICC-01/05-01/08-2909-Conf-AnxA, page 3.

¹⁹⁰ ICC-01/05-01/08-2909-Conf-AnxA, page 3.

abuses allegedly carried out by the “*Nyamulengue*” in Gbakéré, Bossembélé, Yaloké, Damara, PK10, and Vangué Fleurs. The Chamber also notes that document CAR-OTP-0013-0052 was shown to and discussed with Witness CHM-01. The witness stated that “[d]uring the events, fighting did indeed take place in Bossembélé”,¹⁹¹ and that “similar to what happened in Bossembélé, abuses were also committed in Damara, particularly pillaging and so on and so forth”.¹⁹² The witness explained that *Le Citoyen* adopted the pseudonym “*Nyamulengue*” for the MLC troops, which meant “animal-children”.¹⁹³ He added that the MLC troops were referred to in this way in light of the conduct and behavior of the soldiers.¹⁹⁴ Finally, the witness explained that “Yaloke”, a place mentioned in the article, is located past Bossembélé, to the west towards Bossempélé.¹⁹⁵

63. In terms of relevance, the Chamber notes that document CAR-OTP-0013-0090 appears to be copy of a page of the CAR newspaper *Le Citoyen*, dated 22 March 2003, containing two full articles entitled “*Route de M’baïki: Les Nyamulengués en débandade sèment la terreur*” and “*Fidèle Ngouanjika échappe bel au braquage*”. The first article contains references to allegations of abuses, including pillaging, hostage-taking, beatings, and rape, in a number of locations in the CAR, attributed to the “*Nyamulengué*”, who had been cut off from their rear base of Bangui when Bozizé’s troops took control of the city on 15 March 2003. The second article, entitled “*Fidèle Ngouanjika échappe bel au braquage*”, contains no information of relevance to

¹⁹¹ ICC-01/05-01/08-T-355-CONF-ENG ET, page 52, lines 6 to 7.

¹⁹² ICC-01/05-01/08-T-355-CONF-ENG ET, page 54, lines 8 to 10.

¹⁹³ ICC-01/05-01/08-T-355-CONF-ENG ET, page 53, lines 4 to 11.

¹⁹⁴ ICC-01/05-01/08-T-355-CONF-ENG ET, page 53, lines 4 to 11.

¹⁹⁵ ICC-01/05-01/08-T-355-CONF-ENG ET, page 54, lines 20 to 24.

the *Bemba* case. The Chamber also notes that document CAR-OTP-0013-0090 was shown to and discussed with Witness CHM-01.¹⁹⁶ The prosecution recalled that Witness CHM-01 testified that the MLC troops left on 15 March and noted that the article was dated 22 March 2003; based upon this discrepancy the prosecution asked whether the witness was informed of soldiers continuing to roam the country committing acts of violence after 15 March 2003.¹⁹⁷ The witness explained that during the withdrawal of the MLC troops to the Ubangi river there was confusion, acts of violence and abuses, and insecurity.¹⁹⁸ The witness stated that the MLC troops used many secondary roads and footpaths to get to the river and this gave rise to insecurity in the southern parts of the CAR, including in a number of locations mentioned in the article.¹⁹⁹

64. In terms of relevance, the Chamber notes that document CAR-OTP-0013-0113 appears to be a copy of a page of the CAR newspaper *Le Citoyen*, dated 28 February 2003, and contains a full article entitled “CENTRE VILLE: *Nyamulengués ‘Moyibi’ emportent d’importantes cargaisons de butins vers Zongo*”. The article refers to abuses committed by “*les homes de Jean Pierre Bemba*” and provides details of pillaging in the Fourth Arrondissement of Bangui, Bégoua, Damara, Sibut, Bossembélé, and Bozoum, including details of the items pillaged. The article also provides information about the “*Nyamulengués*” taking loot and crossing the river with it. The article also refers to a Central African soldier who was beaten by a group of “*Nyamulengués*”. Lastly, the article makes reference to

¹⁹⁶ ICC-01/05-01/08-T-355-CONF-ENG ET, page 61, line 24 to page 65, line 8.

