

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **23 June 2016**

**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-01/05-01/08-2868)”,  
ICC-01/05-01/08-2981 of 17 February 2014**

**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  
Ms Melinda Taylor

**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  
Victims**

Ms Paolina Massidda

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

Mr Xavier-Jean Keïta

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**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-01/05-01/08-2868) (“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”),<sup>1</sup> 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.<sup>2</sup>
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”,<sup>3</sup> 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.<sup>4</sup> 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

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<sup>1</sup> 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.

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

<sup>3</sup> 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.

<sup>4</sup> ICC-01/05-01/08-2855, paragraph 9.

could only be filed where leave was granted by the Chamber pursuant to Regulation 24(5) of the Regulations.<sup>5</sup>

3. On 8 November 2013, the Office of the Prosecutor (“prosecution”) filed its “Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute” (“Prosecution Application”), together with a confidential annex, in which it seeks the admission of seven documents used during the testimony of Witness D04-54 into evidence.<sup>6</sup> The documents consist of one book written by the accused, one military file, and five press articles.<sup>7</sup>
  
4. The prosecution states that it submits the items for the truth of their content and in some cases without calling their authors or the individuals who provided the information therein to testify at trial.<sup>8</sup> The prosecution asserts that the documents are relevant to and probative of issues at trial, that they bear sufficient indicia of reliability to outweigh any prejudicial effect, and that their admission would satisfy the requirements of Articles 64(2) and 67(1).<sup>9</sup> The prosecution further submits that the accused was put on sufficient notice of the prosecution’s intention to request the admission of the tendered items and notes that the prosecution used the documents during the questioning of witnesses at which point the defence was afforded the opportunity to question the witnesses.<sup>10</sup> Consequently, the prosecution submits, the submitted documents’ admission would not unfairly prejudice the accused.<sup>11</sup> In the annex to the Prosecution

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

<sup>6</sup> Prosecution’s Application for Admission of Materials in Evidence Pursuant to Article 64(9) of the Rome Statute, 8 November 2013, ICC-01/05-01/08-2868-Conf, paragraphs 1 and 9, with confidential Annex A, ICC-01/05-01/08-2868-Conf-AnxA.

<sup>7</sup> ICC-01/05-01/08-2868-Conf, paragraph 7 and ICC-01/05-01/08-2868-Conf-AnxA.

<sup>8</sup> ICC-01/05-01/08-2868-Conf, paragraph 4.

<sup>9</sup> ICC-01/05-01/08-2868-Conf, paragraphs 4 and 5.

<sup>10</sup> ICC-01/05-01/08-2868-Conf, paragraph 5.

<sup>11</sup> Ibid.

Application the prosecution provides detailed information relating to each of the seven documents for the Chamber's consideration.<sup>12</sup>

5. On 15 November 2013, the defence submitted its "Defence Response to the Third Prosecution Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute", ("Defence Response") together with a confidential annex.<sup>13</sup> The defence makes substantive submissions on each of the seven documents for which the prosecution seeks admission in the annex to its Defence Response.<sup>14</sup>

## II. Analysis

6. In accordance with Article 21(1) of the Rome Statute ("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 of Procedure and Evidence ("Rules") and Regulation 23*bis*(3) of the Regulations of the Court ("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.<sup>15</sup> Further, the Chamber underlines once more that its determination on the admissibility of an item as evidence will

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<sup>12</sup> ICC-01/05-01/08-2868-Conf, paragraph 7 and ICC-01/05-01/08-2868-Conf-AnxA.

<sup>13</sup> 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, with annex ICC-01/05-01/08-2892-Conf-AnxA.

<sup>14</sup> ICC-01/05-01/08-2892-Conf, paragraph 7.

<sup>15</sup> 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.

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.<sup>16</sup>

### *Preliminary issues*

8. At the outset, the Chamber notes that the item bearing ERN CAR-OTP-0069-0372 will be dealt with separately, within the context of the Chamber's pending decision in relation to its "Order seeking observations on the submission as evidence of items used during the questioning of witnesses but not submitted as evidence by the parties or participants" ("Order 2841").
  
9. The Chamber notes that four of the documents submitted by the prosecution are media articles and one is a "*communiqué de presse*". In relation to all of these documents, the Majority of the Chamber, Judge Ozaki dissenting,<sup>17</sup> recalls its position on the admission of media reports, the admissibility of which will be treated with caution.<sup>18</sup> In line with this approach, the Majority has held that such reports may be admitted for limited purposes to be determined on a case-by-case basis.<sup>19</sup> Accordingly, each tendered media report/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.
  
10. The Chamber also notes that the defence raises a number of arguments in relation to all or multiple of the documents submitted for admission by the prosecution, which can be more efficiently addressed together. The Chamber will not revisit these issues in the item-by-item analysis of the submitted documents.

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<sup>16</sup> ICC-01/05-01/08-2012-Red, paragraph 18; ICC-01/05-01/08-2299-Red, paragraph 11.

<sup>17</sup> 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, paragraphs 3 to 10.

<sup>18</sup> ICC-01/05-01/08-2299-Red, paragraph 95.

<sup>19</sup> Ibid.

11. Firstly, the defence argues that six documents were not recognised or authenticated by the witness[es] to whom they were shown.<sup>20</sup> In addition, the defence notes, in relation to three media articles emanating from *Le Citoyen*, that the prosecution has provided “no author, publisher or anyone associated with this newspaper to vouch for the reliability or provenance of these documents, nor produced any originals”.<sup>21</sup> 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 purports to be, which can be determined either “because this is evident on its face or because other admissible evidence demonstrates the item's provenance”.<sup>22</sup> The Chamber will assess the authenticity of each document in line with this approach. Similarly, in relation to the reliability or provenance of documents, it is not required that their author testify for them to be deemed admissible; the Chamber will treat such documents, as it has done throughout the case, with caution and in light of the available indicia of probative value.<sup>23</sup> In addition, the Chamber is of the view that a witness's testimony contradicting the content of a document during their questioning in court does not, in itself, render the document inadmissible.<sup>24</sup> Rather, the admission of contested documents may assist the Chamber in determining the truth in light of all relevant evidence.

