



Original: English

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

Date: 28 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 submission as evidence of items used during the questioning of witnesses but not submitted as evidence by the parties or participants”, ICC-01/05-01/08-3034 of 7 April 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

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”) hereby issues the Decision on the submission as evidence of items used during the questioning of witnesses but not submitted as evidence by the parties or participants (“Decision”).

I. Background and Submissions

1. On 23 October 2013, the Chamber issued the “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”),¹ in which it, *inter alia*, ordered the parties and participants to submit their observations on the possible admission into evidence, pursuant to Article 69(3) of the Rome Statute (“Statute”), of the documents referred to in the Annex A of Order 2841 (“Chamber Annex”), including specific considerations as to the admissibility of each item, if any.²

2. On 15 November 2013, the Office of the Prosecutor (“prosecution”) filed its “Prosecution’s Observation on possible admission of 69 documents by the Chamber pursuant to Article 69(3) of the Rome Statute” (“Prosecution’s Observations”),³ in which it, *inter alia*, supports the admission of any of the items referred to in Order 2841 and the Chamber Annex.⁴ The prosecution further reiterates its previous general submissions on the admission of documents,⁵ and provides additional observations in support of the admission of some specific documents in the attached Annex 1.⁶

¹ 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, 23 October 2013, ICC-01/05-01/08-2841.

² ICC-01/05-01/08-2841, paragraph 11.

³ Prosecution’s Observation on possible admission of 69 documents by the Chamber pursuant to Article 69(3) of the Rome Statute, 15 November 2013, ICC-01/05-01/08-2890, with confidential Annex 1 ICC-01/05-01/08-2890-Conf-Anx1. A public redacted version of the confidential Annex 1 was filed on 31 March 2014.

⁴ ICC-01/05-01/08-2890, paragraph 2.

⁵ ICC-01/05-01/08-2890, paragraph 3 and footnote 5.

⁶ ICC-01/05-01/08-2890, paragraphs 2 and 6.

3. On 15 November 2013, the legal representative of victims, Maître Marie Edith Douzima-Lawson (“Me Douzima”), submitted her observations supporting the admission into evidence of several documents annotated by witnesses during their testimony in court.⁷ As to the remaining documents, Me Douzima had no further observations and relies on the Chamber’s wisdom as to their admissibility.⁸ On the same day, the legal representative of victims, the late Maître Assingambi Zarambaud, submitted his observations,⁹ in which he generally, “relied on the Chamber’s wisdom in assessing the admissibility of the documents.”¹⁰
4. On 15 November 2013, the defence for Mr Jean-Pierre Bemba (“defence”) filed its “Defence Submissions pursuant to the ‘Order seeking observation on the submission as evidence of items used during the questioning of witnesses’,” (“Defence Observations”)¹¹ in which it submits its observations on each of the documents included in the Chamber Annex, as detailed in Annex A to the Defence Observations.¹² In general terms, the defence supports the admission into evidence of the majority of the documents mentioned in the Chamber Annex, although it opposes the admission of media articles and several photographs.¹³

⁷ Observations de la Représentante légale de victimes Me. Douzima-Lawson, sur la liste de documents soumis par la Chambre dans son Ordonnance ICC-01/05-01/08-2841 aux fins d’admission en tant qu’éléments de preuve, 15 November 2013, ICC-01/05-01/08-2896, paragraph 5.

⁸ ICC-01/05-01/08-2896, paragraph 6.

⁹ Observations du Représentant légal de victimes, Me. Zarambaud Assingambi, sur la liste de documents annexée à l’Ordonnance de la Chambre ICC-01/05-01/08-2841 aux fins d’admission en tant qu’éléments de preuve, 15 November 2013, ICC-01/05-01/08-2895.

¹⁰ ICC-01/05-01/08-2895, page 4.

¹¹ Defence Submissions pursuant to the “Order seeking observations on the submission as evidence of items used during the questioning of witnesses”, 15 November 2013, ICC-01/05-01/08-2893, with confidential Annex A, ICC-01/05-01/08-2893-Conf-AnxA.

¹² ICC-01/05-01/08-2893, paragraph 9.

¹³ ICC-01/05-01/08-2893-Conf-AnxA

II. Analysis

5. In accordance with Article 21(1) of the Statute, in making its determination, the Chamber has considered Articles 64(2), (7), (9)(a), 67 and 69 of the Statute, Rules 63, 64 and 68 of the Rules of Procedure and Evidence (“Rules”).
6. 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 Issues

7. At the outset, as the defence rightly states, the admissibility of document **CAR-DEF-0002-0713**, a report published by the United Nations Development Program entitled "*La République Centrafricaine: Une étude de cas sur les armes légères et les conflits*", has already been decided upon in the Chamber’s “First decision on the prosecution and defence requests for the admission of evidence” of 15 December

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.

2011 (“Decision 2012”).¹⁶ The Chamber will therefore not address the submissions thereon.

8. With regard to documents **CAR-OTP-0036-0162_R01** and **CAR-OTP-0019-0137**, which are respectively a death certificate and a Central African judicial decision, the Chamber notes that they were assigned reference numbers EVD-T-D04-00003¹⁷ and EVD-T-OTP-00608,¹⁸ as per the instructions of the Presiding Judge during the hearings and without considerations as to their admissibility. Subsequently, on 31 May 2011,¹⁹ the Chamber issued its “Order on the procedure relating to the submission of evidence”, which established the procedure for the admission of items into evidence in the *Bemba* case. Accordingly, the Chamber deems it necessary to assess the admissibility of documents **CAR-OTP-0036-0162_R01** and **CAR-OTP-0019-0137** at paragraphs 91 to 94 of the present Decision.

9. With respect to documents **CAR-OTP-0057-0243** and **CAR-OTP-0057-0353**, which are transcripts of audio broadcasts from *Radio France Internationale* (RFI), the defence submits that documents **CAR-OTP-0057-0243** and **CAR-OTP-0057-0353** are listed in E-court as “Admitted pursuant to ICC-01/05-01/08-2299-Conf”.²⁰ However, the Chamber notes that there is no reference to these documents in the Chamber’s “Decision on the Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute” (“Decision 2299”),²¹ and therefore, their admissibility will be addressed at paragraphs 129 and 130 in the present Decision.

¹⁶ ICC-01/05-01-08-2012-Red, paragraph 57.

¹⁷ Transcript of hearing, 14 January 2011, ICC-01/05-01/08-T-47-CONF-ENG, page 13, line 23 to page 14, line 8.

¹⁸ Transcript of hearing, 4 May 2011, ICC-01/05-01/08-104-CONF-ENG, page 6, lines 20 to 23.

¹⁹ Order on the procedure relating to the submission of evidence, 31 May 2011, ICC-01/05-01/08-1470.

²⁰ ICC-01/05-01/08-2893, paragraph 7.

²¹ ICC-01/05-01/08-2299-Red.

Admissibility assessment by the Chamber on an item-by-item basis

10. The Chamber has identified ten categories into which the materials submitted may be divided. These categories will be considered in turn, in accordance with the three-part test of relevance, probative value, and potential prejudice.

First Category: Mr Bemba's book

11. The Chamber requested observations on the admission of document **CAR-OTP-0069-0372 (Public)**, a book written by Mr Bemba entitled "*Le choix de la Liberté*",²² which was used in court on several occasions during the parties' questioning of, *inter alia*, Witnesses D04-15,²³ D04-18,²⁴ D04-21²⁵ and D04-54.²⁶ In addition, based on previous submissions by the parties,²⁷ the Chamber issued 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)'" , in which it stated 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 2841."²⁸ Accordingly, the Chamber will assess the admissibility of document CAR-OTP-0069-0372 in the present Decision.

²² ICC-01/05-01/08-2841-Conf-Anx, pages 4 to 5.

²³ Transcript of hearing, 11 September 2013, ICC-01/05-01/08-T-343-CONF-ENG, page 37, line 24 to page 41, line 7.

²⁴ Transcript of hearing, 6 June 2013, ICC-01/05-01/08-T-318-CONF-ENG, page 16, line 12 to page 32, line 5, Transcript of hearing, 10 June 2013, ICC-01/05-01/08-T-319-CONF-ENG, page 9, line 20 to page 18, line 15, Transcript of hearing, 11 June 2013, ICC-01/05-01/08-T-320-CONF-ENG page 13, line 22 to page 16, line 6, page 24, line 19 to page 31, line 14.

²⁵ Transcript of hearing, 10 April 2013, ICC-01/05-01/08-T-304-CONF-ENG, page 22, line 9 to page 26, line 13.

²⁶ Transcript of hearing, 31 October 2013, ICC-01/05-01/08-T-348-CONF-ENG, page 39, line 25 to page 45, line 6 and page 62, line 9 to page 74, line 6.

²⁷ Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, 8 November 2013, ICC-01/05-01/08-2868, with confidential Annex A ICC-01/05-01/08-2868-Conf-AnxA and public redacted Annex A CC-01/05-01/08-2868-AnxA-Red; 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 confidential Annex A ICC-01/05-01/08-2892-Conf-AnxA.

²⁸ 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), 17 February 2014, ICC-01/05-01/08-2981-Conf, paragraph 8.

12. The prosecution supports the admission of the book,²⁹ adding that it may assist the Chamber in better contextualising the testimony of witnesses.³⁰ In terms of relevance, the prosecution submits that CAR-OTP-0069-0372 is “relevant and probative, *inter alia*, of the [a]ccused’s control and to undermine D05-54’s credibility.”³¹ The prosecution further states that the book “was written by the accused who portrays himself as a military commander fully involved in military operations, present at theatre of military operations, communicating with ALC units and giving operational and tactical orders to his troops” and notes that the book “contains photographic imagery taken at a time when criminal proceedings against the accused had not been contemplated”.³² The prosecution further alleges that the document “contradicts D04-54’s testimony that Mr Bemba was a civilian and did not give operational orders to his troops.”³³ In addition, the prosecution submits that the translated excerpt of the book “is relevant and probative, *inter alia*, as evidence of the [a]ccused’s ability to communicate with, and command and control ALC units, including units operating in the CAR [and] the [a]ccused’s ability to give operational and tactical orders to subordinates”.³⁴ In terms of potential prejudice, the prosecution submits that the book and the translated excerpt “will not be prejudicial to a fair trial as it was authored by the [a]ccused who has intimate knowledge of its contents, the [d]efence had adequate notice of the document as it was disclosed in advance and used by the [p]rosecution to examine witnesses thereby affording the opportunity for any additional questions”.³⁵

²⁹ The Chamber notes that the prosecution also provides justification for the admission into evidence of document CAR-OTP 0070-0138, which is the English translation of three pages of the book containing a section entitled “Au secours du voisin centrafricain” (“To the rescue of our Central African Neighbour”); this section is from CAR-OTP-0069-0421 through to CAR-OTP-0069-0423 of the document CAR-OTP-0069-0372.

³⁰ ICC-01/05-01/08-2890, paragraph 2.

³¹ ICC-01/05-01/08-2868-Conf-AnxA, page 2.

³² ICC-01/05-01/08-2868-Conf-AnxA, page 2.

³³ ICC-01/05-01/08-2868-Conf-AnxA, page 2.

³⁴ ICC-01/05-01/08-2890-Red-Anx1, page 2.

³⁵ ICC-01/05-01/08-2868-Conf-AnxA, page 2 and ICC-01/05-01/08-2890-Red-Anx1, page 2.

13. The defence opposes the book's admission, arguing, *inter alia*, that Witnesses D04-21 and D04-18 testified as to its inaccuracies, "characterised those aspects shown to them as 'propaganda'" and that the book in its entirety lacks probative value and is irrelevant to the charges.³⁶ In addition, the defence submits that the book is not admissible under the Chamber's own jurisprudence when refusing to admit victims participation forms used during the questioning of dual status victims, as the same reasoning should apply to documents adverse to the accused because "there was no indication at the time the book in question was authored that it would be used in a manner adverse to the accused in subsequent criminal proceedings".³⁷ When responding to the prosecution's submission of the same item through Witness D04-54, the defence alleges that the prosecution's assertion that the "book was written by the accused himself" was "inaccurate in light of sworn testimony to the contrary which was not challenged".³⁸ In addition, the defence submits that Witness D04-54 had no knowledge of the CAR related excerpt shown to him and that the witness should have been given the opportunity to comment on any alleged inconsistencies between the book and his testimony.³⁹

14. The Chamber notes that the book appears to have been written by the accused and describes the activities of the *Mouvement de Liberation du Congo* ("MLC") and the *Armée de Liberation du Congo* ("ALC"), headed by Mr Bemba, over a three-year period, from 1998 through 2001. The book mainly explains the various military and ethnic conflicts within the Democratic Republic of the Congo during this period.

³⁶ ICC-01/05-01/08-2893-Conf-AnxA, page 17, referring to the objection made in ICC-01/05-01/08-2893-Conf-AnxA, page 11 and referring to the testimony of Witnesses D04-21 and D04-18.

³⁷ ICC-01/05-01/08-2893-Conf-Anx, page 11.

³⁸ Defence Response to the Third Prosecution Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, 13 November 2013, ICC-01/05-01/08-2892-Conf-AnxA, page 5.

³⁹ ICC-01/05-01/08-2892-Conf-AnxA, pages 5 to 7.

15. The Chamber notes that excerpts of the book were used to question Witnesses D04-15,⁴⁰ D04-18,⁴¹ D04-21⁴² and D04-54.⁴³ Witnesses D04-18 and D04-54 were questioned in relation to pages CAR-OTP-0069-0421 to CAR-OTP-0069-0423 of the book. Witness D04-54 also commented on three other pages of the book in relation to battles by the ALC in the DRC.⁴⁴ The Chamber further notes that whilst Witnesses D04-18 and D04-21 used the term “propaganda” when questioned about the content of the book,⁴⁵ Witness D04-54 did not make such a statement during his testimony. He declared that the book was prepared by Mr Bemba’s collaborators on Mr Bemba’s behalf instead of by Mr Bemba personally. Witness D04-54 also testified that certain actions, which were attributed to Mr Bemba in his role as Supreme Commander, were actually taken by others, particularly the Chief of General Staff.⁴⁶ In addition, Witnesses D04-15 and D04-21 were asked to describe four photographs,⁴⁷ which appear on pages CAR-OTP-0069-0434 and CAR-OTP-0069-0436 of the document CAR-OTP-0069-0372, and testified that the photographs show Mr Bemba wearing a military or a camouflage uniform and portray Mr Bemba at the control of an aircraft Kingair,⁴⁸ in front of a tent together with two commanders,⁴⁹ in a prone position in the sand together with other soldiers⁵⁰ or at a table dining with the then Chief of Staff of the Ugandan army.⁵¹

⁴⁰ Transcript of hearing, 11 September 2013, ICC-01/05-01/08-T-343-CONF-ENG, page 37, line 24 to page 41, line 7.

⁴¹ Transcript of hearing, 6 June 2013, ICC-01/05-01/08-T-318-CONF-ENG, page 16, line 12 to page 32, line 5, Transcript of hearing, 10 June 2013, ICC-01/05-01/08-T-319-CONF-ENG, page 9, line 20 to page 18, line 15, Transcript of hearing, 11 June 2013, ICC-01/05-01/08-T-320-CONF-ENG page 13, line 22 to page 16, line 6, page 24, line 19 to page 31, line 14.