¹⁹⁷ ICC-01/05-01/08-T-355-CONF-ENG ET, page 63, line 18 to page 65, line 8.

¹⁹⁸ ICC-01/05-01/08-T-355-CONF-ENG ET, page 64, line 2 to page 65, line 8.

¹⁹⁹ ICC-01/05-01/08-T-355-CONF-ENG ET, page 64, line 2 to page 65, line 8.

provinces where people were raped, shot, and where property was pillaged. The Chamber notes that document CAR-OTP-0013-0113 was shown to Witness CHM-01, who commented thereupon, stating that “there was pillaging in the areas where operations had taken place, and that there was a transfer of booty that took place towards Zongo, but that accelerated a few days, as I said yesterday, a few days before the fall of Bangui. And what the ‘Le Citoyen’ tells here in its edition of 28 February, there you are close to the date”.²⁰⁰

65. In terms of relevance, the Chamber notes that document CAR-OTP-0013-0115 appears to be a copy of a page of the CAR newspaper *Le Citoyen*, dated 8 March 2003, containing a full article entitled “*Mongoumba mise à sac par les Nyamulengués*”. The article refers to an “*opération de représailles*” carried out on 5 March 2003, from 06:00, by 500 “*Nyamulengués*” in the town of Mongoumba in response to an incident which occurred two days prior, in which a group of “*les hommes de Jean-Pierre Bemba*” had their loot taken from them by FACA troops in the town. The article goes on to provide information on destruction and pillaging carried out by “*les hommes de Jean-Pierre Bemba*” and also refers to the murder of a Muslim trader. The Chamber notes that document CAR-OTP-0013-0115 was shown to Witness CHM-01.²⁰¹ The witness was asked by the prosecution whether he recalled the incidents in Mongoumba mentioned in the article, to which he stated that “there were events that took place in Mongoumba, and there, when we see at the bottom of the page, it’s the correspondent of ‘Le Citoyen’ who described the situation because that person was there in

²⁰⁰ ICC-01/05-01/08-T-355-CONF-ENG ET, page 56, line 18 to page 57, line 1.

²⁰¹ ICC-01/05-01/08-T-355-CONF-ENG ET, page 57, line 2 to page 61, line 20.

Mongoumba, but as I said a moment ago, there were events which took place in the meantime in Mongoumba during this period”.²⁰²

66. In light of the above, the Chamber is satisfied that the Media Articles – i.e. documents CAR-OTP-0013-0052, CAR-OTP-0013-0090, CAR-OTP-0013-0113, and CAR-OTP-0013-0115 – relate to matters that are properly to be considered by the Chamber, namely the allegations of the commission of crimes by the MLC troops during the time period of the charges and the assessment of the testimony of Witness CHM-01 and that of the evidence as a whole.

67. In terms of probative value, the prosecution generally submits that “[f]eatures such as dates (where available), their authors or source, dates of preparation and methodology or context of preparation appear on each item proposed for admission”.²⁰³ The prosecution submits that these indicia are sufficient for the Chamber to make a *prima facie* evaluation of the items’ reliability.²⁰⁴ The prosecution also notes that the items are publically available.²⁰⁵

68. The defence opposes the admission of all four media articles on the same grounds as is has in its prior submissions on the admission of media articles or press reports. Firstly, the defence avers that the four media articles are incomplete extracts and therefore inadmissible under the

²⁰² ICC-01/05-01/08-T-355-CONF-ENG ET, page 59, lines 5 to 16.

²⁰³ ICC-01/05-01/08-2909, paragraph 12.

²⁰⁴ ICC-01/05-01/08-2909, paragraph 12.

²⁰⁵ ICC-01/05-01/08-2909, paragraph 12.

