

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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TRIAL CHAMBER III

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

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
v. JEAN-PIERRE BEMBA GOMBO**

Public Redacted version of

**“Decision on the ‘Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute’ (ICC-01/05-01/08-2854)”,
ICC-01/05-01/08-2974 of 14 February 2014**

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

The Office of the Prosecutor

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Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes
Ms Kate Gibson
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Legal Representatives of the Victims

Ms Marie-Edith Douzima Lawson

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REGISTRY

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Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”) hereby issues the Decision on the “Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute” (ICC-01/05-01/08-2854) (“Decision”).

I. Background and Submissions

1. 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” (“Order 2824”),¹ in which, *inter alia*, it ordered the parties and participants to file any remaining applications for the admission of evidence within seven days of the completion of the testimony of the last witness to be called by the defence and, in any event, by no later than 31 October 2013.²

2. On 30 October 2013, the Chamber issued its “Decision on the Motion for clarification and reconsideration of the timetable for the parties’ final submissions of evidence”,³ in which, *inter alia*, it extended the deadline set out in Order 2824 for the parties to submit any remaining applications for the admission of material into evidence until 8 November 2013.⁴ In addition, the Chamber reiterated that, as decided in Order 2824, any responses to such applications were to be filed within seven days of their notification and replies could only be filed subject to leave being granted by the Chamber pursuant to Regulation 24(5) of the Regulations of the Court (“Regulations”).⁵

¹ 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.

² ICC-01/05-01/08-2824, paragraph 13(i).

³ Decision on the Motion for clarification and reconsideration of the timetable for the parties’ final submissions of evidence, 30 October 2013, ICC-01/05-01/08-2855.

⁴ ICC-01/05-01/08-2855, paragraph 9.

⁵ ICC-01/05-01/08-2855, paragraph 10, in relation to ICC-01/05-01/08-2824, paragraph 9.

3. On 30 October 2013, the Office of the Prosecutor (“prosecution”) filed the “Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute” (“Prosecution’s Request”),⁶ in which it requests the admission into evidence of 22 items, pursuant to Articles 64(9) and 69(2), (3) and (4) of the Rome Statute (“Statute”) and Rule 63(2) and (5) of the Rules of Procedure and Evidence (“Rules”).⁷ The prosecution groups the tendered items into two categories: (i) those related to the testimony of Witness D04-15; and (ii) other items.⁸
4. 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.⁹ Nevertheless, the prosecution submits that the items are relevant, probative of issues at trial, and bear sufficient indicia of reliability to outweigh any prejudicial effect, in order for the Chamber to assess freely the weight to be attached to these items against the entire record of the trial.¹⁰ 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.¹¹ In addition, the prosecution argues that the Prosecution’s 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 witnesses, and thus the defence was afforded the opportunity to question the witnesses on these items.¹² Lastly, the prosecution submits specific

⁶ Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, 30 October 2013, ICC-01/05-01/08-2854 and Confidential Annex A, ICC-01/05-01/08-2854-Conf-AnxA.

⁷ ICC-01/05-01/08-2854, paragraph 1 and ICC-01/05-01/08-2854-Conf-AnxA.

⁸ ICC-01/05-01/08-2854, paragraph 1.

⁹ ICC-01/05-01/08-2854, paragraph 4.

¹⁰ *Ibid.*

¹¹ ICC-01/05-01/08-2854, paragraph 5.

¹² *Ibid.*

arguments in support of its assertion that each of the documents it tenders is admissible according to the three-part admissibility test.¹³

5. No response was filed to the Prosecution's Request.

II. Analysis

6. In accordance with Article 21(1) of the Statute, in making its determination, the Chamber has considered Articles 64(2), (7), (8)(b), (9)(a), 67 and 69 of the Statute, Rules 63, 64, and 68 of the Rules and Regulation 23bis(3) of the Regulations.
7. 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, according to 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.¹⁴ Further, the Chamber underlines once more that its determination on the admissibility of an item as evidence will have 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.¹⁵

Preliminary issue

8. At the outset, the Chamber notes that one item included in the Prosecution's Request has already been admitted into evidence by the Chamber. Specifically,

¹³ ICC-01/05-01/08-2854, paragraphs 6 to 16 and ICC-01/05-01/08-2854-Conf-AnxA.

¹⁴ 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; 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.

¹⁵ ICC-01/05-01/08-2012-Red, paragraph 18; ICC-01/05-01/08-2299-Red, paragraph 11.

the prosecution requests the admission of document CAR-D04-0003-0527, the Lusaka Accord, signed on 10 July 1999, which was admitted into evidence in the Chamber's "Third Decision on the prosecution and defence requests for the admission of evidence" of 6 November 2013.¹⁶ The Chamber considers the question of the admissibility of this item moot, and will not address the prosecution's submissions thereon.

Analysis

9. In its analysis the Chamber will follow the prosecution's grouping of the submitted materials into two categories, which will be considered in turn in accordance with the three-part test of relevance, probative value, and potential prejudice.

First Category: Items related to the testimony of Witness D04-15

10. The prosecution requests the admission of 16 documents related to the testimony of Witness D04-15. These are: (i) an Amnesty International ("AI") Report, document **CAR-OTP-0073-0768 (Public)** and its French version, document **CAR-OTP-0073-0674 (Public)**; (ii) two Logbooks from Bangui airport, document **CAR-OTP-0045-0002 (Confidential)** and document **CAR-OTP-0045-0228 (Confidential)**; (iii) a letter from the Chairman of the Security Council Committee concerning the Democratic Republic of the Congo ("DRC"), document **CAR-OTP-0070-0009 (Public)**, and its French translation, document **CAR-OTP-0070-0051 (Public)**; (iv) an audio-video recording, item **CAR-OTP-0069-0369 (Public)**, its transcript, document **CAR-OTP-0069-0574 (Public)**, and its English and French translations, documents **CAR-OTP-0069-0531 (Public)**

¹⁶ Third Decision on the prosecution and defence requests for the admission of evidence, 6 November 2013, ICC-01/05-01/08-2864-Conf, paragraphs 112 and 115 to 117.

and **CAR-OTP-0069-0551 (Public)**; (v) hand written notes made by the witness in court at the prosecution's request, document **CAR-ICC-0001-0101 (Confidential)**; (vi) three SIM card analysis reports, documents **CAR-OTP-0047-1660 (Confidential)**, **CAR-OTP-0047-1601 (Confidential)**, and **CAR-OTP-0047-1622 (Confidential)**; and (vii) two media reports, documents **CAR-OTP-0013-0106 (Confidential)** and **CAR-OTP-0073-0850 (Public)**.

AI Report

11. As to the AI Report – documents CAR-OTP-0073-0768 and CAR-OTP-0073-0674 – the prosecution submits that it is relevant to the issue of effective control pursuant to Article 28(a) of the Statute and the credibility of Witness D04-15.¹⁷ The prosecution further submits that the report is relevant to prove the accused's possession of an aircraft used to transport arms.¹⁸ The prosecution adds that page 0814 (English version) of the document corroborates the allegation that the *Mouvement de Libération du Congo* ("MLC") used an aircraft with tail number 9TALC to transport arms, which is the same tail number that appears in the Bangui-Mpoko airport flight logs.¹⁹

12. The Chamber notes that document CAR-OTP-0073-0768 and CAR-OTP-0073-0674, appear to be the English and French versions of an AI Report entitled "Democratic Republic of Congo: arming the east"/"*République Démocratique du Congo (RDC) Le flux d'armes à destination de l'est*" ("AI Report"), dated July 2005, which discusses large-scale arms deliveries to the Great Lakes Region, despite the peace agreements in 2002 within the DRC and between the DRC, Rwanda and Uganda.²⁰ The Chamber notes that page 0814 of the English version, and 0731 of the French, were used during the prosecution's questioning of Witness

¹⁷ ICC-01/05-01/08-2854-Conf-AnxA, page 2.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ CAR-OTP-0073-0768, at 0772 and CAR-OTP-0073-0674, at 0675.

D04-15.²¹ On this page a separate article within the AI Report entitled “Box: The role of Victor Bout and associates – arming both sides”/“*Le rôle de Victor Bout et de ses associés : armer les deux parties*” (“AI Article”) begins, which describes the alleged activities of Victor Bout in arms trafficking into different Central African countries from the 1990s to 2005.²²

13. The particular extract of the AI Article which was read out in court,²³ refers to the fact that in 2001 a Belgian journalist met with Victor Bout, who at the time was working with Jean-Pierre Bemba, and saw two planes, allegedly belonging to Victor Bout, with registration numbers 9T-ALC and MLC.²⁴ The AI Article further adds that one of those airplanes was allegedly seen flying between Uganda and the DRC at least until November 2001, which coincides with an alleged release of 600 rifles from Uganda to Ituri and a particularly brutal episode in the DRC conflict.²⁵ In addition, the AI Article states that in October 2002 a United Nations (“UN”) Panel reported that Victor Bout’s planes were used for various purposes in eastern DRC, among them, the transport of military troops and equipment.²⁶ The Chamber notes that, during his testimony, Witness D04-15 declared that he had heard that “Mr Bout had been arrested because he was an arms dealer”.²⁷ Witness D04-15 was requested by the prosecution to write down the tail number mentioned in the article.²⁸ After having been asked to identify the tail number [REDACTED] in the logbook allegedly corresponding to Bangui’s airport at the time of the events,²⁹ the witness explained that it was not surprising to find “the MLC aircraft flying to Bangui at this time, because there

²¹ Transcript of hearing of 12 September 2013, ICC-01/05-01/08-T-344-CONF-ENG ET, page 62, line 7 to page 64, line 18.