⁴² Transcript of hearing, 10 April 2013, ICC-01/05-01/08-T-304-CONF-ENG, page 22, line 9 to page 26, line 13.

⁴³ Transcript of hearing, 31 October 2013, ICC-01/05-01/08-T-348-CONF-ENG, page 39, line 25 to page 45, line 6 and page 62, line 9 to page 74, line 6.

⁴⁴ Transcript of hearing, 31 October 2010, ICC-01/05-01/08-T-348-CONF-ENG, page 62, line 9 to page 74, line 6, referring to CAR-OTP-0069-0372 at 0394, 0414 and 0420.

⁴⁵ Witness D04-18 at ICC-01/05-01/08-T-318-CONF-ENG, page 20, line 7 to page 28, line 20; Witness D04-21 at ICC-01/05-01/08-T-304-CONF-ENG, page 25, lines 15 to 24.

⁴⁶ Transcript of hearing, 31 October 2010, ICC-01/05-01/08-T-348-CONF-ENG, page 67, line 13 to page 68, line 22.

⁴⁷ CAR-OTP-0069-0372 at 0434 and 0436 (pages 60 and 62); Witness D04-15 at ICC-01/05-01/08-T-343-CONF-ENG page 37, line 24 to page 40, line 20 and Witness D04-0021 at ICC-01/05-01/08-T-304-CONF-ENG, page 23, line 12 to page 26, line 13.

⁴⁸ CAR-OTP-0069-372 at 0434, top of page.

⁴⁹ CAR-OTP-0069-372 at 0434, bottom of page.

⁵⁰ CAR-OTP-0069-372 at 0436, top of page.

As the witnesses were questioned on excerpts relating to, *inter alia*, Mr Bemba's role within the ALC and the MLC during the MLC's intervention in the CAR in 2001, and Mr Bemba's interactions with his own soldiers and one Ugandan soldier, the Chamber finds that document CAR-OTP-0069-0372 is relevant to the charges. The Majority of the Chamber ("Majority") also finds that the book will assist in contextualising the testimonies of Witnesses D04-15, D04-18, D04-21 and D04-54 and may serve to corroborate other evidence.

16. In terms of probative value, whilst the prosecution submits that the book "was authored by the [a]ccused in his own words",⁵² the defence considers the assertion that the book was written by the accused himself incorrect,⁵³ and alleges that this item has no probative value as it contains many inaccuracies.⁵⁴ The Chamber notes that Mr Bemba's biography is included on the last page of the book. The book also contains the photograph of the accused and his name on the cover as well as in the "*post-face*" of the book. As to the defence's general claim that the book should not be admitted because it was "propaganda", the Chamber notes that the book was used during the questioning of several defence witnesses and not all gave the same answers. In these circumstances, the Chamber finds that the defence's general assertion that the book served as "propaganda" does not have any bearing on its probative value.

17. In terms of potential prejudice, the Chamber finds that the defence's argument that the Chamber should treat the book in the same way as the Majority, Judge Ozaki dissenting, treats victims' participation forms is not tenable. In the Majority's view, information obtained from victims under the condition that such information will be kept confidential cannot be compared to information contained in a book available to the public at large.

⁵¹ CAR-OTP-0069-372 at 0436, bottom of page.

⁵² ICC-01/05-01/08-2890-Red-Anx1, page 2.

⁵³ ICC-01/05-01/08-2892-Conf-AnxA, page 5.

⁵⁴ ICC-01/05-01/08-2892-Conf-AnxA, page 5 and ICC-01/05-01/08-2893-Conf-AnxA, page 11.

18. The Chamber notes that the admission of the entire book would allow the Chamber to assess its contents in the proper context. In these circumstances, the Majority finds that document CAR-OTP-0069-0372 is sufficiently relevant and probative to outweigh the potential prejudice that its admission may cause to a fair trial or a fair evaluation of the witnesses' respective testimonies. The Chamber, with Judge Ozaki dissenting on the reasoning, admits document CAR-OTP-0069-0372 into evidence. As CAR-OTP-0070-0138 is the English translation of pages 0421 to 0423, the Chamber admits CAR-OTP-0070-0138 into evidence as well.

Second Category: Documents authored by witnesses

19. The Chamber requested observations on the admission of the following eight documents authored or annotated in court by prosecution or defence witnesses during their testimony:⁵⁵ **CAR-ICC-0001-0010, CAR-ICC-0001-0081, CAR-ICC-0001-0083, CAR-ICC-0001-0088, CAR-ICC-0001-0091, CAR-ICC-0001-0095, CAR-ICC-0001-0097** and **CAR-ICC-0001-0096**. With the exception of document CAR-ICC-0001-0091, the Chamber further notes the parties and participants do not object to the admission of these documents into evidence.⁵⁶

20. Document **CAR-ICC-0001-0010 (Confidential)** is a sketch by Witness 42 signed by him during his testimony in court on 15 February 2011.⁵⁷ The item is an annotated version of a previous drawing by the same witness, item CAR-OTP-0027-0808 (not submitted into evidence in the trial proceedings), drawn to show

⁵⁵ Witness 42; Witness D04-65; Witness D04-50; Witness D04-19; Witness D04-18; Witness D04-23; and Witness D04-26.

⁵⁶ ICC-01/05-01/08-2890, paragraph 2; ICC-01/05-01/08-2893-Conf-AnxA; ICC-01/05-01/08-2895, page 4; ICC-01/05-01/08-2896, paragraph 5.

⁵⁷ Transcript of hearing, 15 February 2011, ICC-01/05-01/08-T-66-CONF-ENG, page 28, line 3 to page 37, line 23.

the presence of the “Banyamulengue” in PK12.⁵⁸ The Chamber notes that, at the request of the defence, the witness added the location and surroundings of the [REDACTED] the house and toilet [REDACTED] and the house [REDACTED] to the sketch.⁵⁹

21. Document **CAR-ICC-0001-0081 (Public)** is a copy of an electronic map of Bangui annotated by Witness D04-65 during his testimony in court on 17 September 2012.⁶⁰ The Chamber notes that the item is an annotated version of document CAR-OTP-0030-0153 (not submitted into evidence in the trial proceedings), in which the witness marked, at the request of the prosecution, the location of the junction where he was allegedly abducted by General Bozizé’s rebels and the location of the presidential palace and of former President Patassé’s residence.⁶¹

22. Document **CAR-ICC-0001-0083 (Confidential)** is a sketch drawn, dated, and signed by Witness D04-50 during his testimony in court on 15 October 2012.⁶² The Chamber notes that the witness made the drawing at the request of the prosecution, in order to show the structure and hierarchy of the *Unité de Sécurité Présidentielle* (“USP”), ranging from the rank of *Caporal* up to *Capitaine*.⁶³

23. Document **CAR-ICC-0001-0088 (Confidential)** is a sketch drawn, dated, and signed by Witness D04-19 during his testimony in court on 6 March 2013.⁶⁴ The Chamber notes that the witness created the sketch at the request of the prosecution, in order to show the relationship between the ALC/MLC and the

⁵⁸ ICC-01/05-01/08-T-66-CONF-ENG, page 28, line 24 to page 29, line 14.

⁵⁹ ICC-01/05-01/08-T-66-CONF-ENG, page 29, line 15 to page 37, line 23.

⁶⁰ Transcript of hearing, 17 September 2012, ICC-01/05-01/08-T-246-CONF-ENG, page 2, line 23 to page 4, line 23.

⁶¹ ICC-01/05-01/08-T-246-CONF-ENG, page 2, line 25 to page 4, line 15.

⁶² Transcript of hearing, 15 October 2012, ICC-01/05-01/08-T-254-CONF-ENG, page 51, line 2 to page 54, line 16.

⁶³ ICC-01/05-01/08-T-254-CONF-ENG, page 51, lines 6 to 21.

⁶⁴ Transcript of hearing, 6 March 2013, ICC-01/05-01/08-T-290-CONF-ENG, page 67, line 24 to page 69, line 13.

Central African Armed Forces (“FACA”) and where each contingent had its defence line in the field.⁶⁵

24. Document **CAR-ICC-0001-0095 (Confidential)** is a document written, dated, and signed by Witness D04-23 during his testimony in court on 20 August 2013.⁶⁶ The Chamber notes that the witness wrote the document at the request of the defence in order to show the names of the various locations that were allegedly invaded by rebels led by General Bozizé during the relevant period under examination.⁶⁷

25. Document **CAR-ICC-0001-0097 (Confidential)** is an annotated map of Bangui bearing the ERN CAR-D04-0002-1081 (admitted into evidence in a previous decision).⁶⁸ This map was annotated, dated and signed by Witness D04-23 during his testimony in court on 21 August 2013, at the request of the defence, in order to show the various neighbourhoods that were allegedly occupied from 25 to 30 October 2002 by rebels led by General Bozizé.⁶⁹

26. Document **CAR-ICC-0001-0096 (Confidential)** is a document [REDACTED]. The Chamber notes that this document is titled “*Les membres du gouvernement de Bozize*” (Members of Bozizé’s Government) and was [REDACTED] in order to indicate the names of the people who belonged to the General Staff of the rebel movement led by General Bozizé.⁷⁰

27. As such, the Chamber is satisfied that the above-mentioned documents may be relevant to issues properly to be considered by the Chamber, including, *inter alia*,

⁶⁵ ICC-01/05-01/08-T-290-CONF-ENG, page 68, lines 2 to 17.

⁶⁶ Transcript of hearing, 20 August 2013, ICC-01/05-01/08-T-332-CONF-ENG, page 38, line 14 to page 48 line 3.

⁶⁷ ICC-01/05-01/08-T-332-CONF-ENG, page 38, line 14 to page 46 line 20.

⁶⁸ Item CAR-D04-0002-1081 (EVD-T-D04-00007) was admitted into evidence by Decision 2012, *see* ICC-01/05-01/08-2012-Red, paragraphs 26 to 33.

⁶⁹ Transcript of hearing, 21 August 2013, ICC-01/05-01/08-T-333-CONF-ENG, page 22, line 19 to page 26, line 11.

⁷⁰ [REDACTED].

allegations of the presence of the “Banyamulengue” in PK12, the structure of the USP, the relationship between the ALC/MLC and FACA, the names of the various locations that were occupied by General Bozizé’s rebels and of alleged members of his rebellion during the relevant period under examination.

28. In terms of probative value, the Chamber is satisfied that all the documents bear sufficient indicia of reliability, such as dates and signatures of witnesses as they have been produced by them during their testimony in court, under the scrutiny of the parties, participants and the Chamber. In terms of potential prejudice, the Chamber notes that none of the parties or participants objects to the admission of these documents into evidence. In these circumstances, the Chamber finds that the documents are sufficiently relevant and probative to outweigh the potential prejudice their admission may cause to a fair trial and a fair evaluation of the witnesses’ respective testimonies. Documents CAR-ICC-0001-0010, CAR-ICC-0001-0081, CAR-ICC-0001-0083, CAR-ICC-0001-0088, CAR-ICC-0001-0095, CAR-ICC-0001-0097 and CAR-ICC-0001-0096 are therefore admitted.

29. The Chamber notes that document **CAR-ICC-0001-0091 (Confidential)** is an annotated version of three pages of Mr Bemba’s book admitted into evidence in paragraph 18 above. Pages CAR-OTP-0001-0421 to CAR-OTP-0001-0423 of the book were [REDACTED] during his testimony, following questioning by the prosecution.⁷¹ The prosecution supports the admission of the excerpt of the book, adding that it was [REDACTED] during the testimony of the witness and may assist the Chamber in better contextualising the testimony.⁷² The defence objects to its admission, arguing that the book in its entirety lacks probative value because previous defence witnesses testified as to the book’s inaccuracies, and

⁷¹ [REDACTED].

⁷² ICC-01/05-01/08-2890, paragraph 2.

characterised those aspects shown to them as “propaganda”.⁷³ The defence further submits that [REDACTED] do not alter its admissibility.⁷⁴ Ms Douzima-Lawson, submits that this document meets the three criteria required by the Chamber in Order 2841 as it is relevant, probative, and does not have a detrimental effect on the proceedings.⁷⁵ She makes a general submission that documents [REDACTED] such as the excerpt at issue, allow for the possibility to contextualise the witnesses’ statements by supporting the answers they provided during the hearings.⁷⁶ In this context, the legal representative submits that the excerpt of the book is signed and dated and was used during the hearings under the control of the Chamber. As such, its admission has no prejudicial effect because the parties had sufficient time to challenge the document in court.⁷⁷

30. In paragraph 18 above, the Chamber has already admitted the book in its entirety. As mentioned above, the Chamber notes that the three-page excerpt describes Mr Bemba’s role within the ALC and the MLC as of 2001 and, in particular, during the ALC’s intervention in the CAR following the 28 May 2001 coup. The Chamber further notes that [REDACTED] may assist the Chamber to better contextualise the testimony of [REDACTED]. The Chamber notes that the witness [REDACTED] corrections to the text allegedly written by Mr Bemba, adding references as to the role of the ALC Chief of General Staff and that of Mr Bemba himself. The Chamber is satisfied that [REDACTED] pages of the book may be relevant to issues properly to be considered by the Chamber, *inter alia*, because [REDACTED] may shed light on the chain of command within the ALC [REDACTED]. In addition, the item [REDACTED] may also assist the Chamber in its assessment of the witness’s credibility and on whether [REDACTED] the book

⁷³ ICC-01/05-01/08-2893-Conf-AnxA, page 17, referring to the objection made in ICC-01/05-01/08-2893-Conf-AnxA, page 11 and referring to the testimony of Witnesses D04-21 and D04-18.

⁷⁴ ICC-01/05-01/08-2893-Conf-AnxA, page 17.

⁷⁵ ICC-01/05-01/08-2896, paragraph 5.

⁷⁶ ICC-01/05-01/08-2896, paragraph 5.

⁷⁷ ICC-01/05-01/08-2896, paragraph 5.

are corroborated by the evidence as a whole. For these reasons, the Chamber is satisfied that the document may be relevant to the issues properly to be considered by the Chamber.

31. In terms of probative value, the Chamber is satisfied that the excerpt [REDACTED] bears indicia of reliability, such as a date and the signature of the witness.⁷⁸ The [REDACTED] pages of the book were indeed produced by the witness during his testimony in court.

32. As to the potential prejudice, considering the relevance and probative value of the annotated document, the Chamber has no reason to believe that the admission of this [REDACTED] excerpt of the book would have a prejudicial effect on a fair trial, as the case will be assessed in light of *all* evidence presented before the Chamber. Document CAR-ICC-0001-0091 is therefore admitted.

Third Category: Photographs

33. The Chamber requested observations from the parties and participants on the admission as evidence of 16 photographs, documents **CAR-D04-0002-1377**, **CAR-OTP-0028-0446**, **CAR-OTP-0046-0199**, **CAR-OTP-0046-0196**, **CAR-OTP-0046-0218**, **CAR-OTP-0046-0229**, **CAR-OTP-0071-0068**, **CAR-D04-0004-0041**, **CAR-D04-0004-0040**, **CAR-OTP-0035-0133**, **CAR-OTP-0046-0222**, **CAR-OTP-0046-0195**, **CAR-OTP-0046-0216**, **CAR-OTP-0046-0212**, **CAR-OTP-0046-0206** and **CAR-OTP-0046-0204**, which were used during the testimony of witnesses before the Court.