12. Secondly, the defence asserts that the prosecution has done nothing more than state “this document is not prejudicial” in relation to five of the documents it

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<sup>20</sup> Documents CAR-OTP-0013-0051, CAR-OTP-0013-0082, CAR-OTP-0013-0320, CAR-OTP-0070-0128, CAR-OTP-0004-0874, and CAR-OTP-0013-0012; *see* ICC-01/05-01/08-2892-Conf-AnxA, pages 2, 3, 4, 5, 7, and 8.

<sup>21</sup> Documents CAR-OTP-0013-0051, CAR-OTP-0013-0082, and CAR-OTP-0013-0320; *see* ICC-01/05-01/08-2892-Conf-AnxA, pages 2, 3, and 4.

<sup>22</sup> 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, paragraph 15.

<sup>23</sup> ICC-01/05-01/08-2299-Red, paragraph 95.

<sup>24</sup> This issue is raised by the defence in relation to documents CAR-OTP-0013-0051, CAR-OTP-0013-0082, CAR-OTP-00130-0320, and CAR-OTP-0013-0012; *see* ICC-01/05-01/08-2892-Conf-AnxA, pages 2, 3, 4, and 8.

submits.<sup>25</sup> The prosecution, on the other hand, in fact submits that the documents in question bear sufficient indicia of reliability to outweigh any prejudicial effect, that the accused was put on sufficient notice of the prosecution's intention to request the admission of the tendered items, and that the defence was afforded the opportunity to question the witnesses.<sup>26</sup> With respect to the submission that each document bears sufficient indicia of reliability to outweigh any prejudicial effect, this is an assessment the Chamber will conduct item-by-item in the context of the three-part test.

13. Thirdly, in relation to each media article tendered by the prosecution, 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".<sup>27</sup> In this regard the Chamber recalls its consistently stated approach to the admission of media articles set out in paragraph 9 above.
  
14. Lastly, the defence notes "the extreme unlikelihood that, on 5 November 2002 in Bangui, given the conflict situation prevailing at the time, journalists were able to go to work, produce a newspaper (necessarily requiring staff, paper, electricity, computers) and sell these papers to members of the public on the streets of Bangui", an argument which it makes in relation to two documents,<sup>28</sup> but which could potentially be applied to all media articles submitted by the prosecution. However, the defence provides no evidence to support this assertion and without more the Chamber sees no reason to doubt that the newspaper articles

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<sup>25</sup> Documents CAR-OTP-0013-0051, CAR-OTP-0013-0082, CAR-OTP-0013-0320, CAR-OTP-0004-0874, and CAR-OTP-0013-0012; *see* ICC-01/05-01/08-2892-Conf-AnxA, pages 2, 3, 4, 7, and 8.

<sup>26</sup> ICC-01/05-01/08-2868-Conf, paragraph 5.

<sup>27</sup> ICC-01/05-01/08-2892-Conf-AnxA, pages 2, 4, 5, 8 and 9. The defence has previously raised similar arguments, *see* 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 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 24.

<sup>28</sup> Documents CAR-OTP-0013-0082 and CAR-OTP-0013-0320; *see* ICC-01/05-01/08-2892-Conf-AnxA, pages 3 and 4.



apparently published during the period of the charges are anything other than what they purport to be.

### *Analysis*

15. The Chamber will now consider the admissibility of each item in turn, following the order of submission adopted by the prosecution, in accordance with the three-part test of relevance, probative value, and potential prejudice.
16. The first item submitted by the prosecution is document **CAR-OTP-0013-0051 (Public)**, which the prosecution submits is a “[p]ress article reporting on the reaction of Bangui residents to the presence of ALC troops in Bangui”.<sup>29</sup> The prosecution submits that this media article is relevant to and probative of the accused’s knowledge for the purposes of Article 28(a) of the Statute.<sup>30</sup> The prosecution asserts that the article “contains allegations of crimes committed by the ALC troops in several areas of Bangui during the time when, according to D04-0054’s testimony, a commission was conducting investigations into crimes allegedly committed by the ALC in Bangui. The document shows that the information about these allegations was published in the press, therefore available in Bangui and, through minimal diligence, to [REDACTED]”.<sup>31</sup> In terms of potential prejudice, the prosecution submits that the admission of this media article would not be “prejudicial but rather [would] allow the Chamber to fairly evaluate D04-0054’s testimony against the information that was reported during the events”.<sup>32</sup>
17. The defence opposes the admission of document CAR-OTP-0013-0051 which the defence asserts is “at best, a one page extract”, rather than a full article as

<sup>29</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

<sup>30</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

<sup>31</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

<sup>32</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

described by the prosecution.<sup>33</sup> The defence argues that such incomplete extracts are inadmissible according to the Chamber's jurisprudence and that document CAR-OTP-0013-0051 has insufficient reliability and probative value for admission.<sup>34</sup> Further, the defence notes that "while the article is dated 14 December 2002, no date is provided of the alleged crimes being reported", which the defence submits undermines the prosecution's submissions as to relevance, "particularly given that Witness D04-54 testified [REDACTED]".<sup>35</sup>

18. In terms of relevance, the Chamber firstly notes that document CAR-OTP-0013-0051 appears to be a copy of a page of the Central African Republic ("CAR") newspaper *Le Citoyen* containing two full articles entitled "*Psychose dans la capitale. Les Banguissois disent niet à Patassé et à ses libérateurs Nyamulengues*" and "*Bossembélé: trois ressortissants Français victimes des Nyamulengues*" respectively. The first article refers to robberies, rapes, and killings which it attributes to "*des hommes de Jean Pierre Bemba*" and also states that the "*Nyamulengues*" have the "*droit de cité*" in the Central African Republic. The second article mentions an incident in which three individuals, one African of French nationality and a couple, were intercepted by "*Nyamulengues*" at Bossembélé. The article states that the African of French nationality had his possessions taken from him and the couple were both beaten and the wife raped. The article also states that the leader of the "*Nyamulengues*" affirmed that the order had been given to strip individuals entering Bangui by this route to ensure that no "needle" entered the capital. The Chamber considers that this information relates to issues relevant to the charges in the present case.