²² CAR-OTP-0073-0768, from 0814 to 0816 and CAR-OTP-0073-0674, from 0731 to 0733.

²³ ICC-01/05-01/08-T-344-CONF-ENG ET, page 64, lines 2 to 16.

²⁴ CAR-OTP-0073-0768, at 0814 and CAR-OTP-0073-0674, at 0731.

²⁵ Ibid.

²⁶ CAR-OTP-0073-0768, at 0815 and CAR-OTP-0073-0674, at 0732.

²⁷ ICC-01/05-01/08-T-344-CONF-ENG ET, page 62, lines 15 to 16.

²⁸ ICC-01/05-01/08-T-344-CONF-ENG ET, page 64, lines 17 to 18.

²⁹ For that purpose, the witness was shown document CAR-OTP-0045-0002 at 0098.

was a conflict in Bangui, the MLC had upped the number of flights to Bangui to increase fuel supplies in Gbadolite”.³⁰ When questioned on what cargo was on the flights from Gbadolite to Bangui, the witness explained that “the flights from Gbadolite to Bangui transported officers in the MLC and their spouses and officers, and there was also empty jerrycans so that they could get fuel for the flight back.”³¹

14. As to the item’s relevance, the Chamber notes that of the 77 page long AI Report (the French version being 90 pages long), only a couple of pages containing the AI Article appear to be relevant to the case. While the Majority has expressed its preference for the admission of whole documents rather than excerpts with a view to avoiding selective references, the Majority considers that in the present case it would be more appropriate to consider the admission of only the AI Article and not the entirety of the larger AI Report. In this regard, the Majority notes that the AI Article, although forming part of the AI Report, constitutes a complete document in itself, which can be properly assessed in its context without admitting the entire AI Report.

15. In line with its consistent approach to the issue of relevance,³² the Chamber is satisfied that, for the purposes of the *Bemba* case, the separate AI Article may be of relevance to issues properly to be considered by the Chamber. These include allegations that the MLC used airplanes to transport troops and supplies to the CAR and that the MLC troops deployed in the CAR were provided with arms and ammunitions from Gbadolite.³³ In addition, the document may be relevant to the Chamber’s assessment of the credibility of Witness D04-15. In terms of its probative value, the Chamber is satisfied that the separate article within the AI

³⁰ ICC-01/05-01/08-T-344-CONF-ENG ET, page 64, line 17 to page 75, line 17.

³¹ ICC-01/05-01/08-T-344-CONF-ENG ET, page 88, lines 1 to 8.

³² ICC-01/05-01/08-2012-Red, paragraph 14.

³³ Revised Second Amended Document Containing the Charges, 18 August 2010, ICC-01/05-01/08-856-Conf-AnxA-Red, paragraph 27(ii) and (iii).

Report mentioned above contains sufficient details of its sources of information and is publicly available from official AI sources; therefore it bears sufficient indicia of reliability to warrant its admission into evidence.

16. In line with its consistent approach to the admission of reports from non-governmental organisations,³⁴ the Majority will approach the admission of the AI Article with caution and consider it for the limited purposes that the information contained therein may serve to corroborate other pieces of evidence and for the assessment of the credibility of Witness D04-15. In light of the envisioned limited usage of the information contained in the article, the Majority is of the view that there is no reason to believe that its admission will have a prejudicial effect on a fair trial. In view of the foregoing, the Majority of the Chamber, Judge Kuniko Ozaki dissenting, admits into evidence the AI Article contained in the AI Report, that is to say, ERN CAR-OTP-0073-0814 to CAR-OTP-0073-0816 of document CAR-OTP-0073-0768 and ERN CAR-OTP-0073-0731 to CAR-OTP-0073-0733 of document CAR-OTP-0073-0674.

Airport Logbooks

17. The prosecution submits documents CAR-OTP-0045-0002 and CAR-OTP-0045-0228, both allegedly the travel logs of Bangui-Mpoko airport with information on flights including matriculation, type of aircraft, origins, and departures, covering the periods of 3 August 2002 to 27 March 2003 and 2 January 2002 to 12 May 2003, respectively.³⁵ The prosecution submits that the documents are relevant to, *inter alia*: (i) the chain of supply of material for military purposes; (ii) the number of MLC flights arriving to and departing from Bangui during the conflict period; (iii) the number of MLC flights arriving to and departing from Bangui before and after the conflict; (iv) the changes in types of MLC aircraft (i.e. helicopter) sent to

³⁴ See, for example, ICC-01/05-01/08-2299-Red, paragraph 36.

³⁵ ICC-01/05-01/08-2854-Conf-AnxA, page 2.

Bangui during the conflict period which are inconsistent with Witness D04-15's claim that the flights were transporting only fuel; (v) records of flights that corroborate dates of events, such as a helicopter flight to Sibut to film interviews in Sibut on 20 February 2003 and helicopter flight to Bangui on 21 January 2003 after a request for ammunition in the communication logs on 20 January 2003; and (vi) the accused's authority and control over the *Armée de Libération du Congo* ("ALC")/MLC.³⁶

18. The Chamber notes that in its "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 ("Decision 2299"),³⁷ the Chamber rejected the admission of the same documents in the following terms:

155. Documents CAR-OTP-0045-0002 and CAR-OTP-0045-0228 are logbooks from Bangui Airport, including entries dated, respectively, from 3 August 2002 to 27 March 2003 and 2 January 2002 to 12 May 2003. The prosecution submits that these logbooks record arrivals and departures of registered aircrafts, including those of the MLC, during the period of 2 January 2002 to 17 May 2003. The prosecution submits that this document was provided by a representative of the "*Agence pour la Sécurité de la Navigation aérienne en Afrique et à Madagascar*" and was created contemporaneously with the events it records, during the normal course of business. The defence objects to the admission of these logbooks since no information or evidence has been provided to support their authenticity. The defence argues that such documents should properly be introduced through witnesses who have knowledge of the document or who can provide a basis for the Chamber to accept that they are in fact logbooks. In its reply the prosecution submits that such a document is self-explanatory and that calling an air traffic controller as a witness would add very little, if anything at all, to understanding the information contained therein.³⁸

156. The Chamber is of the view that such documents, if considered sufficiently reliable, would only prove that MLC planes may have landed in Bangui, and for the most part at times outside the period relevant to the charges. The Chamber finds therefore that this document is only of limited relevance and might only assist the Chamber's determination of the facts relevant to the case in a limited manner. In relation to its probative value, the Chamber notes that, contrary to its submissions, the prosecution has provided no information regarding the origin and reliability of these documents. Indeed, according to the record, these documents were provided to the prosecution by a witness who was not called to testify. Further, there is

³⁶ ICC-01/05-01/08-2854-Conf-AnxA, page 2.

³⁷ ICC-01/05-01/08-2299-Red.

³⁸ ICC-01/05-01/08-2299-Red, paragraph 155.

nothing in the logbooks indicating that the records actually originate from Bangui Airport or that they were created by operators or officials of that airport. Contrary to what the prosecution submits, the documents are not self-explanatory, particularly not with regard to their origin and whether they in fact originate from Bangui Airport. Without a proper explanation as to the meaning of the information in the logbooks or their origin, the Chamber finds no probative value in their contents. Considering the insufficient relevance and probative value of these documents, the Chamber is of the view that admitting them would cause unfair prejudice to the accused. The Chamber therefore rejects the admission of documents CAR-OTP-0045-0002 and CAR-OTP-0045-0228. (footnotes omitted).³⁹

19. The Chamber notes however that it has now heard the testimony of three witnesses who were questioned by both parties in relation to the documents in question. In particular, Witness D04-19 was shown the documents by the prosecution and asked to comment on the dates on which Bangui airport was closed and on the movements of flights operated by the MLC.⁴⁰ Similarly, Witness D04-21 was shown the documents and asked by the prosecution to comment on them in relation to an MLC flight to Sibut on 20 February 2003.⁴¹ Lastly, Witness D04-15 was questioned by the defence and the prosecution on the content of these documents in relation to his allegations that, during the time period relevant to the charges, the MLC increased its flights to Bangui in order to increase the fuel supplies in Gbadolite.⁴² As such, the Chamber is satisfied that the documents are relevant to issues properly to be considered by the Chamber.

20. In terms of probative value, the Chamber notes that document CAR-OTP-0045-0002 appears to be an airport logbook containing details – such as dates, times, type and registration of aircraft, operator, and numbers of flights – of departures and arrivals between 3 April 2002 and 27 March 2003. Document CAR-OTP-0045-0228 appears to be a summary, including information contained in the previous

³⁹ ICC-01/05-01/08-2299-Red, paragraph 156.

⁴⁰ Transcript of hearing of 6 March 2013, ICC-01/05-01/08-T-290-CONF-ENG ET, page 57, line 21 to page 62, line 7.

⁴¹ Transcript of hearing of 11 April 2013, ICC-01/05-01/08-T-305-CONF-ENG ET, page 3, line 21 to page 7, line 7 and page 41, line 10 to page 45, line 24.