34. Document **CAR-D04-0002-1377 (Public)**, is a three-page document, used during the questioning of Witness 209, containing different photographs and

⁷⁸ [REDACTED].

characteristics of an Antonov AN-26 airplane.⁷⁹ The prosecution and defence support the admission of this document, adding that it may assist the Chamber in better contextualising the witness's testimony.⁸⁰ More specifically, the defence adds that the probative value and reliability of the document stem from the witness himself repeatedly insisting that the plane in the photograph "was the same as that which he saw land in Damara on 13 January".⁸¹ The defence further submits that the document is relevant to an evaluation of Witness 209's credibility, in particular when he alleged that an Antonov AN-26 could land in Damara.⁸² Lastly, the defence submits that the document's admission raises no issue of prejudice to a fair trial, as the prosecution was in possession of the photograph "during" Witness 209's testimony, and was able to question him on it.⁸³

35. The Chamber notes that the document contains different photographs of an Antonov AN-26 airplane of the type that, when questioned by the defence during his testimony in court, Witness 209 stated that he saw in Damara on the morning of 13 January 2003.⁸⁴ The Chamber further observes that the witness claimed to have seen an aircraft of the same kind as shown in the document, albeit in a different colour,⁸⁵ and to have seen the loading of looted property onto the aircraft, which was taken from a house belonging to a CAR Member of Parliament.⁸⁶ In the Chamber's view, the document is relevant as it will assist the Chamber to better contextualise Witness 209's testimony and assess his credibility

⁷⁹ Transcript of hearing, 18 June 2011, ICC-01/05-01/08-T-124-CONF-ENG, page 11, line 17 to page 12, line 17.

⁸⁰ ICC-01/05-01/08-2890, paragraph 2; ICC-01/05-01/08-2893-Conf-AnxA, page 2.

⁸¹ ICC-01/05-01/08-2893-Conf-AnxA, page 2. See also ICC-01/05-01/08-T-124-Conf-ENG, page 12, line 3.

⁸² ICC-01/05-01/08-2893-Conf-AnxA, page 3.

⁸³ ICC-01/05-01/08-2893-Conf-AnxA, page 3.

⁸⁴ Although Witness 209 does not mention the year 2002 in the transcript of hearing ICC-01/05-01/08-T-124-Conf-ENG, page 12, line 3, a reference to "13 January 2002" is made in Transcript of hearing, 11 June 2011, ICC-01/05-01/08-T-123-Conf-ENG, page 15, line 15 to page 16, line 17.

⁸⁵ ICC-01/05-01/08-T-124-CONF-ENG, page 12, lines 5 to 15.

⁸⁶ ICC-01/05-01/08-T-124-CONF-ENG, page 7, lines 4 to 11; page 13, line 11 to page 14, line 4; page 16, line 25 to page 17, line 9.

and the reliability of his testimony. In terms of probative value, the Chamber is satisfied that the document offers sufficient indicia of reliability to warrant its admission into evidence. The defence has provided the Chamber with verifiable information on where the document could be obtained, which has enabled the Chamber to access the photograph from the Internet and verify that it is what it purports to be.⁸⁷ With regard to prejudice, the Chamber finds that the admission of the document raises no issue of prejudice to a fair trial, as the parties and participants were in possession of the photograph during Witness 209's testimony and had the opportunity to question him on it. Document CAR-D04-0002-1377 is therefore admitted.

Photographs CAR-OTP-0046-0218, CAR-OTP-0046-0199, CAR-OTP-0046-0229, CAR-OTP-0046-0196

36. Document **CAR-OTP-0046-0218 (Confidential)**, is a photograph that was used during the questioning of, *inter alia*, Witnesses D04-21, D04-13 and V20-02.⁸⁸ The prosecution supports the admission of this document, as it was used in court during the testimony of the witnesses and may assist the Chamber to better contextualise the witnesses' testimony.⁸⁹ The defence supports the admission of this document, as it was shown to Witness V20-02 and will allow the Chamber to weigh the testimony of the dual status individual.⁹⁰ The defence further submits that the document originates from the prosecution, and its admission raises no issues of prejudice to a fair trial, as both the prosecution and the legal

⁸⁷ <http://russianplanes.net/id6554>; http://www.aircharterservice.aero/cargo/aircraft/antonov_an26.htm;
http://www.aviatorsale.com/images/aircraft/specsheet/5242_9745_1.pdf.

⁸⁸ ICC-01/05-01/08-T-304-Conf-ENG, page 61, line 5 to page 62, line 14; transcript of hearing of 13 November 2013, ICC-01/05-01/08-T-351-CONF-ENG ET, page 58, lines 6 to 17; and Transcript of hearing, 8 May 2012, ICC-01/05-01/08-T-225-ENG, page 18, line 15 to page 20, line 23.

⁸⁹ ICC-01/05-01/08-2890, paragraph 2.

⁹⁰ ICC-01/05-01/08-2893-Conf-AnxA, page 11 to 12.

representatives of victims were in possession of the photograph during the testimony of the witnesses concerned.⁹¹

37. The Chamber notes that this document is a photograph depicting eight men in military uniform. Some are armed and wearing differently coloured berets, one holds a communication device and another is dressed in civilian clothes standing to the forefront. The Chamber further notes that there appears to be a crowd of people in the background of the photograph. The prosecution presented Witness D04-21 with this photograph along with other photographs, *inter alia*, CAR-OTP-0046-0199, which were apparently taken immediately before or after the photograph under examination.⁹² The witness identified the soldiers in the photographs as ALC soldiers,⁹³ and testified that the photographs were taken during the mission to Sibut.⁹⁴ He further identified the person in the forefront of the photograph as “the person who had a particular or specific relationship with the President [Patassé]”, apparently Mr Lionel Gan-Befio.⁹⁵ The Chamber further notes that the prosecution presented Witness D04-13 with the photograph and he identified the person holding a Thuraya phone as Major Kamisi.⁹⁶ Lastly, the defence presented Witness V20-02 with the photograph, although he could not recognise any face on the photo, he commented on the soldiers’ attire.⁹⁷

38. Document **CAR-OTP-0046-0199 (Confidential)** is a photograph that was used during the prosecution’s questioning of Witness D04-21. The prosecution supports the admission of this document, as it was used in court during the testimony of the witness and may assist the Chamber to better contextualise the

⁹¹ ICC-01/05-01/08-2893-Conf-AnxA, page 11 to 12.

⁹² ICC-01/05-01/08-T-304-CONF-ENG ET, page 58, line 12 to page 61, line 18.

⁹³ ICC-01/05-01/08-T-304-CONF-ENG ET, page 59, lines 18 to 20 and page 60, lines 7 to 10.

⁹⁴ ICC-01/05-01/08-T-304-CONF-ENG ET, page 60, lines 4 to 6, in relation to page 56, line 10 to page 57, line 6.

⁹⁵ ICC-01/05-01/08-T-304-CONF-ENG, page 61, lines 2 to 18, in relation to page 57, line 17 to page 58, line 6.

⁹⁶ ICC-01/05-01/08-T-351-CONF-ENG ET, page 58, lines 14 to 17.

⁹⁷ ICC-01/05-01/08-T-225-ENG, page 18, line 15 to page 19, line 16.

witness's testimony.⁹⁸ The defence takes no position on the admission of this photograph.⁹⁹

39. The Chamber notes that the photograph depicts four armed men dressed in military clothing as well as a man in civilian clothing using a hand-held communication device. The Chamber notes, as stated above, that this photograph was shown to Witness D04-21 along with other photographs in the same series, *inter alia*, CAR-OTP-0046-0218, which the witness testified were taken during the MLC's mission to Sibut.¹⁰⁰ The Chamber further notes that in relation to the photograph CAR-OTP-0046-199, the witness identified the soldiers in the photograph as ALC soldiers.¹⁰¹

40. Document **CAR-OTP-0046-0229 (Confidential)** is a photograph that was used during the questioning of Witness D04-21.¹⁰² The prosecution supports the admission of this document, as it was used in court during the testimony of the witness and may assist the Chamber to better contextualise the witness's testimony.¹⁰³ The defence supports the admission of this document as Witness D04-21 recognised numerous journalists in the photograph and "provided context and background which contribute to both [the photograph's] probative value and reliability".¹⁰⁴ Furthermore, the defence submits that the photograph is relevant to the witness's testimony and to the charges against the accused.¹⁰⁵

41. The Chamber notes that this document is a photograph apparently depicting Mr Bemba, with a man in military uniform on his left and another on his right side, an aircraft in the background, and reporters and photographers facing him. Mr

⁹⁸ ICC-01/05-01/08-2890, paragraph 2.

⁹⁹ ICC-01/05-01/08-2893-Conf-AnxA, page 11.

¹⁰⁰ ICC-01/05-01/08-T-304-CONF-ENG ET, page 61, lines 5 to 18.

¹⁰¹ ICC-01/05-01/08-T-304-CONF-ENG ET, page 59, lines 18 to 20.

¹⁰² ICC-01/05-01/08-T-304-CONF-ENG, page 62, line 15 to page 63, line 24.

¹⁰³ ICC-01/05-01/08-2890, paragraph 2.

¹⁰⁴ ICC-01/05-01/08-2893-Conf-AnxA, page 12.

¹⁰⁵ ICC-01/05-01/08-2893-Conf-AnxA, page 12.

Bemba appears to be talking to men in civilian clothes, who are taking notes and photographs and who were recognised by Witness D04-21 as international journalists.¹⁰⁶ The Chamber further notes that Witness D04-21 explained that the photograph was taken when the mission arrived in Gbadolite, returning from Sibut, to report back to Mr Bemba.¹⁰⁷

42. Document **CAR-OTP-0046-0196 (Confidential)** is a photograph that was used during the questioning of [REDACTED].¹⁰⁸ The prosecution supports the admission of this photograph, as it was used in court during the testimony of the witnesses and may assist the Chamber to better contextualise the witnesses' testimony.¹⁰⁹ The defence supports the admission of this document, as it was shown to [REDACTED] who recognised [REDACTED] individual in the photograph.¹¹⁰ The defence further submits that the photograph is of sufficient probative value and reliability. Moreover, the defence adds that the photograph is relevant to assist the Chamber in the assessment of [REDACTED] as well as the credibility of [REDACTED].¹¹¹ Regarding the item's potential prejudice, the defence submits that its admission raises no prejudice to a fair trial as the prosecution was in possession of the photograph during the testimony of the witnesses.¹¹²

43. The Chamber notes that the document is a photograph showing, *inter alia*, four men in military uniform seated on chairs and one man in civilian clothing standing in the background. The Chamber notes that [REDACTED] was presented with the photograph by the defence and testified that the picture

¹⁰⁶ ICC-01/05-01/08-T-304-CONF-ENG, page 63, lines 2 to 6.

¹⁰⁷ ICC-01/05-01/08-T-304-CONF-ENG, page 62, line 15 to page 65, line 1.

¹⁰⁸ [REDACTED].

¹⁰⁹ ICC-01/05-01/08-2890, paragraph 2.

¹¹⁰ ICC-01/05-01/08-2893-Conf-AnxA, page 14.

¹¹¹ ICC-01/05-01/08-2893-Conf-AnxA, page 14.

¹¹² ICC-01/05-01/08-2893-Conf-AnxA, page 14.

[REDACTED].¹¹³ The Chamber also notes that the document was used by the defence to question [REDACTED] who did not recognise any of the individuals on the photograph.¹¹⁴

44. In light of the above, the Chamber is satisfied that the photographs CAR-OTP-0046-0218, CAR-OTP-0046-0199, CAR-OTP-0046-0229, CAR-OTP-0046-0196, allegedly taken in Sibut, are relevant to issues properly to be considered by the Chamber, including, *inter alia*, the arrival and presence of MLC/ALC soldiers in Sibut during the relevant period under examination and the presence of international press reporting on the events under examination and Mr Bemba's contact with the press. In addition, they will assist the Chamber to better contextualise the testimonies of the witnesses concerned and to assess their credibility. With regard to probative value, the Chamber finds that all photographs bear sufficient indicia of reliability, [REDACTED] were taken contemporaneously with the events under consideration in the present case, and constitute a visual record of the events.

45. As to the prejudice the admission of the four abovementioned photographs could cause, the Chamber finds that these items are sufficiently relevant and probative to outweigh any prejudice their admission into evidence would cause to a fair trial or a fair evaluation of the witnesses' respective testimonies. In addition, the prosecution and defence both support the admission of the photographs into evidence. Documents CAR-OTP-0046-0218, CAR-OTP-0046-0199, CAR-OTP-0046-0229, CAR-OTP-0046-0196 are therefore admitted.

¹¹³ [REDACTED].

¹¹⁴ [REDACTED].

Photographs CAR-D04-0004-0041 and CAR-D04-0004-0040

46. Documents **CAR-D04-0004-0041 (Confidential)**¹¹⁵ and **CAR-D04-0004-0040 (Confidential)**¹¹⁶ are photographs that were used by the defence to question Witness D04-56. The prosecution supports the admission of these documents, as they were used in court during the testimony of the witness and may assist the Chamber to better contextualise the witness's testimony.¹¹⁷ The defence supports the admission of these photographs, as they were shown to D04-56 who recognised them, [REDACTED] and provided background, context and explanation.¹¹⁸ Furthermore, the defence submits that the documents have sufficient probative value and reliability to warrant admission, are relevant to "the prosecution's attempt to impugn the credibility of this defence witness", and will assist the Chamber in its assessment of his evidence.¹¹⁹ Lastly, the defence submits that the documents were disclosed to the prosecution, who raised no objections as to their reliability or authenticity and as such no prejudice arises from their admission.¹²⁰

47. The Chamber notes that photograph **CAR-D04-0004-0041** shows an armed man in military uniform guarding a closed gate. When presented with the picture, Witness D04-56, [REDACTED] affirmed that the picture was taken close to the staff headquarters in the bush at Sido, a town in the north of CAR.¹²¹ The witness testified that this photograph was taken "at the end of 2001 or early 2002".¹²² The Chamber notes that photograph **CAR-D04-0004-0040** shows two soldiers

¹¹⁵ Transcript of hearing, 13 May 2013, ICC-01/05-01/08-T-316-CONF-ENG, page 42, line 11 to page 45, line 3.

¹¹⁶ ICC-01/05-01/08-T-316-CONF-ENG, page 45, line 6 to page 46, line 9.

¹¹⁷ ICC-01/05-01/08-2890, paragraph 2.

¹¹⁸ ICC-01/05-01/08-2893-Conf-AnxA, pages 16 and 17.

¹¹⁹ ICC-01/05-01/08-2893-Conf-AnxA, pages 16 and 17.

¹²⁰ ICC-01/05-01/08-2893-Conf-AnxA, pages 16 and 17.

¹²¹ ICC-01/05-01/08-T-316-CONF-ENG, page 42, line 19 to page 45, line 3.

¹²² ICC-01/05-01/08-T-316-CONF-ENG, page 44, lines 20 to 22.

surrounded by large pieces of wood. When presented with the picture, Witness D04-56 [REDACTED] was taken in Sido in 2002.¹²³

48. The Chamber is satisfied that they are relevant as they may assist the Chamber in its assessment of Witness D04-56's credibility and the reliability of his testimony. With regard to probative value, although the dates at which the two photographs were taken is uncertain, the Chamber is satisfied that the photographs provide sufficient indicia of reliability, as they were both recognised by Witness D04-56 [REDACTED]. As to the prejudice, the Chamber notes that the parties and participants support the admission of these photographs, which originally emanate from the defence. The Chamber finds that the photographs are sufficiently relevant and probative to outweigh the potential prejudice their admission may cause to a fair trial or a fair evaluation of Witness D04-56's testimony. Documents CAR-D04-0004-0041 and CAR-D04-0004-0040 are therefore admitted.