19. The Chamber notes that, when questioned by the prosecution, Witness D04-54 was shown this document and asked whether he could confirm "whether

<sup>33</sup> ICC-01/05-01/08-2892-Conf-AnxA, page 2.

<sup>34</sup> ICC-01/05-01/08-2892-Conf-AnxA, page 2.

<sup>35</sup> ICC-01/05-01/08-2892-Conf-AnxA, page 2.

allegations like this were taken into account or not by the investigating commission".<sup>36</sup> In response Witness D04-54 stated that [REDACTED] it was only the president of the commission who could answer that question.<sup>37</sup>

20. With regard to probative value, the Chamber notes that this document is only a single-page extract from an apparently larger newspaper. That said, the Chamber notes that it has admitted extracted pages of the newspaper *Le Citoyen* previously, and notes further that the formatting, style, and layout of this document correspond to that of, for example, document CAR-OTP-0004-0336,<sup>38</sup> and document CAR-OTP-0013-0114,<sup>39</sup> previously admitted into evidence. Moreover, the page submitted contains a footer detailing the name of the newspaper, the date, and the issue number, thereby providing many of the details for which the submission of a front page is often beneficial. 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 in themselves which can be properly assessed in their context.<sup>40</sup> In addition, with respect to the defence's submission that the admission of this extract would run counter to the Chamber's own jurisprudence, the Chamber notes that the jurisprudence cited by the defence relates to an extract of an article where it appeared that a section of the specific article, rather than merely other pages of the publication, was omitted.<sup>41</sup> This is not the case in the present instance where the full articles are included. Given the above, the Chamber is of the view that document CAR-OTP-

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<sup>36</sup> Transcript of hearing of 1 November 2013, ICC-01/05-01/08-T-349-CONF-ENG ET, page 25, lines 3 to 24.

<sup>37</sup> Transcript of hearing of 1 November 2013, ICC-01/05-01/08-T-349-CONF-ENG ET, page 25, line 25 to page 26, line 1.

<sup>38</sup> Item CAR-OTP-0004-0336 (EVD-T-OTP-00398) was admitted into evidence by Decision ICC-01/05-01/08-2299-Red, paragraph 97.

<sup>39</sup> Item CAR-OTP-0013-0114 (EVD-T-OTP-00820) was admitted in the Third Decision on the prosecution and defence requests for the admission of evidence, 6 November 2013, ICC-01/05-01/08-2864-Conf, paragraph 75.

<sup>40</sup> See ICC-01/05-01/08-2299-Red, paragraph 96.

<sup>41</sup> See ICC-01/05-01/08-2299-Red, paragraph 116.

0013-0051 bears sufficient indicia that it is an authentic copy of an page of a well-known Central African newspaper for the purposes of its admission as evidence.

21. With regard to potential prejudice, the Majority of the Chamber recalls its consistent approach to the admission of media articles.<sup>42</sup> In line with this approach, such articles can be considered for limited purposes, namely, to corroborate other pieces of evidence, for the purpose of demonstrating that allegations of crimes committed by the *Mouvement de Libération du Congo* (“MLC”) in the CAR were widely published in the media during the time period of the charges, or to contextualise and facilitate the Chamber’s assessment of the testimony of witnesses. The Chamber notes that Witness D04-54 testified that [REDACTED] which minimises its relevance to his testimony. However, the Majority considers that this document can be used to corroborate other pieces of evidence and for the purpose of demonstrating 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 its use, the Majority is satisfied that the admission of this document would not be prejudicial to the fairness of the trial.
22. Therefore, the Chamber, with Judge Ozaki dissenting on the reasoning, admits into evidence document CAR-OTP-0013-0051.
23. The second item submitted by the prosecution is document **CAR-OTP-0013-0082 (Public)**, which the prosecution submits is a “[p]ress article providing a chronology of the events that took place in CAR from 25-Oct-2002 including reports on the presence of and alleged crimes committed by ALC troops”.<sup>43</sup>

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<sup>42</sup> See, for example, ICC-01/05-01/08-2299-Red, paragraphs 101, 104, and 107; and ICC-01/05-01/08-2864-Conf, paragraphs 76, 81, 88, 100, and 106.

<sup>43</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

24. The prosecution submits that the document is relevant and probative as it bears upon, *inter alia*, the credibility of Witness D04-54, in that it contradicts his testimony concerning the arrival of the *Armée de Libération du Congo* (“ALC”) in the CAR.<sup>44</sup> The prosecution also submits that this document shows that information about allegations of pillaging was published by the press and therefore available through normal diligence to [REDACTED] which, according to Witness D04-54’s testimony, [REDACTED].<sup>45</sup> The prosecution notes that the Chamber previously rejected admission of this document since the Chamber found that the document was missing pages.<sup>46</sup> In this regard, the prosecution submits that “no material page is missing and the relevant article is complete” since “[t]he article itself skips from page 6 to page 9” and that the sentence at the beginning of page 9 is a continuation of the final sentence on page 6.<sup>47</sup>
25. In terms of probative value, the prosecution submits that the document was published simultaneously to the events reported.<sup>48</sup>
26. The prosecution finally submits that the document’s admission would not be “prejudicial but rather will allow the Chamber to fairly evaluate D04-0054’s testimony against the information that was reported during the events”.<sup>49</sup>
27. The defence opposes the admission of document CAR-OTP-0013-0082 and recalls its objection to the fact that this document is an extract from a newspaper.<sup>50</sup> In addition, the defence notes that the document skips from page 6 to page 9 and submits that the prosecution has produced no evidence in support of its

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<sup>44</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

<sup>45</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

<sup>46</sup> ICC-01/05-01/08-2868-Conf, paragraph 7.