Chamber's own jurisprudence.²⁰⁶ The defence also asserts that, being extracts, the documents have insufficient reliability and probative value for admission.²⁰⁷ In this regard, the Majority recalls its general preference for the submission of full documents, rather than excerpts, but notes that single articles which form part of a larger document can comprise complete documents in themselves which can be properly assessed in their context.²⁰⁸ The Chamber notes that this is the case with respect to each of the four articles submitted by the prosecution. In addition, the Chamber notes that the jurisprudence cited by the defence relates to a situation where it appeared that a section of a specific article, rather than merely other pages of a publication, was omitted.²⁰⁹ This is not the case in the present instance.

69. Secondly, the defence argues that "[t]he Prosecution has never produced an author, publisher, or anyone associated with this newspaper to vouch for the reliability or provenance of these documents, nor produced any originals, despite their extensive reliance on this publication at trial".²¹⁰ In this regard, the Chamber recalls its position that, in relation to the reliability or provenance of documents, it is not required that their author testify for them to be deemed admissible;²¹¹ the Chamber will assess such documents with caution and in light of the available indicia of probative value.

²⁰⁶ ICC-01/05-01/08-2916-Conf-AnxA, pages 2 to 5.

²⁰⁷ ICC-01/05-01/08-2916-Conf-AnxA, pages 2 to 5.

²⁰⁸ See ICC-01/05-01/08-2299-Red, paragraph 96.

²⁰⁹ See ICC-01/05-01/08-2299-Red, paragraph 116.

²¹⁰ ICC-01/05-01/08-2916-Conf-AnxA, pages 2 to 5.

²¹¹ ICC-01/05-01/08-2299-Red, paragraph 95.

70. Thirdly, the defence notes that while “the Prosecution asserts that [these documents are] ‘publicly available’”, its “own chain of custody lists [these documents] as having come from the French Embassy in Bangui”.²¹² The defence states that the documents were “not obtained from the archives of the newspaper itself, but rather from a third party with a vested interest in the relevant events and outcome of the case”, which the defence submits further undermines the documents’ reliability.²¹³ However, the defence provides no detail in support of the argument that the documents’ value is lessened by their having been obtained from the French Embassy in Bangui. The Chamber – noting that nothing on the documents’ face indicates that they are other than what they are purported to be, i.e. authentic pages of a Central African newspaper – considers that, without more, the defence’s submission that the documents’ reliability is undermined is speculative and does not impact upon their admissibility.

71. Fourthly, the defence notes that none of the four media articles were authenticated, authored, seen, or read contemporaneously to the events by Witness CHM-01.²¹⁴ In this regard the Chamber recalls its position that it is not required that a witness authenticate every documentary piece of evidence; the Chamber need only be satisfied that the item is what it is purported to be, which can be determined either “because this is evident on its face or because other admissible evidence demonstrates the item’s provenance”.²¹⁵ The Chamber once again recalls its position on calling

²¹² ICC-01/05-01/08-2916-Conf-AnxA, pages 2 to 5.

²¹³ ICC-01/05-01/08-2916-Conf-AnxA, pages 2 to 5.

²¹⁴ ICC-01/05-01/08-2916-Conf-AnxA, pages 2 to 5.

²¹⁵ ICC-01/05-01/08-2012-Red, paragraphs 14-16.

documents' authors.²¹⁶ In addition, the Chamber notes that when presented with the items in court, Witness CHM-01 explained that "'Le Citoyen' is one of the newspapers of the written media in Bangui in the Central African Republic" and that "[t]here was no prohibition on the publication of the newspapers and they continued to appear or to be released during that period".²¹⁷

72. Finally, in relation to each tendered document, the defence recalls its general position on the admission of media articles to the effect that they are "generally not considered a source of reliable evidence and their admission should general be rejected for lack of probative value".²¹⁸ In this regard the Chamber recalls its consistently stated approach to the admission of media articles set out in paragraph 56 above.