Photographs CAR-OTP-0046-0222, CAR-OTP-0046-0195, CAR-OTP-0046-0216, CAR-OTP-0046-0212, CAR-OTP-0046-0204

49. Documents **CAR-OTP-0046-0222 (Confidential)**,¹²⁴ **CAR-OTP-0046-0195 (Confidential)**,¹²⁵ **CAR-OTP-0046-0216 (Confidential)**,¹²⁶ **CAR-OTP-0046-0212 (Confidential)**,¹²⁷ **CAR-OTP-0046-0204 (Confidential)**¹²⁸ are photographs that were used during the questioning of Witness V20-02. Both parties support the admission of the photographs, as it may assist the Chamber to better contextualise his testimony and because the photographs have sufficient indicia of reliability

¹²³ ICC-01/05-01/08-T-316-CONF-ENG, page 45, lines 10 to 13.

¹²⁴ ICC-01/05-01/08-T-225-ENG, page 14, line 19 to page 16, line 25.

¹²⁵ Transcript of hearing, 7 May 2012, ICC-01/05-01/08-T-224-CONF-ENG, page 43, line 7 to page 44, line 19.

¹²⁶ ICC-01/05-01/08-T-225-ENG, page 21, line 16 to page 23, line 14.

¹²⁷ ICC-01/05-01/08-T-225-ENG, page 25, line 25 to page 29, line 21.

¹²⁸ ICC-01/05-01/08-T-225-ENG, page 39, line 10 to page 40, line 6.

and probative value.¹²⁹ The defence further submits that the photographs were taken during the events in question and are therefore directly relevant to the allegations against the accused in Sibut.¹³⁰ Lastly, the defence submits that its admission raises no issues of prejudice to a fair trial, as the prosecution disclosed the photographs to the defence and the legal representatives of victims sufficiently in advance to enable all parties and participants to use it during the testimony of Witness V20-02.¹³¹

50. The Chamber notes that photograph **CAR-OTP-0046-0222** was presented by the defence to Witness V20-02 after the witness was shown an alleged contemporaneous video footage depicting the same events in Sibut,¹³² item CAR-DEF-0001-0832 (already admitted into evidence in the trial proceedings).¹³³ The Chamber notes that the photograph shows a helicopter, men in military uniform standing next to individuals in civilian clothing, and a relatively large crowd of people in civilian clothing standing in the background. The Chamber notes that Witness V20-02 explained that the civilians appearing in the photograph were curious crowds “who came in their thousands to see what the father of the Banyamulengue looked like”.¹³⁴ In addition, the witness testified [REDACTED].¹³⁵

51. The Chamber notes that document **CAR-OTP-0046-0195** is a photograph depicting a lady sitting along with four other men in civilian clothing on benches, while a large crowd, including women, men and children, remains standing in the background. The Chamber notes that when presented with the photograph by the defence, Witness V20-02 was asked to identify the persons in the photograph and he recognised the lady as the same person who appeared on the admitted

¹²⁹ ICC-01/05-01/08-2890, paragraphs 2 and ICC-01/05-01/08-2893-Conf-AnxA, pages 21 and 22.

¹³⁰ ICC-01/05-01/08-2893-Conf-AnxA, pages 21 and 22.

¹³¹ ICC-01/05-01/08-2893-Conf-AnxA, pages 21 and 22.

¹³² ICC-01/05-01/08-T-225-ENG, page 14, line 19 to page 17, line 6.

¹³³ See First decision on the prosecution and defence requests for the admission of evidence, 15 December 2011, ICC-01/05-01-08-2012, paragraphs 92 to 93.

¹³⁴ ICC-01/05-01/08-T-225-ENG ET, page 15, lines 9 to 14.

¹³⁵ ICC-01/05-01/08-T-225-ENG ET, page 16, lines 2 to 5.

video CAR-DEF-0001-0832,¹³⁶ but was not able to identify the other people,¹³⁷ although he suggested that the person sitting next to the lady was “the former commissioner”.¹³⁸

52. The Chamber notes that document **CAR-OTP-0046-0216** is a photograph of part of a white twin cab vehicle with four men, who appear to be civilians, standing on the rear platform. The Chamber notes that, when presented with the photograph, Witness V20-02 pointed out soldiers standing next to the vehicle,¹³⁹ and insisted that the picture was part of something “staged”.¹⁴⁰

53. The Chamber notes that document **CAR-OTP-0046-0212** is a photograph of two men, one of whom appears to be photographing or video recording the other. The Chamber notes that when presented with the photograph, Witness V20-02 stated that he did not have comments to make as he did not know the people depicted in the photograph.¹⁴¹ However, the witness testified that this photo would have been taken on the day of Mr Bemba’s alleged visit in Sibut, in a private setting at the house of the lady the witness identified on the admitted video CAR-DEF-0001-0832.¹⁴² The witness also testified that although he did not recognise the two individuals in the photograph as journalists, at least one photographer accompanied Mr Bemba during his visit.¹⁴³

54. The Chamber notes that document **CAR-OTP-0046-0204** is a photograph of several children in a field, with a few adults in civilian clothing standing in the background. The Chamber further notes that, when presented with this

¹³⁶ ICC-01/05-01/08-T-224-CONF-ENG, page 43, lines 20 to 22.

¹³⁷ ICC-01/05-01/08-T-224-CONF-ENG ET, page 45, lines 8 to 23

¹³⁸ ICC-01/05-01/08-T-224-CONF-ENG Et, page 45, line 24 to page 46, line 3.

¹³⁹ ICC-01/05-01/08-T-225-ENG ET, page 21, line 23.

¹⁴⁰ ICC-01/05-01/08-T-225-ENG ET, page 22, lines 6 to 22.

¹⁴¹ ICC-01/05-01/08-T-225-ENG ET, page 27, lines 6 to 24.

¹⁴² ICC-01/05-01/08-T-225-ENG, page 26, line 11 and page 28, lines 3 to 11.

¹⁴³ ICC-01/05-01/08-T-225-ENG, page 25, line 25 to page 29, line 21.

photograph by the defence, Witness V20-02 testified that it was probably taken in Bezera Bria, in the field where Mr Bemba's plane would have landed in Sibut.¹⁴⁴ In the photograph, the children appear to be waving to the photographer and the witness explained that "children are very curious when it comes to seeing a plane".¹⁴⁵

55. As such, the Chamber is satisfied that photographs CAR-OTP-0046-0222, CAR-OTP-0046-0195, CAR-OTP-0046-0216, CAR-OTP-0046-0212, CAR-OTP-0046-0204 are relevant to the issues properly to be considered by the Chamber as they relate, *inter alia*, to the arrival by helicopter of some MLC soldiers in Sibut, the presence of the civilian population at this event and the allegations made by the defence in relation to the general atmosphere that was present during Mr Bemba's visit in this location.¹⁴⁶ Moreover, the photographs may assist the Chamber in better contextualising Witness V02-20's testimony, and assessing his credibility. With regard to probative value, the Chamber is satisfied that the photographs provide sufficient indicia of reliability, as the witness recognised and described the events depicted in the photographs. Moreover, the prosecution has provided sufficient information to support their authenticity and reliability, such as how the photographs were obtained, and their chain of custody. As to the prejudice to a fair trial, the Chamber finds the five above mentioned photographs are sufficiently relevant and probative to outweigh any potential prejudice their admission would cause. The Chamber further notes that both parties support the admission of these photographs into evidence. Documents CAR-OTP-0046-0222, CAR-OTP-0046-0195, CAR-OTP-0046-0216, CAR-OTP-0046-0212, CAR-OTP-0046-0204 are therefore admitted.

¹⁴⁴ ICC-01/05-01/08-T-225-ENG, page 39, line 10 to page 40, line 6.

¹⁴⁵ ICC-01/05-01/08-T-225-ENG, page 39, lines 20 to 23.

¹⁴⁷ ICC-01/05-01/08-T-225-ENG, page 38, line 25 to page 39, line 9.

CAR-OTP-0046-0206 and CAR-OTP-0028-0446

56. Document **CAR-OTP-0046-0206 (Confidential)** is a photograph that was presented to Witness V20-02 by the defence.¹⁴⁷ The prosecution supports the admission of the photograph, adding that it may assist the Chamber to better contextualise the witness's testimony and credibility.¹⁴⁸ The defence submits that it takes no position on the admission of this document, given that the witness could not identify the house in question or recognise where it was.¹⁴⁹

57. The Chamber notes that the photograph depicts people in civilian clothing standing next to a house and some trees. The Chamber notes that the witness could not identify the location where the photograph was taken.¹⁵⁰ In addition, the Chamber notes that the witness was only asked to recognise the location of the photograph. Furthermore, the photograph was not further used during the questioning of other witnesses. Therefore, the photograph would not assist the Chamber in contextualising the witness's testimony and appears otherwise irrelevant to the charges. The Chamber does not admit document CAR-OTP-0046-0206.

58. Document **CAR-OTP-0028-0446 (Confidential)** is a photograph used during the prosecution's questioning of Witness D04-19.¹⁵¹ The prosecution supports the admission of this document, as it was used in court during the testimony of the witness and may assist the Chamber to better contextualise the witness's testimony.¹⁵² The defence objects to the admission of this document, submitting

¹⁴⁷ ICC-01/05-01/08-T-225-ENG, page 38, line 25 to page 39, line 9.

¹⁴⁸ ICC-01/05-01/08-2890, paragraph 2.

¹⁴⁹ ICC-01/05-01/08-2893-Conf-AnxA, page 22.

¹⁵⁰ ICC-01/05-01/08-T-225-ENG, page 38, line 25 to page 39, line 9.

¹⁵¹ Transcript of hearing, 1 March 2013, ICC-01/05-01/08-T-288-CONF-ENG, page 36, line 17 to page 37, line 4. The Chamber notes that CAR-OTP-0028-0446 has been referenced wrongly in the English version of the transcript, whilst the correct reference to this document can be found in the French version of the transcript.

¹⁵² ICC-01/05-01/08-2890, paragraph 2.

that it was “neither recognised nor authenticated” by Witness D04-19.¹⁵³ The defence further submits that the photograph lacks sufficient indicia of reliability or probative value to warrant its admission, and is of questionable relevance to the charges against the accused.¹⁵⁴

59. The Chamber notes that the document appears to be a photograph of a man in military uniform sitting on a vehicle in front of a weapon. The vehicle is boarded on a ship. The Chamber notes that when presented with this photograph, Witness D04-19 was asked whether he recognised the “type of weapon” depicted in it, he identified the weapon as being a 107 millimetre cannon and added “if I remember we didn’t use such a cannon with three barrels”.¹⁵⁵

60. The Chamber notes that the document appears to be a photograph of a vehicle taken on a ship with a soldier sitting on the vehicle in front of a weapon. The Chamber also notes that during his testimony, Witness D04-19 spontaneously described the weapon on the photograph as a 107 millimetre cannon with three tubes and adds that such a weapon was not used by the MLC.¹⁵⁶ The Chamber finds that the photograph is relevant as it relates, *inter alia*, to the issue of whether such weaponry was used by the MLC during the relevant period under examination. Moreover, the Chamber also finds that the photograph will assist in the assessment of Witness D04-19’s credibility and to possibly corroborate other items of evidence. With regard to probative value, the Chamber finds that the photograph is probative [REDACTED]. In addition, the prosecution has provided the Chamber with the relevant information in the Ringtail allowing it to verify that the photograph [REDACTED] annexed the photograph to it.

¹⁵³ ICC-01/05-01/08-2893-Conf-AnxA, page 8.

¹⁵⁴ ICC-01/05-01/08-2893-Conf-AnxA, page 8.

¹⁵⁵ ICC-01/05-01/08-T-288-CONF-ENG, page 36, line 25 to page 37, line 2.

¹⁵⁶ ICC-01/05-01/08-T-288-CONF-ENG, page 36, line 25 to page 37, line 2.

61. With regard to prejudice, contrary to the defence's submission that the witness did not recognise the photograph, Witness D04-19 was only asked by the prosecution whether he could identify the type of weapon in the photograph, which he did. In addition, the photograph was disclosed to the defence sufficiently in advance, thereby giving the defence the opportunity to question the witness on the document. In these circumstances, the Chamber notes that the photograph is sufficiently relevant and probative to outweigh any potential prejudice its admission would cause to a fair trial or a fair evaluation of the witness testimony. For these reasons, document CAR-OTP-0028-0446 is admitted.

62. Document **CAR-OTP-0071-0068 (Confidential)** is a photograph the prosecution used to question Witness D04-21.¹⁵⁷ The prosecution supports the admission of this document, submitting it is relevant and probative as evidence, *inter alia*, of "communication between the Accused and a representative of the CAR government when MLC soldiers were in control of Sibut."¹⁵⁸ The prosecution adds that the document is evidence of the accused's communications with CAR authorities after the MLC's takeover of Sibut and his knowledge of the 2002-2003 events in the CAR.¹⁵⁹ Lastly, the prosecution submits that admitting this document will not be prejudicial to a fair trial as the defence had adequate notice of the document and it was used by the prosecution to question the witness thereby providing the defence the opportunity for any additional questions.¹⁶⁰ The defence objects to the admission of this photograph to support the prosecution's contention that it shows Mr Lionel Gan-Befio on the phone with Mr Bemba.¹⁶¹ The defence submits that "the witness to whom the photograph was shown provided no basis for the [p]rosecution's assertion that it was illustrative

¹⁵⁷ Transcript of hearing, 11 April 2013, ICC-01/05-01/08-T-305-CONF-ENG, page 20, line 20 to page 21 line 23.

¹⁵⁸ ICC-01/05-01/08-2890-Red-Anx1, page 3.

¹⁵⁹ ICC-01/05-01/08-2890-Red-Anx1, page 3.

¹⁶⁰ ICC-01/05-01/08-2890-Red-Anx1, page 3.

¹⁶¹ ICC-01/05-01/08-2893-Conf-AnxA, page 12.

of Mr Gan-Befio speaking to Mr Bemba, and in fact was insistent that he could not know who was on the other end of the phone”.¹⁶² Furthermore, the defence submits that the photograph “is neither relevant to the charges against the accused nor the credibility of this witness’s testimony”.¹⁶³

63. The Chamber notes that the item appears to be a printed version of a website (apparently <http://galleries.forbes.com>) containing a photograph showing a man holding a telephone, while two soldiers are sitting on a green vehicle behind him. The Chamber further notes that there is a caption next to the photograph, stating: “French national Lionel Ganne Befio (R), special adviser to Central African Republic President Ange-Félix Patassé, talks over the phone to Congolese rebel leader Jean-Pierre Bemba in Sibut, 20 February 2003. Bemba’s army is present in CAR since October 2002 with 1,500 troops, to bolster the elected president against an insurgency”. The Chamber notes that, when presented with the photograph, Witness D04-21 testified that the civilian depicted in the picture was indeed Mr Gan-Befio, who allegedly held the position of Mr Patassé’s Special Adviser at the time of events.¹⁶⁴ The Chamber further observes that the witness testified that looking at the photograph he could “neither confirm nor deny who Mr Gan-Befio was talking to at that time”.¹⁶⁵ As to probative value, the Chamber notes that the photograph is actually a screen shot of an open source indicating an URL link, which cannot be retrieved. The Chamber is therefore not satisfied with the photograph’s probative value. In these circumstances, the Chamber finds that the photograph is not sufficiently relevant and probative to outweigh the prejudice that its admission may cause to a fair trial or the fair evaluation of the witness’s testimony. The Chamber does not admit document CAR-OTP-0071-0068.