⁴² Transcript of hearing of 11 September 2013, ICC-01/05-01/08-T-343-CONF-ENG ET, page 87, line 21 to page 89, line 5; ICC-01/05-01/08-T-344-CONF-ENG ET, page 64, line 20 to page 76, line 15 and page 87, line 18 to page 89, line 13.

document, detailing dates, registrations, types, origins and destinations, apparently of flights between 2 January 2002 and 12 May 2003. The Chamber reiterates its view that nothing in the documents indicates that the records they contain actually originate from Bangui Airport or that they were created by operators or officials of that airport.⁴³ However, the Chamber notes that none of the witnesses questioned by the parties in relation to these documents contested the allegation that they were records from Bangui airport. On the contrary, when confronted with document CAR-OTP-0045-0002 at 0076 by the prosecution, Witness D04-19 agreed that it confirmed his testimony that Bangui airport was occupied by Bozizé's troops – and therefore closed – when he arrived in Bangui.⁴⁴ When confronted with the same document at 0198 by the prosecution, Witness D04-21 indicated that it would confirm his testimony as to the time of departure of the flight to Sibut on 20 February 2003.⁴⁵ When asked to comment on document CAR-OTP-0045-0228 at 0238 by the defence, Witness D04-15 indicated that it corresponded to his testimony and that Bangui airport was closed for approximately nine days between 25 October and 3 November 2003.⁴⁶ As such, the Chamber is satisfied that there are no reasons to believe the document is anything other than what the parties appear to agree it to be, i.e. logbooks from Bangui airport. Therefore, the Chamber considers that the documents have sufficient probative value to be admitted as evidence.

21. In terms of potential prejudice, taking into account that the defence did not oppose the use of the documents in Court as it used them when questioning its witnesses affirming that they were indeed “the flight log-book, Bangui airport”,⁴⁷ the Chamber sees no reason to believe that its admission would cause prejudice

⁴³ ICC-01/05-01/08-2299-Red, paragraph 156.

⁴⁴ ICC-01/05-01/08-T-290-CONF-ENG ET, page 58, lines 11 to 20.

⁴⁵ ICC-01/05-01/08-T-305-CONF-ENG ET, page 5, lines 14 to 22.

⁴⁶ ICC-01/05-01/08-T-343-CONF-ENG ET, page 88, line 4 to page 89, line 5.

⁴⁷ ICC-01/05-01/08-T-343-CONF-ENG ET, page 87, line 22.

to a fair trial. Documents CAR-OTP-0045-0002 and CAR-OTP-0045-0228 are therefore admitted.

UN Group of Experts Report

22. The prosecution submits document CAR-OTP-0070-0009 and its French version, document CAR-OTP-0070-0051, which is a letter dated 15 July 2004 from the Chairman of the Security Council Committee established pursuant to Resolution 1533 (2004) concerning the DRC, addressed to the President of the UN Security Council (“UNSC”). The prosecution submits that the document is relevant to the credibility of Witness D04-15.⁴⁸ The prosecution further submits that, according to the representative of the UNSC at page 0027, [REDACTED] was engaged in arms trafficking in violation of a UNSC resolution [REDACTED].⁴⁹
23. The Chamber notes that document CAR-OTP-0070-0009 – and its French version, document CAR-OTP-0070-0051 – appears to be a letter dated 15 July 2004, from the Chairman of the Security Council Committee to the President of the UNSC. The Chamber notes that the letter transmits a report from a Group of Experts (“UN Group of Experts Report”) appointed by the UN Secretary General pursuant to UNSC Resolution 1533 (2004) for the purpose of collecting information related to the monitoring of the implementation of the arms embargo imposed by UNSC Resolution 1493 (2003) of 28 July 2003 on, *inter alia*, the DRC.⁵⁰ The Chamber notes that page 0027 of the English version, and page 0070 of the French, were used during the prosecution’s questioning of Witness D04-15.⁵¹ At those pages there is separate article within the UN Group of Experts Report entitled “Case of Vice-President Bemba and the internal movement of

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ CAR-OTP-0070-0009, at 0013 to 0014 and CAR-OTP-0070-0051, at 0055 to 0056.

⁵¹ ICC-01/05-01/08-T-344-CONF-ENG ET, page 76, line 25 to page 87, line 10.

arms”/“*Le Vice-Président Bemba et le Mouvement interne d’armes*” (“UN Group of Experts Article”).

24. Although the prosecution submits the full UN Group of Experts Report as evidence, the Chamber notes that of the 36 page Report (the French version being 38 pages), only the pages containing the full UN Group of Experts Article appear to be relevant to the case. While the Majority has expressed its preference for the admission of whole documents rather than excerpts with a view to avoiding selective references,⁵² the Majority considers that in the present case it would be more appropriate to consider the admission of only the UN Group of Experts Article within the UN Group of Experts Report. In this regard, the Majority notes that the article, although forming part of the UN Group of Experts Report, constitutes a complete document in itself, which can be properly assessed in its context without the need to assess the entire UN Group of Experts Report.⁵³

25. The UN Group of Experts Article, which was read out in court,⁵⁴ describes an incident which occurred between 20 and 22 January 2004 where five Antonov 26 flights landed at Gbadolite airport, [REDACTED] allegedly containing a considerable amount of arms, including heavy weapons and ammunition.⁵⁵ The article further provides that, during that period, access to the airport was denied to both military observers and civilian personnel of the United Nations Mission in the Democratic Republic of Congo (“MONUC”); however, when MONUC was eventually granted access on 22 January 2004, it conducted an inspection of one delivery of weapons.⁵⁶ [REDACTED].⁵⁷

⁵² Order on the procedure relating to the submission of evidence, 31 May 2011, ICC-01/05-01/08-1470, paragraph 11; ICC-01/05-01/08-2012-Red, paragraph 90; ICC-01/05-01/08-2299-Red, paragraph 116.

⁵³ See ICC-01/05-01/08-2299-Red, paragraph 96.

⁵⁴ ICC-01/05-01/08-T-344-CONF-ENG ET, page 77, line 13 to page 78, line 19.

⁵⁵ CAR-OTP-0070-0009, at 0027 and CAR-OTP-0070-0051, at 0070.

⁵⁶ Ibid.

⁵⁷ Ibid.

26. The Chamber notes that, when confronted with the document, Witness D04-15 indicated that [REDACTED] weapons brought to Gbadolite in order to make an inventory.⁵⁸ The Chamber further notes that, when discussing the issue of the MLC flights from Gbadolite to Bangui during the time period relevant to the charges, the witness explained that “the flights from Gbadolite to Bangui transported officers in the MLC and their spouses and officers, and there was also empty jerrycans so that they could get fuel for the flight back.”⁵⁹ As such, the Chamber is satisfied that the document may be of relevance to issues to be considered by the Chamber. These include allegations that, under the control of Mr Bemba, the MLC used airplanes to transport troops and supplies to the CAR and that the MLC troops deployed in the CAR were provided with arms and ammunition from Gbadolite.⁶⁰ In addition, the document may be relevant to the Chamber’s assessment of the credibility of Witness D04-15.

27. In terms of its probative value, the Chamber is satisfied that the UN Group of Experts Report contains sufficient details of its methodology and sources of information and is publicly available from official UN sources; therefore it bears sufficient indicia of reliability to warrant its admission into evidence. In terms of potential prejudice, taking into account that the defence did not respond to the prosecution’s request to admit the document, the Chamber sees no reason to believe that its admission would cause prejudice to a fair trial. The Chamber therefore admits into evidence the UN Groups of Expert Article contained in the UN Group of Experts Report, that is to say, ERN CAR-OTP-0070-0027 of document CAR-OTP-0070-0009 and ERN CAR-OTP-0070-0070 of document CAR-OTP-0070-0051.

⁵⁸ [REDACTED].

⁵⁹ ICC-01/05-01/08-T-344-CONF-ENG ET, page 88, lines 1 to 8.

⁶⁰ ICC-01/05-01/08-856-Conf-AnxA-Red, paragraph 27(ii) and (iii).

Audio-video Material

28. The prosecution submits an audio-video recording, item CAR-OTP-0069-0369, its transcript, document CAR-OTP-0069-0574, and its English and French translations, documents CAR-OTP-0069-0531 and CAR-OTP-0069-0551 respectively. The prosecution submits that the items are relevant to, *inter alia*, (i) the accused's ability to use various radio communication devices including walkie-talkies, Kenwood long-range radios and satellite phones; (ii) the accused's wearing of a military uniform; (iii) the accused's use of a baton/swagger stick; (iv) the accused's use of Lingala to address ALC troops; and (v) the accused's provision of direct operational and tactical orders to subordinates via the various communication devices.⁶¹
29. The Chamber notes that the video is a 39 minute long video report describing the MLC's struggle against the Congolese government and the role of Mr Jean-Pierre Bemba in the rebellion. While showing footage of territory under the control of the MLC, its infrastructure, inhabitants and soldiers, a French speaking reporter conducts an interview with Mr Bemba showing what appear to be Mr Bemba's daily activities for at least six days. At some parts of the video, between time codes 00:23:45:01 and 00:34:19:02, and between 00:35:58:13 and 00:38:36:02, the reporter is replaced by an English speaker who continues with the narration and interview with Mr Bemba showing his daily activities and those of the MLC. The Chamber notes that for most of the interview and when shown in his daily activities, Mr Bemba appears to be wearing military attire.⁶² In addition, during his daily activities and particularly when addressing the troops, Mr Bemba appears to be carrying a swagger stick.⁶³ The Chamber further notes that Mr

⁶¹ ICC-01/05-01/08-2854-Conf-AnxA, page 3.