73. In terms of probative value, the Chamber notes that it has admitted extracted pages of the newspaper *Le Citoyen* previously and that the formatting, style, and layout of the Media Articles correspond to that of, for example, documents CAR-OTP-0004-0336,²¹⁹ and CAR-OTP-0013-0114,²²⁰ previously admitted into evidence. Moreover, the pages submitted each contain a footer detailing the name of the newspaper, the date, and the issue number. As such, the Chamber is of the view that all the Media

²¹⁶ ICC-01/05-01/08-2299-Red, paragraph 95.

²¹⁷ ICC-01/05-01/08-T-355-CONF-ENG ET, page 50, lines 13 to 14 and page 54, lines 15 to 16.

²¹⁸ ICC-01/05-01/08-2916-Conf-AnxA, pages 2 to 6. The defence has previously raised similar arguments, see Annex A to Defence Response to the Third Prosecution Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, 15 November 2013, ICC-01/05-01/08-2892-Conf-AnxA, pages 2, 4, 5, 8 and 9; Defence Response to the Prosecution's Application for Admission of Evidence from the Bar Table, 19 March 2012, ICC-01/05-01/08-2168, paragraphs 35 to 37; and ICC-01/05-01/08-2617-Conf, paragraph 24.

²¹⁹ Item CAR-OTP-0004-0336 (EVD-T-OTP-00398) was admitted into evidence by Decision ICC-01/05-01/08-2299-Red, paragraph 97.

²²⁰ Item CAR-OTP-0013-0114 (EVD-T-OTP-00820) was admitted into evidence by Decision ICC-01/05-01/08-2864-Conf, paragraph 76.

Articles bear sufficient indicia that they are authentic copies of pages of a well-known Central African newspaper for the purposes of their admission as evidence.

74. In terms of potential prejudice, the prosecution submits that admitting the documents would not be prejudicial to a fair trial as the Defence had adequate notice of the documents as they were disclosed in advance and used by the Prosecution to examine a witness thereby providing the opportunity for any additional questions.²²¹

75. The Majority of the Chamber recalls its approach to the effect that this type of material can be considered for limited purposes. In this case, the Majority considers that the Media Articles could be used to contextualise and facilitate the Chamber's assessment of the testimony of Witness CHM-01, to corroborate other pieces of evidence, and to demonstrate that allegations of crimes committed by the MLC in the CAR were widely published in the media during the time period of the charges. Given the above limitations on their use, the Majority is satisfied that the admission of the Media Articles would not cause prejudice to the fairness of the trial. The Chamber, with Judge Ozaki dissenting on reasoning, admits into evidence documents CAR-OTP-0013-0052, CAR-OTP-0013-0090, CAR-OTP-0013-0113, and CAR-OTP-0013-0115.

²²¹ ICC-01/05-01/08-2909-Conf-AnxA, pages 2 and 3.

Maps

76. The prosecution requests the admission of two maps; documents **CAR-ICC-0001-0102 (Confidential)** and **CAR-ICC-0001-0103 (Confidential)**.

77. The prosecution submits that document **CAR-ICC-0001-0102** is a map of the CAR, the unannotated original version of which bears ERN CAR-OTP-0030-0154, which was “annotated by witness CHM-01 during his testimony for purposes of indicating towns in the CAR where the witness was told that the MLC committed crimes against the civilian population”.²²² The prosecution submits that document **CAR-ICC-0001-0103** is a map of Bangui, the unannotated original of which bears ERN CAR-OTP-0030-0153, which was “annotated by witness CHM-01 during his testimony for purposes of indicating neighbourhoods in Bangui where he knows the MLC committed crimes” and locations where (i) FACA units were based, (ii) the Ministry of Defence was situated, (iii) the headquarters of the army was situated, and (iv) the FACA amphibious battalion was stationed.²²³ The prosecution avers that both maps are “relevant and probative to the movement and locations where the MLC troops committed crimes in the vicinity of Bangui during the period of the charges”.²²⁴

78. In terms of prejudice, the prosecution asserts that “[a]dmitting [the] document[s] will not be prejudicial to a fair trial as [they are] map[s] that [were] annotated by the witness in court to complement his oral testimony

²²² ICC-01/05-01/08-2909-Conf-AnxA, page 3.