¹⁶² ICC-01/05-01/08-2893-Conf-AnxA, page 12.

¹⁶³ ICC-01/05-01/08-2893-Conf-AnxA, page 12.

¹⁶⁴ ICC-01/05-01/08-T-305-CONF-ENG, page 21, lines 7 to 23.

¹⁶⁵ ICC-01/05-01/08-T-305-CONF-ENG, page 21, line 21.

CAR-OTP-0035-0133

64. Document **CAR-OTP-0035-0133 (Confidential)** is a photograph that was used by the prosecution to question Witness D04-09.¹⁶⁶ The prosecution supports the admission of the photograph, as it may assist the Chamber to better contextualise the testimony.¹⁶⁷ The defence objects to the admission of this photograph, submitting that the witness testified that this was not the lorry which he saw at Camp Kasai on 28 October 2002.¹⁶⁸ The defence further submits that no information was given by the prosecution as to the provenance or reliability of this photograph, it is of limited or no relevance to either the charges against the accused or the credibility of the witness, and as such the criteria for admission have not been met.¹⁶⁹
65. The Chamber notes that the document appears to be a photograph portraying white lorries along a road, some with men in military uniform and some with men in civilian clothing sitting at the back of them. The Chamber further notes that the photograph is signed, dated [REDACTED] and contains the initial [REDACTED]. Witness D04-09 was asked whether he saw the same type of lorry on 28 October 2002, the witness testified that, compared to the photograph, the colours of the lorry he saw on that date were different but that their sizes were similar and that they could carry the same number of soldiers.¹⁷⁰
66. As such, the Chamber finds that the photograph may assist it in contextualising the witness's testimony as the photograph may contribute to the assessment of other pieces of evidence relating to the means of transport used by military troops in the CAR at the period under examination.

¹⁶⁶ Transcript of hearing, 14 June 2013, ICC-01/05-01/08-T-323-CONF-ENG, page 30, line 11 to page 31, line 10.

¹⁶⁷ ICC-01/05-01/08-2890, paragraph 2.

¹⁶⁸ ICC-01/05-01/08-2893-Conf-AnxA, page 19; ICC-01/05-01/08-T-323-CONF-ENG, page 30, lines 8 to 10.

¹⁶⁹ ICC-01/05-01/08-2893-Conf-AnxA, page 19.

¹⁷⁰ ICC-01/05-01/08-T-323-CONF-ENG, page 31, lines 3 to 10.

67. As to probative value, the Chamber notes that the photograph is dated and initialled, and that the prosecution provided sufficient information in the metadata as to the origin of the photograph, [REDACTED]. As to prejudice, it is noted that the photograph was disclosed to the defence sufficiently in advance, thereby giving the defence the opportunity to question the witness on the document. Finally, the Chamber notes that the photograph was used to identify a type of lorry present in the CAR at the relevant period under examination. In light of this limited usage and considering that the photograph is sufficiently relevant and probative to outweigh any prejudice its admission would cause to a fair trial or the fair evaluation of the witness's testimony, document CAR-OTP-0035-0133 is therefore admitted.

Fourth Category: Sketches

68. The Chamber requested observations from the parties and participants on the admission of three sketches: documents **CAR-OTP-0035-0057 (Confidential)**, **CAR-OTP-0035-0058 (Confidential)** and **CAR-OTP-0035-0059 (Confidential)**.¹⁷¹ The prosecution supports the admission of the sketches, as they may assist the Chamber to better contextualise the testimony of Witness 69.¹⁷² The defence takes no position on the admission of the sketches.¹⁷³

69. The Chamber notes that each document is a sketch of a male body annotated by Witness 69 during his interview with the prosecution on 27 November 2008 when testifying about his rape. The sketches were again shown to the witness by the

¹⁷¹ The Chamber notes that the level of classification of these sketches is currently confidential despite their showing in public hearings. In these circumstances, the Chamber will request in the present Decision to review the current level of classification of these items.

¹⁷² ICC-01/05-01/08-2890, paragraph 2.

¹⁷³ ICC-01/05-01/08-2893-Conf-AnxA, pages 4 to 5.

defence during his testimony.¹⁷⁴ The Chamber finds that these documents are relevant as they relate, *inter alia*, to the alleged rape of the witness during the relevant period.¹⁷⁵ The Chamber further finds that the sketches will assist in the evaluation of the witness's testimony and the assessment of the credibility of his evidence. With regard to the document's probative value, the Chamber finds that the sketches have sufficient indicia of reliability, as the witness recognised his annotations on the different sketches. In addition, they were signed and dated by the witness during his interview with the prosecution in 2008. The Chamber notes that the defence "takes no position" on the admission of this document. In these circumstances, the Chamber finds that the sketches are sufficiently relevant and probative to outweigh the potential prejudice their admission would cause to a fair trial or a fair evaluation of the witness's testimony. Documents CAR-OTP-0035-0057, CAR-OTP-0035-0058 and CAR-OTP-0035-0059 are therefore admitted.

Fifth Category: Expert Report

70. The Chamber requested observations from the parties and participants on the admission as evidence of a military expert report and its French corresponding translation, documents **CAR-OTP-0066-0002** and **CAR-OTP-0066-0067** respectively.

71. Document **CAR-OTP-0066-0002 (level of classification not indicated)** is a 28-page report from a military expert that was mentioned during the questioning of Witness 219 with regard to the issue of its late disclosure.¹⁷⁶ The prosecution supports the admission of the expert report, submitting that it will assist the

¹⁷⁴ Transcript of hearing, 1 December 2011, ICC-01/05-01/08-T-195-CONF-ENG, page 21, line 16 to page 23, line 13.

¹⁷⁵ ICC-01/05-01/08-T-195-CONF-ENG, page 21, line 16 to page 23, line 13.

¹⁷⁶ Transcript of hearing, 11 April 2013, ICC-01/05-01/08-T-197-CONF-ENG, page 4, line 15 to page 70, line 9

Chamber to better contextualise the witness's testimony.¹⁷⁷ The defence objects to the admission of this expert report, arguing that the report was only disclosed by the prosecution under Rule 77 on 28 November 2011, one week before Witness 219's testimony was scheduled to begin and in violation of the prosecution's disclosure obligations with respect to expert reports.¹⁷⁸ The defence further submits that following an objection from the defence, the prosecution did not to rely on the report during the questioning of the witness.¹⁷⁹ Lastly, the defence submits that it would be prejudiced by the admission of the report, given that it did not question the witness on this report, and has not explored the allegations made therein due to the prosecution's decision not to rely on it.¹⁸⁰

72. The Chamber recalls that a 13-page expert report ("First Report") bearing CAR-OTP-0064-0547, produced by the military expert Witness 219, has already been admitted into evidence.¹⁸¹ The issue at hand concerns the admissibility of the supplementary 28-page report ("Supplementary Report") and its French translation. The Chamber notes that the issue of disclosure of the Supplementary Report, one week before the start of Witness 219's testimony, has already been adjudicated in the "Decision on the prosecution's and defence's requests regarding Witness 219's testimony".¹⁸² The Chamber granted additional time to the defence for its preparation, noting that the Supplementary Report "although not substantially new and different",¹⁸³ contained "a more in-depth analysis of the documentation relied upon in the First Report and more detailed conclusions".¹⁸⁴ The Chamber therefore granted one additional day to the defence to prepare for

¹⁷⁷ ICC-01/05-01/08-2890, paragraph 2.

¹⁷⁸ ICC-01/05-01/08-2893-Conf-AnxA, page 23.

¹⁷⁹ ICC-01/05-01/08-2893-Conf-AnxA, page 23.

¹⁸⁰ ICC-01/05-01/08-2893-Conf-AnxA, page 23.

¹⁸¹ Second Decision on the admission into evidence of material used during the questioning of witnesses, 14 June 2013, ICC-01/05-01/08-2688-Conf, paragraphs 90 and 100(a).

¹⁸² Decision on the prosecution's and defence's requests regarding Witness 219's testimony, 1 December 2011, ICC-01/05-01/08-1974.

¹⁸³ ICC-01/05-01/08-1974, paragraph 19.

¹⁸⁴ ICC-01/05-01/08-1974, paragraph 17.

the testimony of the prosecution's military expert and to consider the Supplementary Report for the purpose of the defence's questioning. In addition, the Chamber found that the prosecution had "repeatedly submitted that it does not intend to rely on Witness 219's supplementary expert report", which was disclosed only a week before Witness 219's testimony and provided to the prosecution on the witness's own accord.¹⁸⁵

73. The Majority is of the view that, although it did not prevent the parties from questioning Witness 219 on the conclusions of the Supplementary Report, the parties *de facto* refrained from relying on this report during their respective questioning. Moreover, the Chamber stated on several occasions that, "while the Supplementary Report contains new information, it does not, in the Chamber's view, appear to substantially alter Witness 219's opinions or the basis of them".¹⁸⁶ In these circumstances, considering the absence of questioning by both parties on the Supplementary Report, the Majority, Judge Steiner dissenting, does not admit documents CAR-OTP-0066-0002 and CAR-OTP-0066-0067 into evidence.

74. Judge Steiner would admit the Supplementary Report which, in her view, is to be considered as an integral part of the First Report already admitted into evidence. As mentioned above, the Supplementary Report brings no substantial new information, being presented for the purpose of "a more in-depth analysis of the documentation relied upon in the First Report and more detailed conclusions". Therefore, in Judge Steiner's views, the Supplementary Report is relevant for issues to be considered by the Chamber and to better contextualise the conclusions of the already admitted First Report. Furthermore, the fact that the parties did not rely on the Supplementary Report does not prevent its admission into evidence because it will not be considered as a separate item of evidence, but

¹⁸⁵ ICC-01/05-01/08-1974, paragraph 13 and ICC-01/05-01/08-1981, paragraph 13 and footnote 12.

¹⁸⁶ ICC-01/05-01/08-1974, paragraph 17 and ICC-01/05-01/08-1981, paragraph 13.

rather a complementary item to evidence already admitted, which is essential for a better understanding of the conclusions made by the military expert. Finally, its admission would not cause any prejudice to a fair trial, since the parties were aware of its content and had sufficient time to prepare their questionings on any information contained in the Supplementary Report.

Sixth Category: NGOs Reports

75. The Chamber requested observations from the parties and participants on the admission as evidence of three Amnesty International (“AI”) Reports, documents **CAR-OTP-0073-0624 (Public)**, **CAR-OTP-0073-0627 (Public)** and **CAR-OTP-0073-0623 (Public)**. The prosecution supports the admission of the reports, as they may assist the Chamber to better contextualise [REDACTED] testimony.¹⁸⁷ As to reports **CAR-OTP-0073-0624** and **CAR-OTP-0073-0627**, the defence objects to their admission, arguing that they are dated 5 August 1992 and 14 November 1994, respectively, and therefore a decade before the relevant events, and over 20 years have passed between the reports and the witness’s testimony.¹⁸⁸ The defence further submits that the reports have no relevance to the charges against the accused and have no ability to assist the Chamber in its evaluation of the witness’s testimony.¹⁸⁹ Regarding report **CAR-OTP-0073-0623**, the defence objects to its admission, arguing that it is dated 4 January 1995, and as such falls outside the temporal scope of the charges.¹⁹⁰ The defence further submits that the witness did not accept the truth of the contents of the report and that it has also no relevance to the charges against the accused and will not assist the Chamber in its evaluation of the witness’s testimony.¹⁹¹

¹⁸⁷ ICC-01/05-01/08-2890, paragraph 2.

¹⁸⁸ ICC-01/05-01/08-2893-Conf-AnxA, page 20.

¹⁸⁹ ICC-01/05-01/08-2893-Conf-AnxA, pages 20 and 21.

¹⁹⁰ ICC-01/05-01/08-2893-Conf-AnxA, page 21.

¹⁹¹ ICC-01/05-01/08-2893-Conf-AnxA, page 21.

76. The Chamber notes that documents CAR-OTP-0073-0624,¹⁹² CAR-OTP-0073-0627,¹⁹³ and CAR-OTP-0073-0623¹⁹⁴ were used by the prosecution during the questioning of [REDACTED]. With regard to the three AI Reports, the Chamber is mindful that they fall outside the temporal scope of the charges. However, the Chamber notes that these reports were used in court by the prosecution to test the witness's credibility relating to [REDACTED].¹⁹⁵ The Chamber observes that the three reports [REDACTED]. In addition, both reports CAR-OTP-0073-0623 and CAR-OTP-0073-0627 [REDACTED]¹⁹⁶ [REDACTED]¹⁹⁷ [REDACTED]¹⁹⁸ reported by Amnesty International in 1992, 1994 and 1995. The Chamber further notes that the witness testified about some security concerns he had following the [REDACTED].¹⁹⁹ The Majority, therefore, is of the view that the three AI reports are relevant for the Chamber to better assess [REDACTED] credibility and the reliability of his evidence. As to probative value, the Majority notes that the reports bear indicia of reliability, such as dates, reference numbers and the initials "AI", indicating that the reports originated from Amnesty International.

77. As to the prejudicial effect the admission of the AI Reports could cause to a fair trial, the Chamber notes that the defence has not substantiated its claim that the witness "did not accept the truth of the contents of [CAR-OTP-0073-0623]" as no reference to the witness's testimony is provided to the Chamber in this respect. The Chamber observes that the defence's protest was that the document was in English, an objection which was overruled by the Presiding Judge²⁰⁰ and that the witness submitted that he did not have an accurate recollection of

¹⁹² [REDACTED].

¹⁹³ [REDACTED].

¹⁹⁴ [REDACTED].

¹⁹⁵ [REDACTED].

¹⁹⁶ [REDACTED].

¹⁹⁷ [REDACTED].

¹⁹⁸ [REDACTED].

¹⁹⁹ [REDACTED].

²⁰⁰ [REDACTED].

[REDACTED].²⁰¹ As the defence was in possession of the three AI Reports at the time of the witness's questioning,²⁰² the defence had the opportunity to further question the witness on their content and the Majority, therefore, considers that admitting these reports would not be prejudicial to a fair trial or to the fair evaluation of the witness's testimony. For the above reasons, the Majority, Judge Ozaki dissenting, admits documents CAR-OTP-0073-0624, CAR-OTP-0073-0627 and CAR-OTP-0073-0623.

Seventh Category: Correspondence

78. The Chamber requested observations from the parties and participants on the admission as evidence of the following documents: **CAR-D04-0003-0513**, a letter from Mr Aimé Kilolo Musamba addressed to Mr Octave Dioba, **CAR-OTP-0048-0383**, a series of email communication sent by [REDACTED] to [REDACTED] Mr Bemba and **CAR-DEF-0001-0075**, a letter which appears to be originated by Mr Bemba and addressed to Mr Richard Bondo Tshimbombo.