⁶² See, *inter alia*, CAR-OTP-0069-0369, at time codes 00:00:33:02 to 00:02:19:22, 00:03:54:14 to 00:04:12:14, 00:06:00:00 to 00:23:43:24, 00:26:32:14 to 00:27:28:03, 00:28:04:17 to 00:28:43:00, 00:34:19:02 to 00:35:58:13.

⁶³ See, *inter alia*, CAR-OTP-0069-0369, at time codes 00:00:42:02 to 00:01:37:47, 00:06:19:03 to 00:06:24:12, 00:11:02:15 to 00:11:13:04, 00:11:25:06 to 00:12:36:00, 00:12:52:12 to 00:13:22:24, 00:13:53:23 to

Bemba indeed appears to address the MLC troops and the population in Lingala.⁶⁴

30. As part of the interview, Mr Bemba explains that the reason for Gbadolite being chosen as the MLC's headquarters, was due to the infrastructures to be found there.⁶⁵ The Chamber notes that the footage appears to show the existence of infrastructure in the area under the control of the MLC, including, *inter alia*, a radio station,⁶⁶ a television station,⁶⁷ large communication antennas,⁶⁸ and an airport.⁶⁹ When shown at his family home, Mr Bemba appears to be surrounded by a wide range of communication devices,⁷⁰ including a Kenwood radio,⁷¹ telephones and walkie-talkies,⁷² devices that he apparently operates by himself.⁷³ He is also shown in what appears to be the MLC's headquarters speaking through a hand held communication device, similar to a walkie-talkie.⁷⁴ Mr Bemba also appears using a communication device while driving,⁷⁵ and outside a building.⁷⁶

31. The Chamber further notes that the footage provides information about the composition of the MLC troops⁷⁷ and the conditions under which they appear to

00:14:13:09, 00:14:32:19 to 00:15:15:23, 00:16:52:15 to 00:18:07:10, 00:19:38:06 to 00:19:52:07, 00:21:01:20 to 00:21:07:00, 00:26:52:22 to 00:27:28:03, 00:28:04:17 to 00:28:25:23.

⁶⁴ CAR-OTP-0069-0369, at time codes 00:11:25:06 to 00:12:25:06, 00:14:18:16 to 00:15:15:23, 00:21:37:11 to 00:23:42:15.

⁶⁵ CAR-OTP-0069-0369, at time codes 00:03:55:02 to 00:04:24:01 and CAR-OTP-0069-0531, at 0535 lines 63 to 67.

⁶⁶ CAR-OTP-0069-0369, at time codes 00:04:58:16 to 00:05:13:05.

⁶⁷ CAR-OTP-0069-0369, at time codes 00:05:26:00 to 00:05:45:00.

⁶⁸ CAR-OTP-0069-0369, at time codes 00:05:17:06 to 00:05:26:00.

⁶⁹ CAR-OTP-0069-0369, at time codes 00:10:21:01 to 00:10:38:00.

⁷⁰ CAR-OTP-0069-0369, at time codes 00:06:00:00 to 00:06:04:00.

⁷¹ CAR-OTP-0069-0369, at time code 00:09:22:19.

⁷² CAR-OTP-0069-0369, at time code 00:09:19:11.

⁷³ CAR-OTP-0069-0369, at time codes 00:09:15:21 to 00:10:20:15.

⁷⁴ CAR-OTP-0069-0369, at time codes 00:06:42:05 to 00:06:51:20.

⁷⁵ CAR-OTP-0069-0369, at time codes 00:10:38:16 to 00:10:54:00.

⁷⁶ CAR-OTP-0069-0369, at time codes 00:35:34:11 to 00:35:38:07

⁷⁷ CAR-OTP-0069-0369, at time codes 00:15:15:23 to 00:16:16:00, 00:31:03:14 to 00:32:40:11, 00:32:39:01 to 00:32:59:13; and CAR-OTP-0069-0531, at 0541, lines 292 to 298 and at 0548, lines 546 to 548.

serve.⁷⁸ The footage also shows what appears to be a meeting of the MLC's Political and Military Counsel chaired by Mr Bemba, in which at least seven individuals participate and Mr Olivier Kamitatu, the MLC's Secretary General, speaks about the purpose of the meeting.⁷⁹ Colonel Amuli, the MLC's Chief of General Staff, also appears in the footage presenting a new brigade of soldiers to Mr Bemba, and addressing him as the MLC's National President.⁸⁰

32. The Chamber further notes that Witness D04-15 was shown part of the video in court, specifically time codes 00:08:50 to 00:13:22, and was questioned by the prosecution in relation to it.⁸¹ The witness identified one of the communication devices used by Mr Bemba as a Kenwood radio,⁸² and testified that that type of radio was used for long-range communication.⁸³ Referring to what he saw in the video, the witness further explained that Mr Bemba would also communicate with Motorola walkie-talkies,⁸⁴ and that in Gbadolite "there were all types of telephones – or two types of telephones, which made it possible for the high-ranking figures to communicate in the immediate environs of Gbadolite."⁸⁵ In addition, the witness explained that Mr Bemba had a base station at the transmission centre and one at home and that telephones were used by high-ranking figures to communicate with each other outside the radio network.⁸⁶ The witness further testified that Mr Bemba was able to stay in virtually constant contact with all parts of his organisation.⁸⁷

⁷⁸ CAR-OTP-0069-0369, at time codes 00:27:57:00 to 00:28:09:14, 00:28:32:04, 00:31:12:19 to 00:31:20:00; and CAR-OTP-0069-0531, at 0546 line 466.

⁷⁹ CAR-OTP-0069-0369, at time codes 00:07:01:22 to 00:07:36:14 and CAR-OTP-0069-0531, at 0537, lines 122 to 128.

⁸⁰ CAR-OTP-0069-0369, at time codes 00:13:09:19 to 00:13:20:21.

⁸¹ Transcript of hearing of 13 September 2013, ICC-01/05-01/08-T-345-CONF-ENG ET, page 17, line 11 to page 29, line 14.

⁸² ICC-01/05-01/08-T-345-CONF-ENG ET, page 18, lines 10 to 22.

⁸³ ICC-01/05-01/08-T-345-CONF-ENG ET, page 22, lines 4 to 7.

⁸⁴ ICC-01/05-01/08-T-345-CONF-ENG ET, page 22, lines 1 to 3.

⁸⁵ ICC-01/05-01/08-T-345-CONF-ENG ET, page 24, line 25 to page 25, line 2.

⁸⁶ ICC-01/05-01/08-T-345-CONF-ENG ET, page 25, lines 9 to 16.

⁸⁷ ICC-01/05-01/08-T-345-CONF-ENG ET, page 26, lines 7 to 9.

33. When confronted with the fact that Mr Bemba appears in the video wearing military uniform,⁸⁸ Witness D04-15 indicated that anyone could put on a military uniform, but insisted that “for me, [he] was not a soldier.”⁸⁹ However, the witness indicated that “as the president of the MLC and commander-in-chief, supreme commander of his army, Bemba was able to give orders and instructions to his units on his territory.”⁹⁰ When referring to the fact that Mr Bemba appears in the video holding a swagger stick, the witness explained that a customary chief could also have a baton like that,⁹¹ and acknowledged that “he was the supreme commander of his army”.⁹² The witness further identified the language in which Mr Bemba addressed the troops as Lingala and affirmed that Mr Bemba would speak to his troops in that language “every time he had the opportunity, he could only speak in that because most people spoke Lingala.”⁹³

34. The Chamber notes that the date on which the footage was captured is not specified, and it is not clear whether the French and the English parts were captured at the same point in time. From its content it can be inferred that the French part was captured after December 1999,⁹⁴ and close to 4 January,⁹⁵ probably of the year 2000.⁹⁶ The English part, however, appears to have been captured after 15 October 2001, since in the footage Mr Bemba refers to the Inter-Congolese dialogue as happening at the time of the interview.⁹⁷ In spite of the above, the Chamber is satisfied that that the audio-video material and related transcripts and translations are relevant to issues properly to be considered by the Chamber. In particular, the items may be relevant to *inter alia* the composition,

⁸⁸ ICC-01/05-01/08-T-345-CONF-ENG ET, page 19, lines 13 and 14.

⁸⁹ ICC-01/05-01/08-T-345-CONF-ENG ET, page 19, lines 19 and 20 and page 28, lines 4 to 6.

⁹⁰ ICC-01/05-01/08-T-345-CONF-ENG ET, page 20, lines 6 to 8.

⁹¹ ICC-01/05-01/08-T-345-CONF-ENG ET, page 26, line 20.

⁹² ICC-01/05-01/08-T-345-CONF-ENG ET, page 26, line 25 to page 27, line 1.

⁹³ ICC-01/05-01/08-T-345-CONF-ENG ET, page 27, lines 11 to 17.

⁹⁴ CAR-OTP-0069-0369, at time code 00:01:14:08.

⁹⁵ CAR-OTP-0069-0369, at time codes 00:18:39:00 to 00:18:43:20.

⁹⁶ CAR-OTP-0069-0369, at time codes 00:19:26:21 to 00:19:33:23 the reporter indicates that the footage corresponds to the celebrations one year after the liberation of Lissala.

⁹⁷ CAR-OTP-0069-0369, at time codes 00:37:06:17 to 00:37:34:08.

organisation and means of identification of MLC troops, the issue of command and control within the MLC, the credibility of Witness D04-15 and the analysis and understanding of the witness's testimony.