<sup>47</sup> ICC-01/05-01/08-2868-Conf, paragraph 7.

<sup>48</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

<sup>49</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

<sup>50</sup> ICC-01/05-01/08-2892-Conf-AnxA, page 3.

submission that the article itself skips from page 6 to page 9.<sup>51</sup> The defence further submits that even if the prosecution's submission is accurate, this undermines the probative value and reliability of the document.<sup>52</sup>

28. With regard to relevance, the Chamber notes that document CAR-OTP-0013-0082, a copy of certain pages of the Central African newspaper *Le Citoyen* dated 5 November 2002, contains details of the chronology of the intervention of the MLC troops in the days following 25 October 2002, including numerous allegations of rapes, pillage and murder, and allegations regarding the humiliation of *Forces armées centrafricaines* ("FACA") troops by MLC troops. The Chamber considers that this information relates to issues relevant to the charges in the present case.

29. The Chamber notes that this document has been shown to a number of witnesses in the present case. [REDACTED] was shown page CAR-OTP-0013-0086 by the prosecution and it was put to him that the article attributed the looting of [REDACTED] to MLC troops, which contradicted the witness's assertions that [REDACTED] had been looted by Bozizé's troops.<sup>53</sup> After having been shown the article, the witness repeated that it was Bozizé's soldiers who pillaged [REDACTED].<sup>54</sup> The same document was also shown by the prosecution to Witness D04-06 in relation to an alleged incident of pillaging by the MLC at the location "36 Villas", on 27 October 2002, in which FACA soldiers were able to protect only two houses belonging to two CAR Ministers.<sup>55</sup> The witness stated that he had never before heard of the incident and when questioned as to whether the article indicated that there was no co-ordination between the FACA troops and the MLC troops, the witness stated that the MLC troops were under

<sup>51</sup> ICC-01/05-01/08-2892-Conf-AnxA, page 3.

<sup>52</sup> ICC-01/05-01/08-2892-Conf-AnxA, page 3.

<sup>53</sup> [REDACTED].

<sup>54</sup> [REDACTED].

<sup>55</sup> Transcript of hearing of 24 June 2013, ICC-01/05-01/08-T-329-CONF-ENG ET, page 9, lines 8 to 25.

the responsibility of the CAR army and that the two armies were merged.<sup>56</sup> A number of sections of this document were also shown by the prosecution to Witness D04-54 who disputed the chronology of events detailed in the document.<sup>57</sup> A number of sections of this document were also shown by the prosecution to Witness D04-13 who stated that he knew nothing about the information contained in the article or contradicted its content, for example with relation to the cooperation between MLC troops and FACA troops.<sup>58</sup>

30. The Chamber notes that in its “Decision on the Prosecutor’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute” of 6 September 2012 (“Decision 2299”),<sup>59</sup> the Chamber rejected the admission of the same document in the following terms:<sup>60</sup>

Document **CAR-OTP-0013-0082** is an extract of an issue of the newspaper *Le Citoyen* published on 5 November 2002. The prosecution alleges that the document is relevant to and probative of, *inter alia*, crimes perpetrated by the MLC against the CAR civilian population, the accused’s alleged authority and control over the MLC, and his knowledge of crimes committed by MLC troops. The Chamber notes that the document is a copy of pages 5, 6 and 9 to 14, of the 5 November 2002 issue of the newspaper *Le Citoyen*. It contains an incomplete report of the events in Bangui from 25 October to 2 November 2002, without pages 7 and 8 missing. The Chamber notes that the missing pages prohibit the Chamber from sufficiently assessing the relevance of the document. Given the Chamber’s preference for admitting full documents rather than excerpts, the Chamber considers that any potential probative value that this report might have is outweighed by the prejudice its admission would cause to the defence. The Chamber therefore refuses to admit document CAR-OTP-0013-0082.

31. The Chamber notes, however, that unlike in the prosecution’s previous application for the admission of this document which was rejected by the

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<sup>56</sup> Transcript of hearing of 24 June 2013, ICC-01/05-01/08-T-329-CONF-ENG ET, page 10, line 8 to page 11, line 19.

<sup>57</sup> Transcript of hearing of 31 October 2013, ICC-01/05-01/08-T-348-CONF-ENG ET, page 13, line 19 to page 23, line 15.

<sup>58</sup> Transcript of hearing of 13 November 2013, ICC-01/05-01/08-T-351-CONF-ENG ET, page 62, line 20 to page 67, line 6.

<sup>59</sup> ICC-01/05-01/08-2299-Red.

<sup>60</sup> ICC-01/05-01/08-2299-Red, paragraph 116.

Chamber in Decision 2299, the prosecution now makes submissions to the effect that the article submitted is a full article in itself, in spite of the missing pages of the newspaper.<sup>61</sup> Indeed, the Chamber notes that upon the document's face this appears to be so. Given that the article is reproduced in full and can therefore be fully analysed in its context, the Chamber considers that the skipping of pages does not diminish its relevance or probative value. The Chamber notes that this document is an extract of a larger newspaper and recalls its position with respect to such documents, as set out in paragraph 20 above. The Chamber also notes that the document bears the name, date, and issue number of the publication, and also that the style, layout and formatting of this document correspond with other articles from *Le Citoyen* admitted by the Chamber.<sup>62</sup> Given the above, the Chamber is of the view that document CAR-OTP-0013-0082 bears sufficient indicia that it is an authentic copy of an article from a well-known Central African newspaper and that it has sufficient probative value to be admitted as evidence.