79. Document **CAR-D04-0003-0513 (Confidential)** was used by the prosecution during the questioning of Witness D04-59.²⁰³ The prosecution supports the admission of this document, as it may assist the Chamber to better contextualise the testimony.²⁰⁴ The defence takes no position on the admission of this document.²⁰⁵

80. The Chamber notes that the document is allegedly a letter of instruction sent by Mr Aimé Kilolo Musamba, former lead counsel of Mr Bemba, addressed to Witness D04-59 and requesting his expert opinion on issues relevant to the *Bemba*

²⁰¹ [REDACTED].

²⁰² Annex A to Prosecution's Communication of Rule 77 Evidence Disclosed to the Defence on 21 August 2013, 21 August 2013, ICC-01/05-01/08-2752-Conf-AnxA.

²⁰³ [REDACTED].

²⁰⁴ ICC-01/05-01/08-2890, paragraph 2.

²⁰⁵ ICC-01/05-01/08-2893-Conf-AnxA, page 5.

case.²⁰⁶ The Chamber notes that the document was shown to and discussed with the witness during his testimony in relation to the scope of the expert witness's mandate and the methodology he followed.²⁰⁷ As such, the Chamber is satisfied that the document is relevant as it may allow the Chamber to better assess the expert's testimony and his credibility. In terms of its probative value, the Chamber is satisfied that the document offers sufficient *prima facie* indicia of authenticity and reliability to warrant its admission into evidence as it originates from Mr Bemba's former lead counsel and its probative value has not been contested by the parties and participants. As to prejudice, the letter was disclosed in advance of the expert's testimony allowing the parties to question the expert on this letter.²⁰⁸ The Chamber is of the view that the admission of this letter of instruction would not cause any prejudice to a fair trial. Document CAR-D04-0003-0513 is therefore admitted.

81. Document **CAR-OTP-0048-0383 (Confidential)**, which is an electronic mail correspondence ("e-mail"), was used by the prosecution during the questioning of Witnesses D04-19²⁰⁹ and D04-21.²¹⁰ The prosecution supports the admission of this document, arguing that it shows that the accused owned the "Thuraya" telephone line [REDACTED] as he was receiving emails about unpaid invoices for communications made on that telephone line.²¹¹ The prosecution further argues that the document provides evidence that the MLC and the accused were in possession of "Thuraya" and "Inmarsat" communication facilities.²¹² Lastly, the prosecution argues that the defence had adequate notice of the document as it

²⁰⁶ ICC-01/05-01/08-T-238-CONF-ENG, page 53, lines 18 to 19; CAR-D04-0003-0513, at 0513.

²⁰⁷ ICC-01/05-01/08-T-238-CONF-ENG, page 55, line 5 to page 60, line 16.

²⁰⁸ ICC-01/05-01/08-T-238-CONF-ENG, page 52, line 2 to page 60, line 16.

²⁰⁹ Transcript of hearing, 11 March 2013, ICC-01/05-01/08-T-291-CONF-ENG, page 20, line 7 to page 22, line 23.

²¹⁰ ICC-01/05-01/08-T-305-CONF-ENG, page 34, line 23 to page 38, line 14.

²¹¹ ICC-01/05-01/08-2890-Red-Anx1, page 2.

²¹² ICC-01/05-01/08-2890-Red-Anx1, page 2.

was disclosed in advance and used by the prosecution to question the witness thereby affording the opportunity for any additional questions.²¹³

82. The defence objects to the admission of the e-mail, arguing that whilst the prosecution referred to it during the questioning of Witness D04-19, the document was not actually shown to the witness. This, the defence contends, is presumably because the witness was not a party to the e-mails and was not in a position to recognise or authenticate them.²¹⁴ The defence further argues that while Witness D04-21 was shown the e-mails, he was not a party to them, had not seen them before, nor was he in a position to authenticate them or determine whether [REDACTED] was a Thuraya phone code or not.²¹⁵ The defence lastly submits that the e-mails lack both reliability and probative value to warrant their admission.²¹⁶

83. The Chamber notes that the document contains a series of e-mail communications regarding Mr Bemba's alleged usage of a Thuraya telephone number [REDACTED] which incurred US\$27,552 in unpaid invoices. According to the e-mails, the unpaid invoices were issued between 16 March 2003 and 5 August 2008. The e-mails further state that legal proceedings will be started in Dubai and Kinshasa against the company [REDACTED] for the pending debts on the Thuraya telephone number.

84. The Chamber notes that the document is relevant, *inter alia*, to the means of communication used by Mr Bemba and may assist the Chamber in assessing the witnesses' credibility and reliability of his testimony. The Chamber is satisfied of the document's probative value as it is dated, and contains e-mail addresses. The Chamber further notes that the document was disclosed in advance of the

²¹³ ICC-01/05-01/08-2890-Red-Anx1, page 2.

²¹⁴ ICC-01/05-01/08-2893-Conf-AnxA, page 9.

²¹⁵ ICC-01/05-01/08-2893-Conf-AnxA, page 9.

²¹⁶ ICC-01/05-01/08-2893-Conf-AnxA, page 9.

testimony of the witnesses and the defence had the opportunity to question them on its content. The Chamber is of the view that the document is sufficiently relevant and probative to outweigh any prejudice that its admission may cause to a fair trial. Document CAR-OTP-0048-0383 is therefore admitted.

85. Document **CAR-DEF-0001-0075 (Public)** is a letter which appears to be originated by Mr Bemba and addressed to Mr Richard Bondo Tshimbombo, the President of *Avocats Sans Frontières*, and was used by the defence during the questioning of Witness 15.²¹⁷ The prosecution supports the admission of this document, as it may assist the Chamber in better contextualising the testimony.²¹⁸ The defence also supports the admission of this document, adding that it has sufficient indicia of reliability on its face, and draws its probative value from the explanation given by Witness 15, who was aware of its content and explained the background context to its creation.²¹⁹ The defence further submits that the document is directly relevant to the prosecution's allegations regarding the legitimacy of the Gbadolite trials.²²⁰

86. The Chamber notes that the letter refers to an alleged previous agreement made with this organisation, in order for it to provide assistance to the detainees and the civil parties involved in a trial in Gbadolite. When presented with the document, Witness 15 explained the context in which this letter was prepared and asserted that it was aimed at ensuring that lawyers from Kinshasa would be present at a trial in Gbadolite, organised to address events that had allegedly occurred in Ituri and to ensure "transparency" regarding these events.²²¹ Document CAR-DEF-0001-0075, dated 23 January 2003, is alleged to be a response

²¹⁷ Transcript of hearing 13 February 2012, ICC-01/05-01/08-T-211-CONF-ENG, page 3, line 7 to page 4, line 20.

²¹⁸ ICC-01/05-01/08-2890, paragraph 2.

²¹⁹ ICC-01/05-01/08-2893-Conf-AnxA, page 5.

²²⁰ ICC-01/05-01/08-2893-Conf-AnxA, page 5.

²²¹ ICC-01/05-01/08-T-211-CONF-ENG, page 3, line 12 to page 4, line 20.

to a letter dated 15 January 2003, which is not in the record of the case and has never been presented by either party. The Chamber therefore is not in a position to confirm whether the 15 January letter was ever received by Mr Bemba, nor whether the letter submitted has ever been sent to Mr Richard Bondo Tshimbombo. The Chamber further observes that document CAR-D04-0002-1430 appears to be an identical letter; however, this document is signed by the MLC Secretary General at that time, Mr Kamitatu, and not by Mr Bemba. Although document CAR-D04-0002-1430 has not been submitted as evidence in the record of the case by the parties or the participants and was not mentioned by the Chamber in its Order 2841, the Chamber is of the view that the mere existence of two similar documents signed by two different persons casts serious doubt as to the probative value of document CAR-DEF-0001-0075. In these circumstances, the Chamber finds that document CAR-DEF-0001-0075 is not sufficiently relevant and probative to outweigh the prejudice its admission may cause to a fair trial and the fair evaluation of Witness 15's testimony. The Chamber therefore does not admit document CAR-DEF-0001-0075.

Eighth Category: CAR documents

87. The Chamber requested observations from the parties and participants on the admission as evidence of four "CAR documents", these are documents: **CAR-OTP-0042-0254**, **CAR-OTP-0036-0162**, **CAR-OTP-0019-0137** and **CAR-OTP-0037-0122**.

88. Document **CAR-OTP-0042-0254 (level of classification not indicated)** is a *message-porté* that was listed as a document to be tendered into evidence by the prosecution during the questioning of Witness D04-19.²²² The prosecution supports the admission of this document, as it may assist the Chamber to better

²²² Transcript of hearing, 13 March 2013 ICC-01/05-01/08-T-293-CONF-ENG, page 24, line 5.

contextualise the witness's testimony.²²³ The defence objects to the admission of this document submitting that it was simply listed by the prosecution as a document it intended to have admitted, with no indication that it was used during Witness D04-19's questioning. The defence further adds that there is no indication in the court's electronic system that this document was used with a witness.²²⁴

89. The Chamber notes that the document appears to be a signed *message-porté*, dated 11 February 2003, from the CAR's *Directeur Général of the Gendarmerie Nationale Centrafricaine* addressed to the *Ministre de la Défense Nationale, the Chef D'Etat-Major des Armées*, and the *Directeur Général of the Unité de Sécurité Présidentielle ("USP")*. The Chamber further notes that the message states that three Congolese rebels have been arrested in CAR and that the rebels declared that they were poorly managed ("*mal gérés*") in the field. The message adds that the rebels advocated returning to their countries of origin through Libengue and will be escorted to Bangui by the CAR *Gendarmerie*. The Chamber is satisfied that the document may be relevant to issues properly to be considered by the Chamber, such as the situation in the field faced by Congolese soldiers during the period under examination. In terms of probative value, the Chamber is satisfied that the document bears sufficient indicia of reliability - such as a letterhead, date, stamp, and signature - and appears to have been produced in the ordinary course of operations within the CAR's *Gendarmerie Nationale*.

90. In terms of potential prejudice, the Chamber notes that this document was listed by the prosecution as a document they intended to submit without it actually being used during Witness D04-19's questioning.²²⁵ The Chamber further notes that there is no indication that this document was used during the questioning of

²²³ ICC-01/05-01/08-2890, paragraph 2.

²²⁴ ICC-01/05-01/08-2893-Conf-AnxA, page 9.

²²⁵ ICC-01/05-01/08-T-293-CONF-ENG, page 23, line 6 to page 24, line 5.

any other witnesses. Although this particular document was not put to Witness D04-19 during his testimony, Witness D04-19 was shown a similar document (already admitted into evidence)²²⁶ and also testified on the issue of the situation of the MLC troops in the CAR.²²⁷ The Majority therefore is of the view that, despite the prosecution only orally requesting the document's submission,²²⁸ Witness D04-19 was given the chance to testify on the situation the MLC troops may have faced in the field with regard to the provision of food. In addition, the Chamber notes that the document was disclosed in advance of the testimony of the witnesses and the defence was informed of the prosecution's intention to submit this document for admission into evidence, which allowed the defence to question the witness on the document's content. Therefore, the Majority is of the view that the document is sufficiently relevant and probative to outweigh any prejudice that its admission may cause to a fair trial. The Majority, Judge Ozaki dissenting, admits document CAR-OTP-0042-0254.

91. Document **CAR-OTP-0036-0162_R01 (Confidential)** is a death certificate issued on 18 November 2002, in the 4th *Arrondissement* of Bangui. The Chamber notes that the prosecution supports the admission of the document, as it may assist the Chamber to better contextualise Witness 87's testimony.²²⁹ The defence "takes no position" on its admission.²³⁰

92. The Chamber notes that the document states that [REDACTED] died on 31 October 2002 at 16.00 in his house. The Chamber further notes that the certificate was used in court by the defence in order to question Witness 87 in relation her

²²⁶ CAR-OTP-0042-0235.

²²⁷ Transcript of hearing, 4 March 2013, ICC-01/05-01/08-T-289-CONF-ENG, page 6, lines 1 to 15; Transcript of hearing, 6 March 2013, ICC-01/05-01/08-T-290-CONF-ENG, page 71, lines 1 to 5.

²²⁸ ICC-01/05-01/08-T-293-CONF-ENG, page 23, line 6 to page 24, line 5.

²²⁹ ICC-01/05-01/08-2890, paragraph 2.

²³⁰ ICC-01/05-01/08-2893-Conf-AnxA, page 2.

brother's date of death.²³¹ As such, the Chamber is satisfied that the document is relevant to issues that are properly to be considered by the Chamber, in particular the allegations related to the crime of murder and in order to assess the credibility and the testimony of Witness 87. In terms of probative value, the Chamber is satisfied that the document bears sufficient indicia of reliability - such as a letterhead, date, stamp, and signature - and appears to have been produced in the ordinary course of operations within the CAR. As to the item's potential prejudice, the Chamber notes that the prosecution supports and the defence takes no position on the document's admission. In these circumstances, the Chamber is of the view that the document is sufficiently relevant and probative to outweigh the potential prejudice the admission of this document would cause to a fair trial or a fair evaluation of the witness's testimony. Document CAR-OTP-0036-0162 is therefore admitted.

93. Document **CAR-OTP-0019-0137 (Confidential)** is a judicial decision, issued on 16 September 2004, and generated by Witness 9 in his function as investigating judge in the CAR. The Chamber notes that the prosecution supports the document's admission, as it may assist the Chamber to better contextualise the witness's testimony.²³² The defence takes no position on its admission.²³³

94. The Chamber notes that the document is a judicial decision referring to an application for a partial dismissal of criminal charges and the referral to a criminal court of the charges against the accused and other persons. The document relates, *inter alia*, to the charges of murder, rape, arbitrary detention, pillaging and looting, allegedly committed by the MLC in the CAR between October 2002 and March 2003. The Chamber finds the document relevant as it

²³¹ ICC-01/05-01/08-T-45-CONF-ENG, page 23, line 24 to page 25, line 13; ICC-01/05-01/08-T-46-CONF-ENG, page 1, line 19 to page 2, line 25; ICC-01/05-01/08-T-47-CONF-ENG, page 12, line 15 to page 15, line 10.

²³² ICC-01/05-01/08-2890, paragraph 2.

²³³ ICC-01/05-01/08-2893-Conf-AnxA, page 2.

relates to issues properly to be considered by the Chamber, and it may also assist the Chamber in contextualising Witness 9's testimony. In terms of probative value, the Chamber notes that the document was used in court to question Witness 9, who recognised his signature on the last page and commented on the document.²³⁴ The Chamber is satisfied that the document bears sufficient indicia of reliability - such as a letterhead, date, stamp, and signature - and appears to have been produced in the ordinary course of operations within the CAR's *Tribunal de Grande Instance de Bangui*. As to the item's potential prejudice, the Chamber notes that the prosecution supports and the defence takes no position as to the document's admission. As such, the Chamber finds document CAR-OTP-0019-0137 sufficiently relevant and probative to outweigh the potential prejudice its admission would cause to a fair trial or the fair evaluation of the witness's testimony. The Chamber admits document CAR-OTP-0019-0137.