²²³ ICC-01/05-01/08-2909-Conf-AnxA, page 4.

²²⁴ ICC-01/05-01/08-2909-Conf-AnxA, pages 3 and 4.

and the Defence had the opportunity to put any additional questions to the witness regarding [the] document[s]”.²²⁵

79. The defence takes no position on the admission of either document.²²⁶

80. The Chamber notes that both maps were annotated by Witness CHM-01 during his oral testimony and were the subject of questioning by the parties.²²⁷ For this reason, and because the maps show the areas in which crimes were allegedly committed, they are relevant and probative, and may assist the Chamber’s assessment of the witnesses’ testimony and its understanding of the location of the alleged crimes. There is no suggestion that admitting the maps will cause prejudice, a possibility made even less likely because the parties had the opportunity to question the witnesses about the maps. Both unopposed maps—documents CAR-ICC-0001-0102 and CAR-ICC-0001-0103—are be admitted on this basis.

Third Category: Items related to the testimony of Witness CHM-01 submitted by Me Zarambaud

81. Me Zarambaud submitted three CAR Presidential Decrees, documents **CAR-V28-0001-0064 (Public)**, **CAR-V28-0001-0066 (Public)**, and **CAR-V28-0001-0075 (Public)**. Me Zarambaud alleged that, in general, the documents are relevant to the official role of the members of the Presidential Guard – “*Garde Présidentielle*” or “*Sécurité Présidentielle*” –

²²⁵ ICC-01/05-01/08-2909-Conf-AnxA, pages 3 and 4.

²²⁶ ICC-01/05-01/08-2916-Conf-AnxA, page 6.

²²⁷ With respect to CAR-ICC-0001-0102, *see*, ICC-01/05-01/08-T-355-CONF-ENG ET, page 31, line 23 to page 39, line 21; and with respect to CAR-ICC-0001-0103, *see*, ICC-01/05-01/08-T-355-CONF-ENG ET, page 42, line 3 to page 44, line 15.

whose mandate and activities have been discussed during the proceedings in relation to the crimes committed in the CAR during the relevant period.²²⁸ As to their probative value, Me Zarambaud submitted that the decrees are public documents available at the *Secrétariat Général* of the CAR government, which were produced during the regular activities of the organ they emanate from. As such, Me Zarambaud argued, the documents contain sufficient indicia of reliability as to allow the Chamber to make a *prima facie* determination of their probative value.²²⁹ Lastly, Me Zarambaud submitted that these documents have sufficient probative value for their admission not to cause prejudice to the proceedings.²³⁰

82. The Chamber notes that document CAR-V28-0001-0064 is a CAR Presidential Decree, numbered N°80/041, entitled "*Portant Organisation de la Garde Présidentielle*", dated 19 January 1980, signed by the then President of the Republic, David Dacko ("President Dacko"), which sets out the organisational structure of the Presidential Guard and states, in its Article 3, that the Commander of the Presidential Guard reports directly to the President of the Republic. Document CAR-V28-0001-0066 is a CAR Presidential Decree, numbered N°81/019, entitled "*Portant Statut de la Garde Présidentielle*", dated 13 January 1981, signed by President Dacko, which contains the Statute of the Presidential Guard. Notably, Article 1 thereof establishes that the Presidential Guard is placed under the direct authority of the President of the Republic and benefits from the support of the Ministry of National Defence, particularly in relation to payments and logistics; Article 2 establishes that the Commander of the Presidential

²²⁸ ICC-01/05-01/08-2911, paragraph 10.

²²⁹ ICC-01/05-01/08-2911, paragraph 12.

²³⁰ ICC-01/05-01/08-2911, paragraph 13.