32. In terms of potential prejudice, the Majority of the Chamber recalls its approach to the effect that this type of material can be considered for limited purposes, namely to contextualise and facilitate the Chamber's assessment of the testimony of those witnesses to whom it was shown and to corroborate other pieces of evidence. In addition, the Chamber considers that this document can be admitted for the purpose of demonstrating 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 its use, the Majority is satisfied that the admission of this document would not cause unfair prejudice to the fairness of the trial. Therefore, the Chamber, with Judge Ozaki dissenting on the reasoning, admits into evidence document CAR-OTP-0013-0082.

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<sup>61</sup> ICC-01/05-01/08-2868-Conf, paragraph 7.

<sup>62</sup> See paragraph 20 above.



33. The third item submitted by the prosecution is document **CAR-OTP-0013-0320 (Public)**, which the prosecution submits is a “[p]ress article containing allegations of the commission of crimes by ALC troops”.<sup>63</sup> The prosecution submits that this media article is relevant to and probative of the accused’s knowledge and failure to take all necessary and reasonable measures pursuant to Article 28(a) of the Statute.<sup>64</sup> The prosecution submits that this document shows that “information about these allegations was published by the press, therefore available in Bangui, and, through minimal diligence, [REDACTED]” which, according to Witness D04-54’s testimony was conducting investigations.<sup>65</sup> In addition, the prosecution submits that this article “shows that detailed investigation leads were available at the time of relevant events, including information about the location of the house where crimes of rapes reportedly occurred, the number of the victims, and the initials of the father of some of those victims”.<sup>66</sup>

34. The prosecution finally submits that the document’s admission would not be “prejudicial but rather will allow the Chamber to fairly evaluate D04-0054’s testimony against the information that was reported during the events”.<sup>67</sup>

35. The Chamber notes that document CAR-OTP-0013-0320 appears to be the front cover and pages 3 to 10 of an issue of the newspaper *Le Citoyen*, dated 8 November 2002, containing a number of different articles. The Chamber notes that the prosecution describes this document as a “Press article”, however the Chamber notes that a number of complete articles are included in the pages submitted by the prosecution containing information on allegations of crimes committed by the MLC troops in the CAR including rapes, killings, and pillaging,

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<sup>63</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

<sup>64</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

<sup>65</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

<sup>66</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

<sup>67</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

along with information as to the locations and dates of alleged crimes.<sup>68</sup> In addition, the document reports that MLC troops committed humiliating and degrading acts against FACA soldiers.<sup>69</sup> In light of this, the Chamber considers that the document as a whole contains information on issues relevant to the charges in the present case.

36. The Chamber notes that this document was shown to Witness D04-54 who stated that he was not aware of the article.<sup>70</sup>

37. The Chamber notes that this document is an extract of a larger newspaper and recalls its position with respect to such documents, as set out in paragraph 20 above. In this regard the Chamber considers that the five articles containing relevant information are included in full in document CAR-OTP-0013-0320 and, as such, can be properly assessed in their context.

38. The Chamber notes that the prosecution has provided the front page of this newspaper which bears the name and date of publication, and the issue number, which details are also reproduced in the footer of each page. In addition, the Chamber notes that the style, layout, and formatting of the document correspond with other articles from *Le Citoyen* previously admitted by the Chamber.<sup>71</sup> For these reasons, the Chamber is of the view that document CAR-OTP-0013-0320 bears sufficient indicia that it is an authentic copy of a well-known Central

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<sup>68</sup> See CAR-OTP-0013-0320, at page 0321 (article entitled “*Communiqué – République Centrafricaine – Violations graves et massives des droits de l’homme à Bangui*”), 0323 to 0326 (articles entitled “*Déclaration des parties politiques de l’opposition sur les événements du 25 Octobre 2002*” and “*Commissariat du 5e Arrdt: Quatre rebelles Banyamulengues tués pour braquage*”), 0327 and 0328 (“*Réactions – Ligue Centrafricaine des Droits de l’Homme – Déclaration sur la tentative du coup d’état du 25 Octobre 2002*” and “*La Marche de Protestation contre les Banyamulengues par les jeunes de PK 12*”).

<sup>69</sup> CAR-OTP-0013-0320, at CAR-OTP-0013-0323.

<sup>70</sup> Transcript of hearing of 1 November 2013, ICC-01/05-01/08-T-349-CONF-ENG ET, page 18, line 1 to page 19, line 10.

<sup>71</sup> See paragraph 20 above.

African newspaper and has sufficient probative value for the purposes of its admission as evidence.

39. In terms of potential prejudice, the Majority of the Chamber recalls its approach to the effect that this type of material can be considered for limited purposes, namely 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 its use, the Majority is satisfied that the admission of this document would not cause unfair prejudice to the fairness of the trial. Therefore, the Chamber, with Judge Ozaki dissenting on the reasoning, admits into evidence document CAR-OTP-0013-0320.