35. In terms of probative value, the Chamber notes that the video report appears to emanate from the source – TnpInfos.TV www.thommaty.skyrock.com – and notes, as explained above, that there is a change of reporter from French to English speaker at some times during the video and there is not clarity as to the date in which the recording was captured. Notwithstanding the above, the Chamber is satisfied that the video material and related transcripts and translations possess probative value because the accused and other persons are clearly identifiable in the video and the accused and some locations appearing in the video were recognised and referred to by Witnesses D04-15 in the context of his testimony.

36. In terms of potential prejudice, the Chamber notes that the defence did not respond to the prosecution's request for the admission of these items. In addition, the video material was disclosed to the defence on 21 November 2012,⁹⁸ and the related transcripts and translations on 3 December 2012.⁹⁹ Therefore, the defence had the opportunity to question more than half of the witnesses it called to testify at trial, including Witness D04-15, in relation to the items. As such, the Chamber sees no reason to believe that the admission of the audio-video material and related transcripts and translations would be prejudicial to the fairness of the trial. For the above reasons, the Chamber admits into evidence items CAR-OTP-0069-0369, CAR-OTP-0069-0574, CAR-OTP-0069-0531, and CAR-OTP-0069-0551.

⁹⁸ Prosecution's Communication of Rule 77 Evidence Disclosed to the Defence on 21 November 2012, 22 November 2012, ICC-01/05-01/08-2432, with Confidential Annex A, ICC-01/05-01/08-2432-Conf-AnxA.

⁹⁹ Prosecution's Communication of Rule 77 Evidence Disclosed to the Defence on 3 December 2012, 5 December 2012, ICC-01/05-01/08-2467, with Confidential Annex A, ICC-01/05-01/08-2467-Conf-AnxA.

Witness D04-15's hand written notes

37. The prosecution submits into evidence document CAR-ICC-0001-0101, a list of numbers appearing in document CAR-OTP-0055-0893, created by Witness D04-15 at the request of the prosecution during his testimony. The prosecution submits that the document is relevant as evidence to prove, *inter alia*, that the telephone log of numbers in document CAR-OTP-0055-0893 belongs to the accused.¹⁰⁰ These numbers, according to the prosecution, are the same as those found in documents CAR-OTP-0047-1660, CAR-OTP-0047-1601, and CAR-OTP-0047-1622, an analysis of the accused's mobile phone SIM cards that were seized when he was arrested in May 2008.¹⁰¹ According to the prosecution, the matching of contacts from the accused's 2008 SIM cards to his Thuraya records shows that they are the accused's records and shows the pattern of calls of the accused during the events in question.¹⁰²

38. The Chamber notes that, during the prosecution's questioning, Witness D04-15 was indeed requested to write down on a blank piece of paper some of the information contained in document CAR-OTP-0055-0893 (a record of phone calls made from a Thuraya phone allegedly belonging to the accused).¹⁰³ The prosecution asked the witness to write down five entries from the record – entries 134, 340, 349, 351 and 1011; which the witness did by copying a series of numbers belonging to each entry, i.e. entry number, date, start time, called number, duration and amount (USD).¹⁰⁴ After copying the entries, the witness dated and signed the document, which was assigned ERN CAR-ICC-0001-0101.¹⁰⁵

¹⁰⁰ ICC-01/05-01/08-2854-Conf-AnxA, page 4.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Item CAR-OTP-0055-0893 (EVD-T-OTP-00591) was admitted into evidence by Decision 2299, ICC-01/05-01/08-2299-Red, paragraphs 162 and 163.

¹⁰⁴ ICC-01/05-01/08-T-345-CONF-ENG ET, page 37, line 11 to page 39, line 23 and CAR-ICC-0001-0101.

¹⁰⁵ ICC-01/05-01/08-T-345-CONF-ENG ET, page 39, line 24 to page 40, line 23.

39. The witness was then requested to compare the data he had written down with that included in a document allegedly containing information from a SIM card of a mobile phone belonging to Mr Bemba (document CAR-OTP-0047-1660, the admissibility of which will be decided separately in the present Decision).¹⁰⁶ The prosecution then asked the witness to read document CAR-DEF-0001-0152 (a letter from Mr Bemba to Mr Kaba, President of the *Fédération Internationale des Droits de l'Homme* ("FIDH"), dated 20 February 2003),¹⁰⁷ and confronted the witness with the fax information – phone number, date and time – appearing at the top of document CAR-OTP-0001-0034 (the FIDH Report on crimes in the CAR, No. 355 dated February 2003).¹⁰⁸ The witness was then asked to compare one of the entries he had written on document CAR-ICC-0001-0101 with the phone number allegedly belonging to Mr Kaba appearing in document CAR-OTP-0073-0850 (a press release the admissibility of which will be decided separately in the present Decision).¹⁰⁹

40. In the view of the Chamber, although the document was indeed prepared and used by the witness in court, the document in itself does not have the "capacity to make a fact at issue more or less probable than it would be without the item" or the "potential to influence the Chamber's determination on at least one fact that needs to be determined to resolve the case".¹¹⁰ The Chamber considers that the prosecution has failed to demonstrate how document CAR-ICC-0001-0101 can be probative of any facts at issue. More specifically, the Chamber is not convinced by the prosecution's assertion that this list of numbers written down by Witness D04-15 may demonstrate that the document from which the numbers were taken is indeed a telephone log belonging to the accused. The Chamber

¹⁰⁶ ICC-01/05-01/08-T-345-CONF-ENG ET, page 41, line 8 to page 44, line 15.

¹⁰⁷ Item CAR-DEF-0001-0152 (EVD-T-OTP-00391) was admitted into evidence by Decision 2299, ICC-01/05-01/08-2299-Red, paragraphs 54 to 56 and 62.

¹⁰⁸ ICC-01/05-01/08-T-345-CONF-ENG ET, page 44, line 16 to page 49, line 15.

¹⁰⁹ ICC-01/05-01/08-T-345-CONF-ENG ET, page 49, line 16 to page 50, line 25.

¹¹⁰ ICC-01/05-01/08-2012-Red, paragraph 14.

considers that the allegations brought by the prosecution as to the relevance and probative value of the document are issues more properly to be raised as part of their final submissions, without the need for this document to be part of the evidence of the case. Document CAR-ICC-0001-0101 – which is not relevant to the Chamber’s determination of any fact at issue – is therefore not admitted into evidence.

SIM-card analysis reports

41. The prosecution submits three analysis reports relating to SIM cards and memory cards obtained from mobile phones allegedly belonging to Mr Bemba, documents CAR-OTP-0047-1660, CAR-OTP-0047-1601 and CAR-OTP-0047-1622 (“SIM card Reports”). The prosecution submits that the author/source of the reports is [REDACTED] from the Belgian *Police Judiciaire Federale*.¹¹¹ The prosecution submits that the items are relevant to prove, *inter alia*, that the phone numbers the accused called from a Thuraya phone, according to the phone records in document CAR-OTP-0055-0893, are attributed to several known contacts found in the SIM cards which were seized subsequent to his arrest in 2008.¹¹² According to the prosecution, the contacts include, but are not limited to former Presidents Patassé, Museveni, Bongo and Sassou, and Antoine Gonda, Viktor Bout, [REDACTED], Jean Ping and the accused’s spouse Lilliane Bemba.¹¹³ According to the prosecution, the matching of contacts from the SIM cards of the accused in 2008 to the records of his alleged Thuraya phone shows that the Thuraya records are the accused’s and it shows the pattern of calls made by the accused during the time of the events.¹¹⁴

¹¹¹ ICC-01/05-01/08-2854-Conf-AnxA, page 4.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

42. As to document CAR-OTP-0047-1660 (“SIM card Report 1”), the Chamber notes that it was used by the prosecution to question Witness D04-15 in court. The prosecution requested that the witness compare some entries appearing in document CAR-OTP-0055-0893, the record of phone calls made from a Thuraya phone bearing the number “1650260055” allegedly belonging to the accused (“Thuraya record”), which has already been admitted into evidence in the present case,¹¹⁵ with names and numbers appearing in the SIM card Report 1.¹¹⁶ During this exercise, the witness was able to confirm that: (i) the phone number mentioned at entry 134 of the Thuraya record corresponded with that identified as belonging to “BUT” in the SIM card Report 1;¹¹⁷ (ii) entry 340 of the Thuraya record corresponded to the number ascribed to “BONGO” in the SIM card Report 1;¹¹⁸ (iii) entry 351 of the Thuraya record, corresponded to the number ascribed to “GHONDA 1” in the SIM card Report 1;¹¹⁹ and (iv) entry 1011 of the Thuraya record, corresponded to the number ascribed to “PATASSE” in the SIM card Report 1.¹²⁰ The Chamber is therefore satisfied that the document may be of relevance to issues properly to be considered by the Chamber. In particular, the document may be of relevance to the Chamber’s assessment of the Thuraya record, and its determination of whether it indeed corresponds to that of the phone used by the accused during the time period relevant to the charges.

43. In terms of its probative value, the Chamber is satisfied that the document bears sufficient indicia of reliability, such as a date, signature, stamp and letter-head and appears to have been produced in the ordinary course of operations of the Belgian *Police Judiciaire*, to warrant its admission into evidence. In terms of potential prejudice, the Chamber notes that the defence did not respond to the

¹¹⁵ ICC-01/05-01/08-2299-Conf, paragraphs 162 and 163.