Guard is nominated and removed directly by the President of the Republic; Article 3 provides that the organisation and the troops of the Presidential Guard are subsumed to the decisions of the President of the Republic, which are covered by the secrecy of national defence; and Article 29 establishes that the Presidential Guard is responsible for ensuring the security of the President of the Republic at all times and locations. Document CAR-V28-0001-0075 is a CAR Presidential Decree, numbered N°85/073, entitled *“Modifiant l’appellation de l’Unité Militaire créée par le Décret n°81.019 du 13 Janvier 1981 et la dénommant ‘Sécurité Présidentielle’”*, dated 22 March 1985, signed by the then President of the Republic, André Kolingba, which states that the Military Unit created by Presidential Decree No. 81.019 of 13 January 1981, which is placed under the direct authority of the President of the Republic, will be modified in that its name will be changed from “Presidential Guard” (*Garde Présidentielle*) to “Presidential Security” (*Sécurité Présidentielle*).

83. The Chamber further notes that the documents were discussed in Court by Witness CHM-01, following questioning by the legal representative of victims, in relation to the role and chain of command of the USP.²³¹ As such, although the documents predate the time period of the charges, the Chamber is satisfied that the documents may be of relevance to matters that are properly to be considered by the Chamber; particularly, regarding the chain of command of the forces involved in the conflict and for the assessment of the testimony of Witness CHM-01.

²³¹ ICC-01/05-01/08-T-356-CONF-ENG ET, page 7, line 21 to page 11, line 8.

84. In terms of probative value, the Chamber is satisfied that the documents bear sufficient indicia of reliability – such as a letter head, date, stamp, and signature – and appear to have been produced in the ordinary course of operations within the CAR Presidency. As such, the Chamber is satisfied that the documents hold sufficient probative value in order to be admitted into evidence. In terms of potential prejudice, the Chamber sees no reason to believe that the admission of these Presidential Decrees, which were not challenged by the parties, may have a prejudicial effect on a fair trial. Documents CAR-V28-0001-0064, CAR-V28-0001-0066 and CAR-V28-0001-0075 are therefore admitted into evidence.

Fourth Category: Written Statement of Witness CHM-01

85. The Chamber notes that in its Order 2923 it informed the parties and the participants that, pursuant to its powers under Article 69(3) of the Statute and subject to its assessment in accordance with the three-prong test, it was considering admitting into evidence the written statement of Witness CHM-01 (“2008 Statement”), document **CAR-OTP-0008-0219_R01**.²³²

86. The Chamber notes the prosecution’s submission that the Chamber has discretion to admit any type of evidence at trial including prior recorded statements.²³³ However, in the view of the prosecution, the admission of Witness CHM-01’s 2008 Statement does not appear necessary considering that Witness CHM-01’s oral testimony is more comprehensive than his 2008 Statement and because the witness did not contradict himself while

²³² ICC-01/05-01/08-2923, paragraph 5.

²³³ ICC-01/05-01/08-2930, paragraph 7.

testifying before the Chamber.²³⁴ The Chamber further notes the submission of the legal representatives of victims in that the testimony of Witness CHM-01 was corroborative of the 2008 Statement.²³⁵ The Chamber also notes the defence's submission that the prejudicial effect of the admission of the 2008 Statement outweighs any probative value or relevance it may have.²³⁶

87. The Majority reiterates its view that that in order for the Chamber to properly discharge its statutory truth-finding mandate, rather than merely assessing the testimony of a witness against those excerpts of their prior interviews or statements that the parties decide to refer to in court in the limited time available to them, it should be able to compare a witness's testimony against the entirety of the prior recorded statements or interviews of witnesses.²³⁷ However, the Chamber notes the submissions of the parties and participants, in that there is no need for Witness CHM-01's 2008 Statement to be admitted into evidence. Thus the Chamber decides that it will not analyse whether the item complies with the three-part admissibility test.

²³⁴ ICC-01/05-01/08-2930, paragraph 11.

²³⁵ ICC-01/05-01/08-2934, paragraph 4.

²³⁶ ICC-01/05-01/08-2936, paragraph 21.