40. The fourth document submitted by the prosecution is document **CAR-OTP-0070-0128 (Confidential)**, a “Military administrative record of [REDACTED]”.<sup>72</sup> The prosecution submits that this document is relevant as it establishes the lack of reliability of document CAR-D04-0003-0281 in that it shows that “[REDACTED] could not have been in prison as of 11 October 2004 since [...] he was an officer in the FARDC as of 1 July 2004 and must have gone through the Demobilization, Disarmament, and Reintegration process prior to joining the FARDC”.<sup>73</sup> The prosecution also asserts that his entry into the FARDC as an officer “creates the inference that no criminal record of his ‘conviction’ existed”.<sup>74</sup>

41. Finally, the prosecution submits that “[t]his document is not prejudicial because it is directly relevant to Defence document CAR-D04-0003-0281 and the

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<sup>72</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

<sup>73</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

<sup>74</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

contention therein, which the Defence had the opportunity to re-examine D04-54 on".<sup>75</sup>

42. The defence submits that document CAR-OTP-0070-0128 has "utterly no probative value, with the Prosecution having failed to provide any evidence as to its reliability or provenance [...] or as to the authenticity of the website from which the document was apparently downloaded and printed".<sup>76</sup> The defence submits that similar documents have previously been deemed inadmissible by the Chamber "on the basis that 'contrary to its submission, the prosecution has provided no information regarding the origin and reliability of these document[s]'"<sup>77</sup> Further, the defence submits that even if reliable the document does not contradict other evidence in the case as to the length of time [REDACTED] was in custody and that it therefore lacks probative value.<sup>78</sup>

43. The Chamber notes that item CAR-OTP-0070-0128, appears to be an administrative document providing details regarding the military service of [REDACTED] downloaded from a website. From the document it appears that [REDACTED] was nominated and began his service in the *Forces Armées de la République Démocratique du Congo* ("FARDC") on 1 July 2004.

44. The Chamber further notes that, during the prosecution's questioning, this document was shown and read out to Witness D04-54, who was asked to comment on its content.<sup>79</sup> In particular, the prosecution asked the witness to comment on the apparently conflicting information provided by this document,

<sup>75</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 1.

<sup>76</sup> ICC-01/05-01/08-2892-Conf-AnxA, page 5.

<sup>77</sup> ICC-01/05-01/08-2892-Conf-AnxA, page 5.

<sup>78</sup> ICC-01/05-01/08-2892-Conf-AnxA, page 5.

<sup>79</sup> Transcript of hearing of 1 November 2013, ICC-01/05-01/08-T-349-CONF-ENG ET, page 32, line 23 to page 39, line 5.

[REDACTED] and that provided by document CAR-D04-0003-0281,<sup>80</sup> which [REDACTED].<sup>81</sup> Although the witness stated that he could provide no clarification on the content of the document,<sup>82</sup> [REDACTED].<sup>83</sup> Therefore, the witness explained, the fact that [REDACTED],<sup>84</sup> because it was [REDACTED].<sup>85</sup> The witness further added that [REDACTED].<sup>86</sup>

45. In view of the above, the Chamber considers that document CAR-OTP-0070-0128 may be relevant to issues properly to be decided by the Chamber and may contextualise and facilitate its assessment of the testimony of Witness D04-54.

46. However, in terms of reliability and probative value, while the prosecution asserts that the document originates from the *FARDC Auditoriat Militaire*,<sup>87</sup> it has provided only very limited information in support of this assertion. Moreover, although specifically requested by the Presiding Judge in court,<sup>88</sup> the prosecution has not provided verifiable information as to where the document can be obtained. In view of the foregoing and in line with its previous practice,<sup>89</sup> although it appears that the document may be relevant to the charges, the Chamber is of the view that, since its reliability has not been sufficiently established by the tendering party, its probative value is outweighed by its potentially prejudicial effect on a fair trial. For the above reasons, the Chamber rejects the admission into evidence of document CAR-OTP-0070-0128.

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<sup>80</sup> Item which has not been submitted or admitted into evidence in the present case.

<sup>81</sup> ICC-01/05-01/08-T-349-CONF-ENG ET, page 31, line 12 to page 36, line 18.

<sup>82</sup> ICC-01/05-01/08-T-349-CONF-ENG ET, page 37, lines 3 and 4 and 22.

<sup>83</sup> ICC-01/05-01/08-T-349-CONF-ENG ET, page 36, line 19 to page 38, line 1.

<sup>84</sup> ICC-01/05-01/08-T-349-CONF-ENG ET, page 36, lines 21 to 23.

<sup>85</sup> ICC-01/05-01/08-T-349-CONF-ENG ET, page 38, lines 9 and 10.

<sup>86</sup> ICC-01/05-01/08-T-349-CONF-ENG ET, page 38, line 12 to page 39, line 5.

<sup>87</sup> See "Author/Source" in ICC-01/05-01/08-2868-Conf-AnxA, page 1.

<sup>88</sup> ICC-01/05-01/08-T-349-CONF-ENG ET, page 35, lines 22 to 25.

<sup>89</sup> ICC-01/05-01/08-2299, paragraph 24.

47. As indicated in the preliminary remarks above, the admission of the fifth document submitted by the prosecution, document **CAR-OTP-0069-0372**, will be decided upon in the context of a decision relating to the Chamber's Order 2841.
48. The sixth document submitted by the prosecution is document **CAR-OTP-0004-0874 (Public)**, which the prosecution submits is a "press statement issued by the former Prime Minister of CAR and Deputy of the National Assembly, Jean-Paul NGOUPANDE, in which he holds PATASSE, MISKINE, and BEMBA responsible for exactions committed by troops under their control in the CAR".<sup>90</sup>
49. The prosecution submits that document CAR-OTP-0004-0874 is relevant to and probative of the knowledge of the accused for the purposes of Article 28(a) of the Statute, the chapeau elements of Articles 7 and 8 of the Statute, and the credibility of Witness D04-54.<sup>91</sup> The prosecution notes that the document "contains allegations of crimes, particularly rapes committed by the ALC troops in several areas of Bangui during the time when, according to D04-0054's testimony, a commission was conducting investigations into crimes allegedly committed by the ALC in Bangui".<sup>92</sup> Based upon this, the prosecution submits that document CAR-OTP-0004-0874 shows that "information about these allegations was so well known in Bangui that even a former CAR Minister in Paris had received that information a few days after the start of the conflict in Bangui" and that "detailed information was available at the time of relevant events, including the specific locations where crimes of rapes were committed and the age of the victims".<sup>93</sup>

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<sup>90</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 2.