¹¹⁶ ICC-01/05-01/08-T-345-CONF-ENG ET, page 41, line 8 to page 44, line 10.

¹¹⁷ ICC-01/05-01/08-T-345-CONF-ENG ET, page 41, line 23 to page 42, line 15.

¹¹⁸ ICC-01/05-01/08-T-345-CONF-ENG ET, page 42, line 21 to page 43, line 4.

¹¹⁹ ICC-01/05-01/08-T-345-CONF-ENG ET, page 43, line 5 to page 44, line 2.

¹²⁰ ICC-01/05-01/08-T-345-CONF-ENG ET, page 44, lines 3 to 10.

prosecution's submission into evidence of this report and sees no reason to believe that its admission would be prejudicial to the fairness of the trial. For the above reasons, the Chamber admits into evidence document CAR-OTP-0047-1660.

44. The Chamber notes that, when questioning Witness D04-15, the prosecution affirmed that there were "over 23 matches between the Thuraya records and Mr Bemba's SIM cards seized in 2008",¹²¹ however, no additional matches than those referred in relation to the SIM card Report 1 were discussed with this or any other witness. Further, documents CAR-OTP-0047-1601 and CAR-OTP-0047-1622, were not used by the parties or participants to question any of the witnesses called to testify at trial. Therefore, although the prosecution affirms that contacts included in documents CAR-OTP-0047-1601 and CAR-OTP-0047-1622 would match some of the Thuraya records,¹²² no further information has been provided in order to allow the Chamber to assess the relevance of the documents. As previously stressed "the burden rests on the party seeking the item's admission to demonstrate its admissibility".¹²³ Since the relevance of the documents has not been sufficiently established by the tendering party, the documents are not admitted into evidence.

Media Reports

45. At the outset, the Chamber recalls its consistent approach to the admission of media reports, as set out by the Majority of the Chamber, Judge Ozaki dissenting,¹²⁴ in its Decision 2299.¹²⁵ In this regard, the admissibility of such

¹²¹ ICC-01/05-01/08-T-345-CONF-ENG ET, page 44, lines 11 and 12.

¹²² ICC-01/05-01/08-2854-Conf-AnxA, page 4.

¹²³ ICC-01/05-01/08-2299-Red, paragraph 10.

¹²⁴ 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.

¹²⁵ ICC-01/05-01/08-2299-Red, paragraph 95.

materials will be approached with caution with the possibility of such reports being admitted for limited purposes to be determined on a case-by-case basis.

46. The prosecution requests the admission of two media reports: (i) document CAR-OTP-0013-0106, an article published in the newspaper *Le Citoyen* on 17 February 2003, entitled “*Dossier Special: Patassé, Bemba et Miskine*”; and (ii) document CAR-OTP-0073-0850, a Human Rights Watch (“HRW”) article published by the online source “allAfrica.com”.
47. As to document CAR-OTP-0013-0106, the prosecution submits that it is relevant and probative, *inter alia*, of the accused’s control, knowledge, and failure to take measures. According to the prosecution, the article records the accused’s reaction, on 14 February 2003, after having received on the evening of 13 February 2003 an FIDH report (document CAR-OTP-0001-0034),¹²⁶ on crimes committed by the ALC forces in the CAR.¹²⁷ The prosecution affirms that at page 0109 of the document, the article quotes the words of the accused who alleged that the FIDH’s information was of a political character and “conflate[d] the FIDH’s investigation with his assertion that France did not ‘swallow’ ‘our’ intervention in the CAR”.¹²⁸ According to the prosecution, the accused implied that the arrest of eight of his men and his letter to General Cissé addressed the information contained in the FIDH report and that he was willing to arrest authors of crimes but that he lacked identifiable proof of rapes or other crimes.¹²⁹
48. 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, such as that under consideration, can comprise complete documents

¹²⁶ Item CAR-OTP-0001-0034 (EVD-T-OTP-00395) was admitted into evidence by Decision 2299, ICC-01/05-01/08-2299-Red, paragraphs 29 to 37.

¹²⁷ ICC-01/05-01/08-2854-Conf-AnxA, page 5.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

in themselves which can be properly assessed in their context. The Chamber notes that the article of the newspaper *Le Citoyen* of Monday 17 February 2003 submitted by the prosecution contains a series of sections focused on the allegations made by the FIDH of crimes being committed in the CAR and the alleged responsibility for those crimes of the then President Ange-Felix Patassé, Mr Bemba and Abdoulaye Miskine. One of the sections, at ERN CAR-OTP-0013-0109, entitled “*Crimes de guerre: Jean-Pierre Bemba rejette les accusations de la FIDH*”, summarises some answers allegedly given by Mr Bemba to *Agence France-Presse* on the previous Friday, i.e. 14 February 2003. According to the article, Mr Bemba affirmed that the allegations were “of a political character” and that “France had never supported [their] intervention in the CAR”.¹³⁰ Referring to the allegations of rape, Mr Bemba stated “I defy anyone to say that Jean-Pierre Bemba raped one girl in Central Africa” or that he gave “orders to commit rape”.¹³¹ In addition, Mr Bemba affirmed that he had written to the UN Special Representative, General Cissé, and that he had responded on 17 January, i.e. 2003, indicating that he had no information and that “he expected an investigation to be initiated between Chad and the CAR”.¹³² The Chamber notes that this information is, to a certain extent, consistent with that contained in documents CAR-OTP-0017-0363 and CAR-OTP-0033-0209, the letter from Mr Bemba to General Cissé and his corresponding answer, both already admitted into evidence for the purposes of the trial.¹³³

¹³⁰ CAR-OTP-0013-0106, at 0109, “*Ce sont des procès d’intention [illegible] caractère politique*” and “*La France n’a jamais avalé notre intervention en Centrafrique*”.

¹³¹ CAR-OTP-0013-0106, at 0109, “*Je défie qui que ce soit de dire que Jean-Pierre Bemba ait violé une seule fille en Centrafrique, et je défie qui que ce soit de dire que j’aie donné l’ordre d’aller violer*”.

¹³² CAR-OTP-0013-0106, at 0109, “*En ce qui concerne les allégations de viols j’ai écrit au représentant spécial du secrétaire général de l’ONU en Centrafrique, le général Cissé, à ce propos et il m’a répondu le 17 janvier me disant qu’il n’avait aucun élément et qu’il attendait qu’une enquête soit ouverte entre le Tchad et la Centrafrique*”.

¹³³ Items CAR-OTP-0017-0363 (EVD-T-OTP-00453) and CAR-OTP-0033-0209 (EVD-T-OTP-00584) were both admitted into evidence by Decision 2299, ICC-01/05-01/08-2299-Red, paragraphs 48, 49 and 52.

49. The Chamber further notes that, during the prosecution's questioning of Witness D04-15, the witness was asked to read the abovementioned section of the article and to comment on its content.¹³⁴ When asked whether it was true that Mr Bemba rejected the accusations included in the FIDH Report,¹³⁵ the witness asserted that Mr Bemba asked the representative of the UN Secretary General to carry out investigations of what "[Mr Bemba] called serious accusations".¹³⁶ In addition, when asked whether there were any attempts by Mr Bemba to investigate and prosecute the crimes reported,¹³⁷ the witness responded that an officer of the ALC joined a commission set up by the Central African officers in order to carry out investigations.¹³⁸

50. As such, the Chamber is satisfied that the document may be of relevance to the charges against the accused and refers to matters that are properly to be considered by the Chamber. In particular, the document may be of relevance to the accused's knowledge of allegations of the commission of crimes by MLC soldiers at the relevant period under examination, whether the conduct described in the charges was widely broadcasted, and to the measures taken by the accused to prevent or repress commission of crimes or submit the matter to the competent authorities for investigation and prosecution.

51. Turning to the document's probative value, the Majority notes that it contains a full article of the newspaper *Le Citoyen*, published in the CAR on 17 February 2003. In terms of reliability, the Chamber notes that this article emanates from a well-known news outlet, was created contemporaneously with the events under examination, and appears to have been created in the course of the normal activities of the newspaper *Le Citoyen*. The Majority further notes that the article

¹³⁴ ICC-01/05-01/08-T-345-CONF-ENG ET, page 52, line 15 to page 55, line 17.

¹³⁵ ICC-01/05-01/08-T-345-CONF-ENG ET, page 54, lines 12 and 13.

¹³⁶ ICC-01/05-01/08-T-345-CONF-ENG ET, page 54, lines 24 and 25 and page 55, lines 13 to 15.

¹³⁷ ICC-01/05-01/08-T-345-CONF-ENG ET, page 55, lines 1 to 5.

¹³⁸ ICC-01/05-01/08-T-345-CONF-ENG-ET, page 55, lines 6 to 8.

provides complete details as to its sources of information. The Majority is satisfied that the document holds sufficient probative value to warrant its admission into evidence.

52. As to the potential prejudice, as previously indicated, the Majority of the Chamber is of the view that this press article can be considered for a limited purpose; in particular, the information contained therein may serve to corroborate other pieces of evidence and may be examined when assessing whether the conduct described in the charges was widely broadcasted. In light of the limited purpose for which this document may be used, the Majority is of the view that its admission will not cause prejudice to the fairness of the trial. The Chamber, with Judge Ozaki dissenting on the reasoning, admits into evidence document CAR-OTP-0013-0106.