²³⁷ ICC-01/05-01/08-2012-Red, paragraph 143 and Decision on the admission into evidence of items deferred in the Chamber's "First decision on the prosecution and defence requests for the admission of evidence" (ICC-01/05-01/08-2012), 3 September 2013, ICC-01/05-01/08-2793, paragraphs 15 and 23.

Fifth category: Written Statements of witnesses who provided testimony before the Chamber not submitted by the parties.

88. The Chamber notes that, in its Order 2824, the Majority informed the parties and participants that it was considering ordering the submission as evidence of a number of witnesses' statements and ordered the parties and legal representatives to file any observations on the matter by 11 October 2013.²³⁸ Noting the submissions of the parties,²³⁹ the Chamber decides that there is no need for it to order the submission as evidence of the statements listed in the annex to Order 2824 pursuant to Article 69(3).

III. Conclusions

89. In view of the foregoing:

- a. the Chamber ADMITS into evidence documents: [REDACTED],
CAR-D04-0003-0128/CAR-D04-0003-0135, CAR-D04-0003-0129,
CAR-D04-0003-0130, CAR-D04-0003-0131, CAR-D04-0003-0132,
CAR-D04-0003-0133, CAR-D04-0003-0134, CAR-D04-0003-0136,
CAR-D04-0003-0137, CAR-D04-0003-0138, CAR-D04-0003-0139,
CAR-D04-0003-0140, CAR-D04-0003-0141, CAR-D04-0003-0342,
CAR-D04-0003-0398, CAR-OTP-0013-0052, CAR-OTP-0013-0090,
CAR-OTP-0013-0113, CAR-OTP-0013-0115, CAR-ICC-0001-0102,
CAR-ICC-0001-0103, CAR-V28-0001-0064, CAR-V28-0001-0066, and
CAR-V28-0001-0075;

²³⁸ ICC-01/05-01/08-2824, paragraphs 12 and 13 (iv) (internal footnotes omitted).

²³⁹ See paragraphs 4 and 5 above.

- b. the Majority, Judge Ozaki dissenting, ADMITS into evidence document CAR-OTP-0069-0010;
- c. the Majority, Judge Steiner dissenting, REJECTS the admission of document CAR-OTP-0069-0083_R01;
- d. the Chamber DECIDES not to admit document CAR-OTP-0008-0219_R01; and
- e. the Chamber DECIDES that there is no need for it to request the submission as evidence of the statements listed in the annex to Order 2824.

90. In addition, the Chamber:

- a. ORDERS that the EVD-T numbers previously assigned to the items admitted into evidence in the present decision remain unchanged;
- b. INSTRUCTS the Registry to assign new EVD-T numbers to those items which currently do not have EVD-T references;
- c. INSTRUCTS the Registry to assign a single EVD-T number to documents CAR-D04-0003-0128 and CAR-D04-0003-0135;
- d. ORDERS the parties and participants to file by 31 March 2014 public redacted versions of their filings and corresponding annexes or to inform the Chamber that they may be reclassified as public without redactions; and
- e. ORDERS the parties and participants to review the level of confidentiality of the items emanating from them admitted by the present Decision and:

(a) provide to the Registry, within 10 days of notification of the present Decision with the correct metadata as to the level of confidentiality of all items in relation to

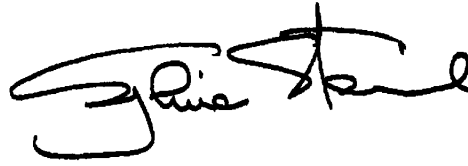
which the information is either not clear or has not been previously provided; and

- (b) request to the Chamber, within 10 days of notification of the present Decision, the reclassification as Public, with or without redactions, of items in relation to which the reasons to maintain their confidentiality do not longer exist and/or to inform the Chamber of the reasons for maintaining the confidentiality of all items for which no reclassification as public is requested.

91. The partly dissenting opinion of Judge Kuniko Ozaki is attached as Annex A to the present Decision.

92. The partly dissenting opinion of Judge Sylvia is attached as Annex B to the present Decision.

Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 26 August 2014

At The Hague, the Netherlands