<sup>91</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 2.

<sup>92</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 2.

<sup>93</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 2.

50. In terms of prejudice the prosecution submits that document CAR-OTP-0004-0874 “is not prejudicial but rather will allow the Chamber to fairly evaluate D04-0054’s testimony against the information that was reported during the events” and notes that “the Defence had the opportunity to re-examine D04-54 on this issue”.<sup>94</sup>
51. The defence submits that document CAR-OTP-0004-0874 “exhibits no indicia of reliability on its face” and that “[a]t best, it appears to be nothing more than a print-out from the internet of a letter purporting to be over a decade old” with “no signature, letterhead, no stamp or seal”.<sup>95</sup> The defence adds that the prosecution presented no evidence of its reliability and its author was not called to testify.<sup>96</sup> The defence adds that similar documents have previously been deemed inadmissible by the Chamber “on the basis that ‘contrary to its submission, the prosecution has provided no information regarding the origin and reliability of these document[s]’”.<sup>97</sup>
52. The Chamber notes that document CAR-OTP-0004-0874 appears to be a *communiqué de presse* issued by Mr Jean-Paul Ngoupande in Paris, dated 2 November 2002, entitled “*Non aux tueries, aux viols et aux pillages commis par les troupes de Jean-Pierre Bemba et d’Abdoulaye Miskine*”.
53. In terms of relevance, the document contains numerous allegations of crimes committed in the CAR, particularly in the northern areas of Bangui, by MLC troops including killings, rapes, and pillaging, and details thereof. The Chamber notes that the article starts by specifying that the alleged crimes were committed as of 30 October 2002, stating that since taking control of Bangui on 30 October 2002, the troops sent by Jean-Pierre Bemba at the request of his associate,

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<sup>94</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 2.

<sup>95</sup> ICC-01/05-01/08-2892-Conf-AnxA, page 7.

<sup>96</sup> ICC-01/05-01/08-2892-Conf-AnxA, page 7.

<sup>97</sup> ICC-01/05-01/08-2892-Conf-AnxA, page 7.

President Ange-Felix Patassé, had engaged in the worst abuses against the civilian population.<sup>98</sup> The Chamber is therefore satisfied that the document contains information relevant to issues properly to be considered by the Chamber.

54. The Chamber further notes that this document was shown to Witness D04-54 by the prosecution and part of it read out to him. However, the witness stated that he was not aware of the information included therein [REDACTED] Bangui at the end of October to the beginning of November 2002.<sup>99</sup>
55. With regard to probative value, the Chamber notes that the prosecution has provided no information as to the source of the *communiqué de presse*, although it appears to have been downloaded from the website [www.sangonet.com](http://www.sangonet.com) and the Chamber notes that it is currently accessible online.<sup>100</sup>
56. In terms of potential prejudice, although not a media article, but rather a *communiqué de presse* published by a named author, the Chamber notes that its admission must be treated with caution. Similarly to media articles, the Majority of the Chamber recalls its approach to the effect that this type of material can be considered for limited purposes, namely to contextualise and facilitate the Chamber's assessment of the testimony of Witness D04-54 and to corroborate other pieces of evidence, particularly those related to the date of arrival and alleged commission of crimes by the MLC. In addition, the Chamber considers that this document can be admitted for the purpose of demonstrating 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

<sup>98</sup> See CAR-OTP-0004-0874: "Depuis qu'elles ont pris possession, le 30 octobre 2002, de la ville Bangui, les troupes envoyées par Jean-Pierre BEMBA à la rescousse de son associé en affaires, le Président Ange-Félix PATASSE, se livrent aux pires exactions contre les populations civiles".

<sup>99</sup> Transcript of hearing of 1 November 2013, ICC-01/05-01/08-T-349-CONF-ENG ET, page 14, line 5 to page 16, line 3.

<sup>100</sup> <http://www.sangonet.com/ActualiteC12/NontueriesviolsNov02.html>.



on its use, the Majority is satisfied that the admission of the document would not cause unfair prejudice to the fairness of the trial. The Chamber, with Judge Ozaki dissenting on the reasoning, admits document CAR-OTP-0004-0874.

57. The seventh document submitted for admission by the prosecution is document **CAR-OTP-0013-0012 (Public)**, which the prosecution submits is “a press release from *Le Confident* containing information about the crimes committed by MLC troops in the CAR”.<sup>101</sup> The prosecution submits that this press release is relevant to and probative of the knowledge of the accused for the purposes of Article 28(a) of the Statute, the chapeau elements of Articles 7 and 8 of the Statute, and the credibility of Witness D04-54.<sup>102</sup> The prosecution notes that the article “contains allegations of rapes and killings committed by the ALC troops in several areas of Bangui during the time when, according to D04-0054’s testimony, a commission was conducting investigations into crimes allegedly committed by the ALC in Bangui”.<sup>103</sup> The prosecution submits that this shows that “information about these allegations was published by the press, therefore available in Bangui, and, through minimal diligence, available to the commission”.<sup>104</sup>

58. In terms of prejudice the prosecution submits that document CAR-OTP-0013-0012 “is not prejudicial but rather will allow the Chamber to fairly evaluate D04-0054’s testimony against the information that was reported during the events” and notes that “the Defence had the opportunity to re-examine D04-54 on this issue”.<sup>105</sup>

59. The defence opposes the admission of document CAR-OTP-0013-0012 which it submits is “in fact a one-page extract from what the Prosecution alleges to be a

<sup>101</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 2.