53. As to document CAR-OTP-0073-0850, the prosecution submits that it is relevant to prove that phone number 2216375020 was a phone number used by Mr Sidiki Kaba, the then President of the FIDH.¹³⁹ The prosecution submits that the phone number on this document matches the phone number that the accused called on 13 February 2003 at 21:48:24 hours, according to the information contained in the Thuraya record (CAR-OTP-0055-0893 at 0900).¹⁴⁰ The prosecution further submits that the call lasted only 5 seconds but the fact that it was called at all indicates that the accused had received the FIDH report and wished to speak to Mr Kaba about it.¹⁴¹ In addition, according to the prosecution, the accused's letter to Mr Kaba (CAR-DEF-0001-0152) indicates that the accused spoke to Mr Kaba on the phone between receiving the report and his 20 February 2003 letter.¹⁴² In the view

¹³⁹ ICC-01/05-01/08-2854-Conf-AnxA, page 5.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

of the prosecution, this shows that the Thuraya record is the accused's record and provides information as to when the accused knew about the FIDH report.¹⁴³

54. The Chamber notes that the media report, allegedly authored by HRW, refers to matters occurring in Senegal in February 2001 and is therefore not related to the facts at issue in the present case. However, as noted by the prosecution, at the end of the report there is a note providing a series of phone numbers for the public to contact to obtain further information. Among them there is the phone number of Sidiki Kaba from the FIDH [REDACTED].¹⁴⁴ The Chamber notes that the same number is registered at entry 349 of the Thuraya record, as a call made on 13 February 2003 at 21:48:24 which lasted 5 seconds.¹⁴⁵ In addition, in his letter of 20 February 2003 addressed to Mr Kaba, Mr Bemba starts by stressing that the letter is related to the telephone conversation that they had recently had.¹⁴⁶ The Chamber further notes that the document was used by the prosecution to question Witness D04-15, who verified that the phone number allegedly belonging to Mr Kaba matched the phone number of entry 349 in the Thuraya record in court.¹⁴⁷ The Chamber is therefore satisfied that the item may be of relevance to issues properly to be considered by the Chamber; in particular, whether the Thuraya record is indeed the record of phone calls made by the accused during the time of the events and to the assessment of the testimony of Witness D04-15.

55. As to the item's probative value, the Chamber is satisfied that the document holds sufficient probative value and is sufficiently reliable as evidence that Mr Sidiki Kaba's phone number on February 2001 was [REDACTED]. As to potential prejudice, in light of the limited purpose for which this document may be relied

¹⁴³ Ibid.

¹⁴⁴ CAR-OTP-0073-0850.

¹⁴⁵ CAR-OTP-0055-0893, at 0900.

¹⁴⁶ CAR-DEF-0001-0152, « A la suite de la récente conversation téléphonique que nous avons eue ».

¹⁴⁷ ICC-01/05-01/08-T-345-CONF-ENG ET, page 49, line 21 to page 52, line 14.

upon, the Chamber is of the view that its admission will not cause unfair prejudice to a fair trial. Accordingly, the Chamber admits into evidence document CAR-OTP-0073-0850.

Second Category: Others

56. The prosecution requests the admission of five additional documents it identifies as “others”. These are: (i) three letters signed by [REDACTED] documents **CAR-OTP-0048-0374 (Confidential)**, **CAR-OTP-0048-0375 (Confidential)** and **CAR-OTP-0048-0377 (Confidential)**; and (ii) two prior written statements provided by Witness D04-18 to the prosecution in October 2009, documents **CAR-OTP-0054-0005 (Confidential)** and **CAR-OTP-0054-0019 (Confidential)**.

Letters signed by [REDACTED]

57. As to document CAR-OTP-0048-0374, the prosecution submits that it is relevant, *inter alia*, to show that the accused was in possession of and using a satellite telephone number [REDACTED].¹⁴⁸ The prosecution asserts that the source provider is clearly identified and sufficiently linked to the emails and that admitting this document into evidence is not prejudicial to a fair trial as the document was disclosed in advance and used in court during witness examination.¹⁴⁹

58. The Chamber notes that, contrary to the prosecution’s submission, document CAR-OTP-0048-0374 does not make any reference to a satellite phone that was in the possession of or used by the accused, nor does it provide any information that may be of relevance to the Chamber’s determination. The letter, which is dated 29 September 2004, appears to be [REDACTED] and only refers to some

¹⁴⁸ ICC-01/05-01/08-2854-Conf-AnxA, page 5.

¹⁴⁹ Ibid.

outstanding payments that Mr Bemba would have owed to the letter's sender. When the document was shown to [REDACTED] he did not recognise it, but remembered [REDACTED] some outstanding bills of Mr Bemba, none of which were related to the accused's alleged possession or use of a satellite phone.¹⁵⁰ Accordingly, considering that the document does not make any reference to a satellite phone in possession or use by the accused, as alleged by the prosecution, the Chamber considers the document not to be relevant to the present case and rejects its admission.

59. As to document CAR-OTP-0048-0375, the prosecution submits that it is relevant, *inter alia*, to show that the accused was in possession of, and frequently used, Thuraya telephone communication, the cost of which amounted to the sum of \$32.000 or \$30.000.¹⁵¹ The prosecution asserts that the source provider is clearly identified and sufficiently linked to the emails and that admitting this document into evidence is not prejudicial to a fair trial as the document was disclosed in advance and used in court during witness examination.¹⁵²

60. The Chamber notes that the document, which is an undated letter [REDACTED] and apparently [REDACTED] indeed makes some reference to an unpaid bill by Mr Bemba for the use of a Thuraya telephone, which for a period of six months would amount to \$30.000.¹⁵³ The Chamber notes that during the prosecution's questioning, the document was shown to [REDACTED] and he was asked to read out and comment on the relevant paragraph.¹⁵⁴ The witness did not recall having seen the letter before.¹⁵⁵ In the view of the Chamber, although the document makes reference to the issue of unsettled Thuraya phone bills by Mr

¹⁵⁰ [REDACTED].

¹⁵¹ ICC-01/05-01/08-2854-Conf-AnxA, page 5.

¹⁵² Ibid.

¹⁵³ CAR-OTP-0048-0375.

¹⁵⁴ [REDACTED].

¹⁵⁵ [REDACTED].

Bemba, the fact that the document does not have a date or any reference to the time frame of the use of the phone to which it refers and does not give information about the number of the phone it refers, prevents the Chamber from concluding that the document is of any relevance to the facts at issue. Accordingly, the Chamber rejects its admission.

61. As to document CAR-OTP-0048-0377, the prosecution submits that it is relevant, *inter alia*, to show that the accused and the MLC were in possession of, and used, Thuraya telephone communication, as well as the fact that [REDACTED] was in possession of evidence regarding the MLC's Thuraya telephone communications.¹⁵⁶ The prosecution further submits that admitting this document into evidence is not prejudicial to a fair trial as the document was disclosed in advance and used in court during witness examination.¹⁵⁷

62. The Chamber notes that the document, a letter dated 31 August 2006, addressed to the Minister of Budget, Secretary General of the MLC, allegedly from [REDACTED] although with no signature, makes reference to a request made on 7 May 2003 by the MLC's Secretary General for [REDACTED] to inform him about the overall situation of the MLC's accounts.¹⁵⁸ The letter refers to the lack of answers to previous claims for unpaid bills and to a new claim submitted [REDACTED] stressing that the supporting documents related to all Thuraya telephone communications were not included in that claim, although they were available.¹⁵⁹ The Chamber further notes that the chain of custody of the Thuraya records (CAR-OTP-0055-0893) shows that the document emanated from and was provided to the prosecution by [REDACTED].

¹⁵⁶ ICC-01/05-01/08-2854-Conf-AnxA, page 5.

¹⁵⁷ Ibid.

¹⁵⁸ CAR-OTP-0048-0377.

¹⁵⁹ Ibid.

63. During the prosecution's questioning of [REDACTED] the witness was requested to read the document and comment on its content.¹⁶⁰ The witness acknowledged that [REDACTED] in Kinshasa in approximately 2004,¹⁶¹ and then at a later stage after 2006 [REDACTED] no solution to his claims.¹⁶² The witness further confirmed that [REDACTED].¹⁶³

64. In view of the above, the Chamber is satisfied that the document may be of relevance in demonstrating that [REDACTED] possessed evidence related to the communications made with a Thuraya telephone used by the MLC in 2003. As to the item's probative value, the Chamber notes that the document does not have a signature. However, taking into account that it is dated and contains details of the sender and addressee and considering that the information about outstanding claims [REDACTED] was confirmed by [REDACTED], the Chamber is satisfied that the letter holds sufficient probative value to warrant its admission. As to potential prejudice, in light of the limited purpose for which this document is admitted, the Chamber is of the view that its admission will not have a prejudicial effect on the fairness of the trial. Accordingly, the Chamber admits into evidence document CAR-OTP-0048-0377.

Written statements of Witness D04-18

65. The prosecution submits two prior recorded written statements of Witness D04-18, documents CAR-OTP-0054-0005 and CAR-OTP-0054-0019. The prosecution argues that they are relevant, *inter alia*, to challenge the credibility of the witness's *viva voce* testimony as the statement was taken prior to his decision to become a Defence witness.¹⁶⁴ In relation to document CAR-OTP-0054-0005, the prosecution submits that it is also relevant to show widespread knowledge of

¹⁶⁰ [REDACTED].

¹⁶¹ [REDACTED].

¹⁶² [REDACTED].

¹⁶³ [REDACTED].