95. Document **CAR-OTP-0037-0122_R01 (level of classification not indicated)** is a judicial report on alleged pillaging at the time period under examination, including two *procès verbaux de témoin* and a list of pillaged items, which was used during the questioning of Witnesses 110²³⁵ and 108.²³⁶ Both parties support the admission of this document, adding, *inter alia*, that it may assist the Chamber in better contextualising the testimony of the witnesses, that the document was recognised by Witness 110 and that it is relevant to the credibility of her claims as to the alleged events she testified on.²³⁷ Further, the defence adds that the document's admission raises no issue of prejudice to a fair trial, as the document

²³⁴ ICC-01/05-01/08-T-104-CONF-ENG, page 5, line 11 to page 11, line 18.

²³⁵ Transcript of hearing, 10 June 2011, ICC-01/05-01/08-T-126-CONF-ENG, page 26, line 21 to page 38, line 10.

²³⁶ Transcript of hearing, 29 June 2011, ICC-01/05-01/08-T-134-CONF-ENG, page 10, line 21 to page 21, line 1 and page 38, line 4 to page 40, line 18.

²³⁷ ICC-01/05-01/08-2890, paragraph 2; ICC-01/05-01/08-2893-Conf-AnxA, page 3.

stems from the prosecution who had the opportunity to question Witness 110 during her testimony.²³⁸

96. The Chamber notes that the two individuals providing statements appear to be [REDACTED] interviewed by the *Gendarmerie Nationale* at PK 12, on 24 September 2008. In this document, they allege that the “Banyamoulengues” occupied houses, pillaged and looted property. The document pertains to an investigation that was carried out by the CAR *Gendarmerie* relating to the “Banyamulengue” breaking inside, pillaging [REDACTED] and occupying it.²³⁹ In addition, Witness 108 was questioned by the defence about the circumstances by which he obtained this document.²⁴⁰

97. Although the document in question is dated five years after the CAR events, the Chamber finds that it is relevant to, *inter alia*, the pillaging and looting allegedly committed by the “Banyamulengue” during the relevant period. Furthermore, the document will assist the Chamber to better contextualise both witnesses’ testimony, to assess their credibility and the reliability of the evidence they provided. In terms of probative value, the Chamber is satisfied that the document bears sufficient indicia of reliability - such as the letterhead, date, and official stamp – and appears to have been produced in the ordinary course of operations within the CAR’s *National Gendarmerie*. The Chamber further notes that both witnesses attested to the document’s reliability [REDACTED].²⁴¹ The Chamber notes the parties’ support for the admission of this document and finds that there is no suggestion that admitting it would cause any prejudice to a fair trial. Document CAR-OTP-0037-0122_R01 is therefore admitted.

²³⁸ ICC-01/05-01/08-2893-Conf-AnxA, page 3.

²³⁹ ICC-01/05-01/08-T-126-CONF-ENG, page 26, line 21 to page 32, line 5; ICC-01/05-01/08-T-134-CONF-ENG, page 10, line 21 to page 20, line 13 and page 38, lines 6 to 17.

²⁴⁰ ICC-01/05-01/08-T-134-CONF-ENG, page 13, line 2 to page 21, line 1.

²⁴¹ [REDACTED].

Ninth Category: Media sources

98. The Chamber requested observations from the parties and participants on the admission as evidence of 22 media articles, documents **CAR-D04-0004-0030, CAR-D04-0004-0032, CAR-OTP-0071-0043, CAR-OTP-0071-0049, CAR-OTP-0071-0063, CAR-OTP-0071-0051, CAR-D04-0002-1380, CAR-DEF-0001-0205, CAR-OTP-0069-0146, CAR-OTP-0069-0271, CAR-OTP-0069-0272, CAR-OTP-0069-0303, CAR-OTP-0005-0125, CAR-OTP-0005-0127, CAR-OTP-0057-0243, CAR-OTP-0057-0353, CAR-OTP-0036-0041, CAR-OTP-0036-0039, CAR-OTP-0056-0278, CAR-OTP-0013-0098, CAR-OTP-0030-0269 and CAR-D04-0002-2027,** which were used during the questioning of various witnesses before the court.

99. The Chamber notes that the Majority, Judge Ozaki dissenting,²⁴² set out its position on the admission of media reports in its Decision 2299.²⁴³ In this regard, the Majority stated that it would approach the admissibility of such materials with caution and held that such reports may be admitted for limited purposes to be determined on a case-by-case basis. In line with the Majority's approach, each submitted media article will be assessed to determine its relevance, its probative value, and whether any prejudice to a fair trial may be caused by its admission.

100. The prosecution makes a general submission in support of the admission of the media articles, stating that it may assist the Chamber in better contextualising the witnesses' testimonies.²⁴⁴ The defence "recalls its position generally that the admission of media articles cannot be reconciled with the consistent jurisprudence of Trial Chambers I and II," and that "media reports are generally

²⁴² 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.

²⁴³ ICC-01/05-01/08-2299, paragraph 95.

²⁴⁴ ICC-01/05-01/08-2890, paragraph 2.

not considered a source of reliable evidence and their admission is generally rejected for lack of probative value.”²⁴⁵

CAR-D04-0004-0030 and CAR-D04-0004-0032

101. Document **CAR-D04-0004-0030 (Public)** appears to be the print of an online transcript of a radio broadcast, which was used by the defence during the questioning of Witnesses D04-56²⁴⁶ and D04-23.²⁴⁷ The prosecution supports the admission of this document.²⁴⁸ The defence takes no position on its admission, adding that the relevant portions have been read into the record of the case.²⁴⁹

102. The Chamber notes that CAR-D04-0004-0030 appears to be the transcript of an audio “Afrique-midi” report of RFI”, dated 14 December 2002, containing an interview with a bishop in Bossangoa. The Chamber notes that the document refers to, *inter alia*, the fighting between General Bozizé’s and Patassé’s soldiers in Bossangoa, and the alleged looting of hospitals, murders and rapes by Bozizé’s rebels at the relevant period under examination. When presented with the document by the defence, Witness D04-56 stated that everything said in the article “is the truth. They’re speaking the truth.”²⁵⁰ After reading the article, Witness D04-23 stated that it was “not possible to contradict the statement of the bishop of that town”.²⁵¹

²⁴⁵ ICC-01/05-01/08-2893-Conf-AnxA, citing 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 36 to 37, and Decision on the Prosecutor’s Bar Table Motions, 17 December 2010, ICC-01/04-01/07-2635, paragraphs 29 to 33.

²⁴⁶ ICC-01/05-01/08-T-316-CONF-ENG, page 46, line 13 to page 47, line 17.

²⁴⁷ ICC-01/05-01/08-T-333-CONF-ENG, page 18, line 18 to page 22, line 18.

²⁴⁸ ICC-01/05-01/08-2890, paragraph 2.

²⁴⁹ ICC-01/05-01/08-2893-Conf-AnxA, page 17.

²⁵⁰ ICC-01/05-01/08-T-316-CONF-ENG, page 46, line 13 to page 47, line 17.

²⁵¹ ICC-01/05-01/08-T-333-CONF-ENG, page 18, line 18 to page 22, line 17.

103. Document **CAR-D04-0004-0032 (Public)** is a printout of an online news article that was used during the questioning of Witness D04-56, [REDACTED].²⁵² The prosecution supports the admission of this document, as it may assist the Chamber in better contextualising his testimony.²⁵³ The defence takes no position on the admission of this document, adding that the relevant portions have been read into the record of the case.²⁵⁴

104. The Chamber notes that the document is an “*Agence France Presse*” (“AFP”) online news release dated 25 February 2003, containing an account of CAR national media sources thanking President Patassé for freeing the cities occupied by General Bozizé’s rebels. The Chamber further notes the document relates to the movements of troops during the 2002-2003 CAR events and crimes allegedly committed by General Bozizé’s rebels in Bozoum and Sibut between 25 October 2002 and mid-February 2003. The document also refers to names of commanders in charge of military operations in the CAR. When presented with the document, Witness D04-56 referred to the burning of houses, stating that “[w]e did many things that have been reported on this particular account. It is the truth”.²⁵⁵

105. As to the relevance of documents CAR-D04-0004-0030 and CAR-D04-0004-0032, the Majority is satisfied that these media articles are relevant to issues properly to be considered by the Chamber, and they may also assist the Chamber in contextualising Witnesses D04-56 and D04-23’s testimonies and assessing their credibility. With regard to the documents’ probative value, the Majority notes that they are dated and available online and sees no reason to doubt that the articles are what they purport to be. Moreover, they appear to have been produced in the ordinary course of the activities of well-known international media organisations, further supporting their reliability. In light of this, the

²⁵² ICC-01/05-01/08-T-316-CONF-ENG, page 47, line 24 to page 50, line 11.

²⁵³ ICC-01/05-01/08-2890, paragraph 2.

²⁵⁴ ICC-01/05-01/08-2893-Conf-AnxA, page 17.

²⁵⁵ ICC-01/05-01/08-T-316-CONF-ENG, page 48, line 1 to page 49, line 21.

Majority considers documents CAR-D04-0004-0030 and CAR-D04-0004-0032 to possess sufficient probative value for the purpose of the admissibility assessment. As to prejudice, the Majority considers that they are sufficiently relevant and probative to outweigh any prejudice their admission would cause. Furthermore, in line with its approach regarding other media articles of a similar nature,²⁵⁶ the Majority is of the view that this type of document can be considered for a limited purpose, namely to provide contextual information about the CAR 2002-2003 events and the armed groups involved therein. In light of the limited purpose for which these documents may be used and taking into account that the documents emanate from the defence itself, the Majority is of the view that the risk of prejudice to a fair trial that their admission may cause is minimal. The Majority, Judge Ozaki dissenting, therefore admits documents CAR-D04-0004-0030 and CAR-D04-0004-0032.

CAR-OTP-0071-0043, CAR-OTP-0071-0049, CAR-OTP-0071-0063 and CAR-OTP-0071-0051

106. Documents **CAR-OTP-0071-0043 (Public)**,²⁵⁷ **CAR-OTP-0071-0049 (Public)**,²⁵⁸ **CAR-OTP-0071-0063 (Public)**²⁵⁹ and **CAR-OTP-0071-0051 (Public)**²⁶⁰ were all used by the prosecution during the questioning of Witness D04-21. The prosecution supports their admission.²⁶¹ Regarding media articles CAR-OTP-0071-0043, CAR-OTP-0071-0049 and CAR-OTP-0071-0063, the defence objects to their admission, arguing that they are not only of no relevance to the charges against Mr Bemba or the credibility of the witness, but they also fall outside the temporal scope of the events in the present case.²⁶² The defence further submits that the relevant excerpts from the documents have been commented upon by

²⁵⁶ ICC-01/05-01/08-2299-Red, paragraphs 91 to 97.

²⁵⁷ ICC-01/05-01/08-T-306-CONF-ENG, page 40, line 21 to page 43, line 12.

²⁵⁸ ICC-01/05-01/08-T-306-CONF-ENG, page 47, line 16 to page 48, line 8.

²⁵⁹ ICC-01/05-01/08-T-306-CONF-ENG, page 48, line 9 to page 49, line 23.

²⁶⁰ ICC-01/05-01/08-T-306-CONF-ENG, page 49, line 24 to page 51, line 20.

²⁶¹ ICC-01/05-01/08-2890, paragraph 2.

²⁶² CC-01/05-01/08-2893-Conf-AnxA, pages 12 to 13.

Witness 209 and exist in the record of the case.²⁶³ The defence adds that Witness D04-21 did not accept the accuracy of document CAR-OTP-0071-0063's contents.²⁶⁴ With regard to document CAR-OTP-0071-0051, the defence objects to its admission, arguing that it is a printout from an unofficial open source from the Internet, and appears to be an excerpt rather than a complete article.²⁶⁵ The defence further argues that the Chamber has previously rejected the admission of documents not bearing sufficient indicia of reliability due to their prejudicial effect on a fair trial.²⁶⁶ The defence further argues that the document is of no relevance to the charges against Mr Bemba or the credibility of the Witness D04-21 and falls outside the temporal scope of the events in the present case. Finally, the defence submits that the witness did not accept the accuracy of the document.²⁶⁷

107. The Chamber notes that **CAR-OTP-0071-0043** is a printout of an online article entitled "*Lettre ouverte de J.P Bemba aux députés et sénateurs du MLC*", dated 3 May 2011, which apparently refers to an open letter sent by Mr Bemba from The Hague on 13 April 2011, which was made public on 30 April 2011. According to the article, Mr Bemba called upon the resistance, members of parliament and senators of the MLC to resist the attempts made by political opponents to weaken the MLC and its role serving the people of the DRC. The article further states that Mr Bemba instructed the new Secretary General of the MLC, Thomas Luhaka ("Mr Luhaka"), to set up a preparatory commission to the MLC Congress, and a committee for the preparation of MLC candidacies for the elections. When the article was presented in court to Witness D04-21 by the prosecution, the witness asserted that "Mr Bemba is in contact with the secretary-general of his party".²⁶⁸

²⁶³ ICC-01/05-01/08-2893-Conf-AnxA, pages 12 to 13.

²⁶⁴ ICC-01/05-01/08-2893-Conf-AnxA, page 13.

²⁶⁵ ICC-01/05-01/08-2893-Conf-AnxA, page 13.

²⁶⁶ ICC-01/05-01/08-2893-Conf-AnxA, page 14.

²⁶⁷ ICC-01/05-01/08-2893-Conf-AnxA, page 14.

²⁶⁸ ICC-01/05-01/08-T-306-CONF-ENG, page 41, lines 7 and 8.

However, when asked whether Mr Bemba still had a role within the MLC while being held in the custody of the Court, Witness D04-21 testified that “what I learned [REDACTED] there is consultation between the national president and the senior staff of the party, but Mr Bemba does not manage or administer the MLC. It will be quite difficult for him to do so under the circumstances in which he is, some 6,000 kilometres away.”²⁶⁹ The Chamber also notes that the witness’s answer did not challenge the authenticity or content of the whole document, but rather mentioned that parts of it could have been misinterpreted by the journalist who reported on the events.²⁷⁰

108. The Chamber notes that document **CAR-OTP-0071-0049** is a printout of an online press article dated 13 August 2012, published by www.allafrica.com. The Chamber further notes that the article relates to a speech allegedly given by the Mr Luhaka, about the status of Mr Bemba’s trial before the Court, in which the Secretary General stresses the accused’s innocence and the MLC’s moral support for Mr Bemba during his trial. This document was presented to Witness D04-21 and he was asked by the prosecution whether he was aware of this statement by the Secretary General of the MLC, to which he responded “Yes, I believe yes.”²⁷¹

109. With regard to relevance, the Majority notes that although press articles CAR-OTP-0071-0043 and CAR-OTP-0071-0049 fall outside the temporal scope of the events in the present case or the charges against Mr Bemba, they may assist the Chamber to better contextualise Witness D04-21’s testimony, assess his credibility and the reliability of his evidence. With regard to the documents’ probative value, the Chamber notes that the prosecution has provided the Chamber with verifiable information on where the documents could be obtained, which has enabled the Chamber to access the documents from the Internet to verify that the document

²⁶⁹ CC-01/05-01/08-T-306-CONF-ENG, page 42, lines 4 to 22.

²⁷⁰ CC-01/05-01/08-T-306-CONF-ENG, page 42, lines 4 to 18.