<sup>102</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 2.

<sup>103</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 2.

<sup>104</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 2.

<sup>105</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 2.

publication called ‘Le Confident’”.<sup>106</sup> The defence again submits that such incomplete extracts are inadmissible under the Chamber’s jurisprudence, and that the document has “insufficient reliability and probative value to warrant admission”.<sup>107</sup> The defence further objects to what it alleges to be the attributed source of the article, “AFP”, submitting that the Chamber has previously rejected the admission of documents of this type.<sup>108</sup>

60. The Chamber notes that document CAR-OTP-0013-0012 appears to be a copy of a single page of a press publication called *Le Confident*, dated 7 November 2002, which contains one “*Lettre ouverte*” authored by “*Centrafrique Sans Frontières*” and an article entitled “*La FIDH et la LCDH condamnent les exactions commises à Bangui*” with its source stated as being “AFP”.

61. In terms of relevance the Chamber notes that the “*Lettre ouverte*” mentions allegations of rapes and killings committed in the CAR by MLC troops against Central African girls and women as of the date of the attempted coup, 25 October 2002, whereas the article entitled “*La FIDH et la LCDH condamnent les exactions commises à Bangui*” mentions violations of human rights and systematic rapes, particularly of minors under the age of eight, and states that FIDH (International Federation for Human Rights) and LCDH (*Ligue Centrafricaine des Droits de l’Homme*) called for light to be shed on violations on the part of rebels, on the one hand, and on the part of the loyalist forces supported by Libyans and MLC troops, on the other. The article also mentions crimes against the civilian population allegedly committed by the private militia directed by Abdulaye Miskine. It further mentions that, as of Wednesday, i.e. 30 October 2002 (article dated Tuesday 5 November 2002) the loyalist forces had taken control of the situation in Bangui. The Chamber therefore considers that document CAR-OTP-

<sup>106</sup> ICC-01/05-01/08-2892-Conf-AnxA, pages 7 and 8.

<sup>107</sup> ICC-01/05-01/08-2892-Conf-AnxA, page 8.

<sup>108</sup> ICC-01/05-01/08-2892-Conf-AnxA, page 8.

0013-0012 contains information relevant to issues properly to be considered by the Chamber.

62. The Chamber further notes that this document was shown to Witness D04-54 by the prosecution and a part of it read out to him; Witness D04-54 stated that he was not aware of the allegations contained in the letter.<sup>109</sup>
63. With regard to probative value, the Majority notes that this document is an extract of a larger newspaper and recalls its position with respect to such documents, as set out in paragraph 20 above. In this regard the two articles contained in document CAR-OTP-0013-0012 are included in full and as such can be properly assessed in their context. The Chamber considers that document CAR-OTP-0013-0012 bears sufficient indicia upon its face that it is a copy of a page of a well-known Central African newspaper. The document contains the title, date, and issue number of the publication, and provides the author of the first article and the media source of the second.
64. In terms of potential prejudice, the Majority of the Chamber recalls its approach to the effect that this type of material can be considered for limited purposes, namely to contextualise and facilitate the Chamber's assessment of the testimony of Witness D04-54 and to corroborate other pieces of evidence. In addition, the Chamber considers that this document can be admitted for the purpose of demonstrating that allegations of crimes committed by the MLC in the CAR were widely published in the media during the time period of the charges. With respect to the defence's argument that the Chamber has previously rejected the admission of articles citing as their source AFP, the Majority notes that in that instance the fact that the reports allegedly emanating from third parties were

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<sup>109</sup> Transcript of hearing of 1 November 2013, ICC-01/05-01/08-T-349-CONF-ENG ET, page 13, line 7 to page 14, line 4.

copies from "unofficial open sources" was central to the Chamber's decision not to admit them.<sup>110</sup> This is not the case with respect to the present article, which emanates from a well-known Central African newspaper. Given the above limitations on its use, the Majority is satisfied that the admission of this document would not cause prejudice to the fairness of the trial. Therefore, the Chamber, with Judge Ozaki dissenting on the reasoning, admits document CAR-OTP-0013-0012.

### III. Conclusions

65. In view of the foregoing the Chamber:

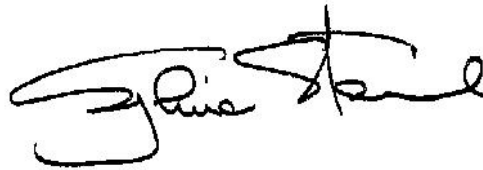
- (i) ADMITS into evidence items: CAR-OTP-0013-0051, CAR-OTP-0013-0082, CAR-OTP-0013-0320, CAR-OTP-0004-0874, and CAR-OTP-0013-0012;
- (ii) REJECTS the admission into evidence of item CAR-OTP-0070-0128;
- (iii) NOTES that item CAR-OTP-0069-0372 will be dealt with in the context of a decision relating to the Chamber's Order 2841;
- (iv) ORDERS that any EVD-T numbers previously assigned to any of the above items shall remain unchanged;
- (v) INSTRUCTS the Registry to assign new EVD-T numbers to those items which currently do not have one; and
- (vi) ORDERS the parties to file public redacted versions of their filings and corresponding annexes or to inform the Chamber that they may be reclassified as public without redactions, by Monday, 24 February 2014.

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<sup>110</sup> See ICC-01/05-01/08-2299-Red, paragraph 113; and Third Decision on the prosecution and defence requests for the admission of evidence, 6 November 2013, ICC-01/05-01/08-2864-Conf, paragraph 105.

66. 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.




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**Judge Sylvia Steiner**



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**Judge Joyce Aluoch**



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**Judge Kuniko Ozaki**

Dated this 23 June 2016

At The Hague, the Netherlands