¹⁶⁴ ICC-01/05-01/08-2854-Conf-AnxA, page 6.

allegations of rape and looting by MLC soldiers in the CAR within the soldiers and members of the Etat-Major in Gbadolite.¹⁶⁵ As to document CAR-OTP-0054-0019, the prosecution submits that the document also shows the accused's *de facto* control over the MLC military wing, including his access to intelligence reports and issuance of orders that were carried out.¹⁶⁶

66. The prosecution further affirms that the documents are reliable because they were recorded in accordance with the required safeguards of Rule [REDACTED] of the Rules; the statements include Witness D04-18's signature verifying the contents of the statements as well as the date of the signature (29 October 2009).¹⁶⁷ The prosecution submits that admitting these documents will not be prejudicial to a fair trial as the defence had adequate notice of the document as it was disclosed in advance and various portions of the statement were used by the prosecution to contradict the testimony provided by Witness D04-18 in court, thereby providing the defence with the opportunity for any additional questions.¹⁶⁸ In addition, the prosecution submits that during the hearing the prosecution addressed important inconsistencies between the courtroom testimony and the witness's prior statements.¹⁶⁹ Therefore, the prosecution argues, admitting the two statements will allow the Chamber to fully assess and contextualise the inconsistencies in evaluating both the witness's credibility and the truth of the contents of the statements.¹⁷⁰

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ ICC-01/05-01/08-2854-Conf-AnxA, page 6.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

67. The Chamber reiterates its view that, when the admission into evidence of prior recorded testimony – either video or audio recordings, transcripts of interviews, or written statements¹⁷¹ – of witnesses who testify at trial is sought:

134. The starting point for the Chamber's analysis is the presumption, enshrined in Article 69(2) of the Statute, that the "testimony of a witness at trial shall be given in person". As the Appeals Chamber has held, this "principle of orality", "makes in-court personal testimony the rule". However, the Appeals Chamber has also made clear that "in-court personal testimony is not the exclusive mode by which a Chamber may receive witness testimony", and that "a Chamber has the discretion to receive the testimony of a witness by means other than in-court personal testimony, as long as this does not violate the Statute and accords with the Rules" and "is not prejudicial to or inconsistent with the rights of the accused or with the fairness of the trial generally".

135. Where a witness testifies before the Chamber, Rule 68 of the Rules is of particular relevance to the question of the admissibility of their [prior recorded testimony]. This provision empowers a Trial Chamber to allow, in accordance with Article 69(2) of the Statute:

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. (footnotes omitted).¹⁷²

68. As to the requirements under Rule 68 of the Rules, the Chamber is satisfied that the requirements are met. In particular, Witness D04-18 was present before the Trial Chamber and the prosecution, the defence, the legal representatives of victims, and the Chamber had the opportunity to question him during the trial

¹⁷¹ ICC-01/05-01/08-2012-Red, paragraph 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.

¹⁷² ICC-01/05-01/08-2012-Red, paragraphs 134 to 135.

proceedings.¹⁷³ The Chamber is further satisfied that the witness consented to his prior statements given to the prosecution being submitted into evidence.¹⁷⁴

69. In terms of relevance, the Majority of the Chamber, Judge Kuniko Ozaki dissenting, reiterates its view that the prior recorded interviews of witnesses who have testified at trial are relevant because they may assist the Chamber in assessing, contextualising, and weighing the witnesses' testimony.¹⁷⁵ In this regard, the Majority reiterates its view 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 the prior interviews or statements that the parties decide to refer to in court in the limited time available to them to conduct questioning, it should be able to compare a witness's testimony against the entirety of their prior recorded interviews.¹⁷⁶ In addition, the Majority notes that, during the testimony of Witness D04-18, the witness was extensively questioned by the prosecution, the legal representatives of victims, and the Chamber on the content and apparent contradictions between his testimony and his prior statements.¹⁷⁷ The Majority is therefore satisfied that the witness's prior statements are relevant to matters that are properly to be considered by the Chamber and would assist in the Chamber's analysis of the credibility of the witness and in the assessment of his testimony.

¹⁷³ Witness D04-18 provided testimony before the Chamber from 5 June 2013 to 11 June 2013, *see* transcript of hearing of 5 June 2013, ICC-01/05-01/08-T-317-CONF-ENG ET, transcript of hearing of 6 June 2013, ICC-01/05-01/08-T-318-CONF-ENG ET, transcript of hearing of 10 June 2013, morning session, ICC-01/05-01/08-T-319-CONF-ENG ET, transcript of hearing of 10 June 2013, afternoon session, ICC-01/05-01/08-T-319bis-CONF-ENG ET, transcript of hearing of 11 June 2013, morning session, ICC-01/05-01/08-T-320-CONF-ENG ET, transcript of hearing of 11 June 2013, afternoon session, ICC-01/05-01/08-T-320bis-CONF-ENG ET.

¹⁷⁴ ICC-01/05-01/08-T-317-CONF-ENG ET, page 36, lines 14 to 19.

¹⁷⁵ ICC-01/05-01/08-2012-Red, paragraph 142; 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, paragraph 23.

¹⁷⁶ ICC-01/05-01/08-2012-Red, paragraph 143; ICC-01/05-01/08-2793, paragraph 23.

¹⁷⁷ *See, inter alia*, ICC-01/05-01/08-T-317-CONF-ENG ET, page 33, line 5 to page 36, line 19; ICC-01/05-01/08-T-319bis-CONF-ENG ET, page 6, line 15 to page 11, line 1, page 14, lines 2 to 13; ICC-01/05-01/08-T-320-CONF-ENG ET, page 55, lines 3 to 15.

70. In terms of probative value, the statements' reliability stems from the fact that they appear to have been taken in accordance with Rule [REDACTED] of the Rules. In addition, during Witness D04-18's in-court testimony, the alleged contradictions between the witness's prior statements and his in-court testimony were extensively discussed and the witness was given the opportunity to either confirm his answers or explain the contradictions.¹⁷⁸ In the view of the Chamber, these factors provide the documents with sufficient probative value for their admission as evidence.

71. In terms of potential prejudice, the Chamber notes that the defence did not respond to the prosecution's request for the admission of the statements into evidence. The Majority reiterates its principled view that the admission of the prior recorded interviews of witnesses who have testified at trial will enable the Chamber to compare the witnesses' testimony against their prior interviews to determine the extent of inconsistencies, if any, which will contribute to the fair evaluation of the witnesses' testimony.¹⁷⁹ In addition, the Majority reiterates that prior statements are to be considered complementary to the witness's in-court testimony and not as a substitute, and will be used to assess the testimony and to determine the weight to be afforded to the testimony as a whole.¹⁸⁰ In view of the foregoing, the Majority sees no reason to believe that the admission of the prior statements of Witness D04-18 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 documents CAR-OTP-0054-0005 and CAR-OTP-0054-0019.

III. Conclusions

¹⁷⁸ See, *inter alia*, ICC-01/05-01/08-T-319bis-CONF-ENG ET, page 13, line 24 to page 41, line 6.

¹⁷⁹ ICC-01/05-01/08-2012-Red, paragraph 146.

¹⁸⁰ ICC-01/05-01/08-2012-Red, paragraphs 149 and 150.

72. In view of the foregoing, the Chamber:

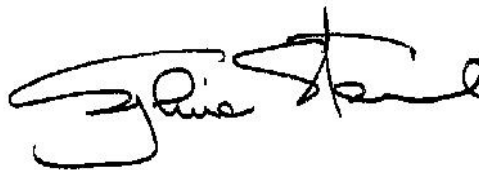
- i. ADMITS into evidence the following items: CAR-OTP-0045-0002, CAR-OTP-0045-0228, ERN CAR-OTP-0070-0027 of document CAR-OTP-0070-0009, ERN CAR-OTP-0070-0070 of document CAR-OTP-0070-0051, CAR-OTP-0069-0369, CAR-OTP-0069-0574, CAR-OTP-0069-0531, CAR-OTP-0069-0551, CAR-OTP-0047-1660, CAR-OTP-0013-0106, CAR-OTP-0073-0850 and CAR-OTP-0048-0377;
- ii. REJECTS the admission into evidence of items: CAR-ICC-0001-0101, CAR-OTP-0047-1601, CAR-OTP-0047-1622, CAR-OTP-0048-0374 and CAR-OTP-0048-0375;
- iii. CONSIDERS MOOT the request to admit item CAR-D04-0003-0527;
- iv. ORDERS that any EVD-T numbers previously assigned to any of the above items shall remain unchanged;
- v. INSTRUCES the Registry to assign new EVD-T numbers to those items which currently do not have one; and
- vi. ORDERS the prosecution to file by 28 February 2014 public redacted versions of the Prosecution Request and corresponding annex or to inform the Chamber that they may be reclassified as public without redactions;
- vii. ORDERS the prosecution to review the level of confidentiality of the items 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;
 - (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,

73. The Majority of the Chamber, Judge Kuniko Ozaki dissenting, admits into evidence items: ERN CAR-OTP-0073-0814 to ERN CAR-OTP-0073-0816 of document CAR-OTP-0073-0768, ERN CAR-OTP-0073-0731 to ERN CAR-OTP-0073-0733 of document CAR-OTP-0073-0674, CAR-OTP-0054-0005 and CAR-OTP-0054-0019.

74. The partly dissenting opinion of Judge Kuniko Ozaki is attached as Annex A 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 23 June 2016

At The Hague, The Netherlands