²⁷¹ ICC-01/05-01/08-T-306-CONF-ENG, page 47, line 20 to page 48, line 6.

are what they purports to be and that the dates of publication provided are in fact correct.²⁷² Moreover, the Chamber notes that neither the witness, nor the defence, challenged the authenticity of the documents. As to prejudice, the documents were in the possession of both parties in advance of the testimony, allowing them to question the witnesses on them. Furthermore, the Majority is of the view that these documents are sufficiently relevant and probative to outweigh the prejudice their admission could cause to a fair trial or a fair evaluation of Witness D04-21's testimony. In these circumstances the Majority, Judge Ozaki dissenting, admits documents CAR-OTP-0071-0043 and CAR-OTP-0071-0049.

110. The Chamber notes that document **CAR-OTP-0071-0063** is a printout of an online media article dated 12 May 2011, published by www.cheikfitanews.net. The Chamber further notes that the article relates to Mr Luhaka's visit to Brussels, where he organised an informational meeting dealing with Mr Bemba's situation, the situation of the MLC and the situation of the country. With regard to Mr Bemba's situation, according to the article, Mr Luhaka was optimistic regarding the outcome of the trial. Furthermore, in the article, the Secretary General appears to be discussing some of the evidence given at trial. Finally, the document mentions Mr Luhaka's planned visit to Mr Bemba in The Hague. When presented with the article, the prosecution focused its questioning on this planned visit.²⁷³ Witness D04-21 declared that [REDACTED] indicated that the different bodies of the party exchanged the "information they may have had or may have read about in the media".²⁷⁴

²⁷² For CAR-OTP-0071-0043: <http://unitedpeopleofcongo.blogspot.nl/2011/05/lettre-ouverte-de-jp-bemba-aux-deputes.html>; for CAR-OTP-0071-0049: <http://fr.allafrica.com/stories/201208130872.html> and for CAR-OTP-0071-0063: <http://www.cheikfitanews.net/article-thomas-luhaka-sg-du-mlc-a-bruxelles-unite-de-l-opposition-et-vote-pour-l-alternance-73655279.html>

²⁷³ ICC-01/05-01/08-T-306-CONF-ENG, page 49, lines 13 to 15.

²⁷⁴ ICC-01/05-01/08-T-306-CONF-ENG, page 48, line 14 to page 49, line 23.

111. The Chamber notes that document **CAR-OTP-0071-0051** is a printout of an online media article dated 4 September 2012, published by www.fr.igihe.com. Contrary to the defence's assertion, it does not appear to be an excerpt of a broader document but consists of a complete press article containing the transcription of an interview given to Radio Okapi by the Deputy Secretary-General of the MLC, Jean-Lucien Busa, in which he commented on the presentation of evidence at the accused's trial, on behalf of the MLC, stating that Mr Bemba did not have control over his troops in the CAR, that the MLC's intervention in the CAR was legal and that MLC soldiers were incorporated in the Central African army. When presented with the document, Witness D04-21 stated that "there are some points in this statement which I do not believe are in keeping with reality."²⁷⁵ When further questioned by the Presiding Judge, the witness clarified that "I don't think that they were able to visit him every day".²⁷⁶

112. The Chamber is of the view that documents CAR-OTP-0071-0063 and CAR-OTP-0071-0051 were used by the prosecution in relation to possible recent contacts between Mr Bemba, from the detention centre, and current MLC leaders. The Majority notes that although the articles fall outside the temporal scope of the events in the case, they may be relevant for the Chamber to better contextualise Witness D04-21's testimony, and to assess his credibility and the reliability of his evidence. With regard to the documents' probative value, the Chamber notes that these are public documents, and the prosecution has provided the Chamber with verifiable information on where the documents could be obtained. This has enabled the Chamber to access the document from the Internet to verify that the documents are what they purport to be and that the dates of publication provided are in fact correct. Lastly, the documents were in the possession of both parties in advance of the testimony, allowing them to question the witness on their content.

²⁷⁵ ICC-01/05-01/08-T-306-CONF-ENG, page 50, line 4 to page 52, line 7.

²⁷⁶ ICC-01/05-01/08-T-306-CONF-ENG, page 52, lines 2 to 6.

The Majority finds that the documents are sufficiently relevant and probative to outweigh the prejudice they may cause to a fair trial. In these circumstances, the Majority is of the view that there is no reason to believe that their admission will have a prejudicial effect on a fair trial. The Majority, Judge Ozaki dissenting, admits documents CAR-OTP-0071-0063 and CAR-OTP-0071-0051.

113. Documents **CAR-D04-0002-1380 (Public)**, **CAR-DEF-0001-0205 (Public)** and **CAR-OTP-0069-0146 (Level of classification not indicated)** were used during the questioning of Witnesses 209,²⁷⁷ 173,²⁷⁸ and 178,²⁷⁹ and D04-65.²⁸⁰ The prosecution supports their admission.²⁸¹ The defence objects to the admission of these documents, reiterating its previous submissions on the admission of media and press articles, and arguing that Witness 209 commented in court on the relevant excerpts of the documents.²⁸²

114. The Chamber notes that document **CAR-D04-0002-1380** is a printout of an online media article published by www.sangonet.com and citing as a source AFP, which is dated 8 December but with no indication of the year of publication. However, the web link shows that the article appears to have been published in December 2002.²⁸³ The document is entitled "*Les forces fidèles au président Patassé reprennent le contrôle de Damara*" and relates to the recovery of the city of Damara by forces loyal to President Patassé, stating that they are composed by FACA elements, USP and MLC forces. The Chamber notes that, when shown this document in court by the defence, Witness 209 indicated that the whole text was

²⁷⁷ Transcript of hearing, 6 June 2011, ICC-01/05-01/08-T-122-CONF-ENG, page 42, line 10 to page 46, line 17.

²⁷⁸ Transcript of hearing, 29 August 2011, ICC-01/05-01/08-T-149-CONF-ENG, page 30, line 2 to page 31, line 9.

²⁷⁹ Transcript of hearing, 8 September 2011, ICC-01/05-01/08-T-157-CONF-ENG, page 18, line 15 to page 21, line 5.

²⁸⁰ ICC-01/05-01/08-T-246-CONF-ENG, page 56, line 2 to page 59, line 17.

²⁸¹ ICC-01/05-01/08-2890, paragraph 2.

²⁸² ICC-01/05-01/08-2893-Conf-AnxA, pages 3 to 6.

²⁸³ http://www.sangonet.com/ActualiteC13/Damara_repriseForcesE7dec02.html and the mention of the complete date 8 December 2002 in <http://www.sangonet.com/ActualiteC13/Actualite-CA13.html>

not entirely true, since no Central African soldiers were operating in the field at that time and that he did not know about the presence of troops, other than MLC soldiers, in Damara at the time.²⁸⁴ The Chamber finds the document relevant as it contains information which relates to issues which are properly to be considered by the Chamber, such as information regarding the events in Damara and the composition of the loyalist forces. Additionally, the Majority finds that document may assist the Chamber to better assess the witness's testimony and his credibility.

115. The Chamber notes that document **CAR-DEF-0001-0205** is a copy of an article published in the Central African newspaper, "*L'echo de Centrafrique*" on 31 December 2002 and reports on lootings allegedly committed by Mr Bozizé's rebels in the towns of Kabo, Batangafo, Kaga-Bandoro, Sibut, Dekoua, Damara, Bambari and Bozoum, and the alleged killings and rapes of civilians in Bossangoa. The Chamber further notes that the "bulletin" was published within the temporal scope of the charges. The defence used this article during the testimony of Witnesses 173 and 178 to, *inter alia*, question them on whether they witnessed events in Bossangoa, Bossembélé and Bozoum.²⁸⁵ As such, given that both witnesses questioned the reliability of the press article, the Majority finds that the document is relevant as it will assist the Chamber to better contextualise their testimonies. In addition, Witness 173 repeatedly disagreed with the content of the article, asserted that alleged crimes were committed by Mr Patassé's troops and the MLC, or did not want to comment on parts of the article.²⁸⁶ Therefore, the document is particularly relevant to assess Witness 173's credibility and the reliability of his evidence.

²⁸⁴ ICC-01/05-01/08-T-122-CONF-ENG, page 42, line 10 to page 46, line 17.

²⁸⁵ ICC-01/05-01/08-T-157-CONF-ENG, page 18, line 20 to page 21, line 3; ICC-01/05-01/08-T-149-CONF-ENG, page 30, line 3 to page 36, line 2.

²⁸⁶ ICC-01/05-01/08-T-149-CONF-ENG, page 33, line 14 to page 36, line 16.

116. The Chamber notes that **CAR-OTP-0069-0146** is a printout of an online media article entitled “*Question: «Qui informe Prosper N’DOUBA?» Réponse: Les citoyens centrafricains*”, dated 12 October 2011, apparently published by Centrafrique-Press.com. The article relates to how Prosper N’Douba, Director of Publications of the website “*Centrafrique-Presse*,” obtained information about the CAR and the Bozizé regime which was published on the website. According to Centrafrique-Presse, its information is derived from ordinary CAR citizens who allegedly spoke out against the crimes committed by General Bozizé’s government against the CAR population. When shown the document in court by the prosecution, Witness D04-65 was, *inter alia*, questioned about his relationship with General Bozize’s regime.²⁸⁷ The Majority notes that although the article falls outside the temporal scope of the events in the case, it is nevertheless relevant for the Chamber to better contextualise Witness D04-65’s testimony, assess his credibility and the reliability of his evidence.

117. With regard to the probative value of CAR-D04-0002-1380, CAR-DEF-0001-0205 and CAR-OTP-0069-0146, the Majority notes that the press articles bear sufficient indicia of reliability as they are dated as well as publicly available on the Internet. Moreover, the articles appear to have been produced in the ordinary course of the activities of either a well-known international media organisation (AFP source) or a known Central African media outlet, further supporting their reliability. When the web-link appearing at the bottom of the article is not complete, as it is the case for CAR-OTP-0069-0146, the prosecution provided the Chamber with verifiable information on where the document could be obtained, which enabled the Chamber to access the document from the Internet to verify that the document is what it purports to be and that the date of publication

²⁸⁷ CAR-OTP-0069-0146; ICC-01/05-01/08-T-246-CONF-ENG, page 56, line 2 to page 59, line 17.

provided is in fact correct. Indeed, this article is accessible online²⁸⁸ and, in the Majority's view, bears sufficient indicia of reliability.

118. As to prejudice, the Majority is of the view that these documents may be admitted for a limited purpose, since they may serve to corroborate other pieces of evidence and may be examined when assessing whether the conduct described in the charges was widely reported. Documents CAR-D04-0002-1380 and CAR-DEF-0001-0205 originate from the defence itself and all three documents were in the possession of both parties in advance of the testimony, allowing them to question the witnesses on it. Lastly, the Chamber is of the view that the three press articles are sufficiently relevant and probative to outweigh the prejudice it may cause to a fair trial. In these circumstances, 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. The Chamber, with Judge Ozaki dissenting on the reasoning, admits document CAR-D04-0002-1380. The Majority, Judge Ozaki dissenting, admits documents CAR-DEF-0001-0205 and CAR-OTP-0069-0146.

119. Documents **CAR-OTP-0069-0271 (Public)** and **CAR-OTP-0069-0272 (Public)** are documents that were used by the prosecution during the questioning of [REDACTED].²⁸⁹ The prosecution supports their admission.²⁹⁰ The defence objects to the admission of these documents, arguing that they are printouts from unofficial open sources from the Internet, appear to be excerpts rather than complete articles, and provide no details of their authors.²⁹¹ The defence further argues that the Chamber should, as it has in the past, reject the admission of documents not bearing sufficient indicia of reliability due to their prejudicial

²⁸⁸ <http://www.centrafrique-presse.info/site/info-politique-49.html>

²⁸⁹ [REDACTED].

²⁹⁰ ICC-01/05-01/08-2890, paragraph 2.

²⁹¹ ICC-01/05-01/08-2893-Conf-AnxA, pages 6 to 7.

effect on a fair trial.²⁹² Lastly, the defence argues that the witness did not accept the accuracy of the document.²⁹³

120. The Chamber notes that item **CAR-OTP-0069-0271** is a media article dated 29 November 2002, transcribing a *Communiqué* entitled “*Communiqué du Parti de l’Unité Nationale (PUN): Question de l’arrestation de ses cadres, de la privation de liberté, de la démission du chef de l’Etat*” apparently issued on 25 October 2002. The Chamber further notes that in the *Communiqué*, the “*Parti de l’Unité Nationale*” appears to describe the general situation of crisis in the CAR and requests the resignation of President Patassé [REDACTED].²⁹⁴ The Chamber notes that, when presented with the document by the prosecution, [REDACTED].²⁹⁵

121. The Chamber notes that **CAR-OTP-0069-0272** is a printout of an online media article containing the transcription of an interview allegedly given by [REDACTED] to “*Centrafrique News*” dated [REDACTED].²⁹⁶ The Chamber further notes that in the interview, [REDACTED]. The Chamber notes that the document was presented by the prosecution to [REDACTED].²⁹⁷

122. As to the relevance of documents CAR-OTP-0069-0271 and CAR-OTP-0069-0272, the Majority is satisfied that the media articles are relevant to issues properly to be considered by the Chamber as it may assist it to better contextualise [REDACTED] assess his credibility and the reliability of his evidence. The Majority is satisfied of the documents’ probative value as they are documents that are dated and appear to have been produced in the ordinary course of the activities of a known Central African media outlet, further supporting their reliability. Moreover, the prosecution has provided the Chamber

²⁹² ICC-01/05-01/08-2893-Conf-AnxA, pages 6 to 7.

²⁹³ ICC-01/05-01/08-2893-Conf-AnxA, page 6.

²⁹⁴ CAR-OTP-0069-0271.

²⁹⁵ [REDACTED].

²⁹⁶ CAR-OTP-0069-0272, at page 0277 to 0279.

²⁹⁷ [REDACTED].

with verifiable information on where the documents could be obtained, which has enabled the Chamber to access the documents from the Internet to verify that the documents are what they purport to be and that the date of their publication provided is correct.²⁹⁸ As to potential prejudice, as previously indicated, the Majority is of the view that, the documents may serve to assist it in better contextualising [REDACTED] and for the limited purpose of assessing his credibility and the reliability of his testimony. Therefore, the Majority considers that the press articles are sufficiently relevant and probative to outweigh any prejudice their admission may cause to a fair trial. The Chamber notes that the defence was in possession of the documents in advance of the witness's testimony allowing it to question the witness on these documents. In these circumstances, the Majority is of the view that there is no reason to believe that their admission will have a prejudicial effect on a fair trial. The Majority, Judge Ozaki dissenting, admits documents CAR-OTP-0069-0271 and CAR-OTP-0069-0272.

123. Document **CAR-OTP-0069-0303 (Public)** was used during the testimony of Witnesses D04-49²⁹⁹ and D04-21.³⁰⁰ The prosecution supports its admission.³⁰¹ The defence objects to the admission of this article, arguing that Witnesses D04-49 had never seen the document and was unaware of its existence.³⁰² The defence further argues that while Witness D04-21 was aware of the document, it is irrelevant to the allegations against the accused, falls far outside the temporal scope of the charges against him, and is of no value to the Chamber in assessing his credibility.³⁰³

²⁹⁸ [REDACTED].

²⁹⁹ Transcript of hearing, 21 November 2012, ICC-01/05-01/08-T-272-CONF-ENG, page 63, line 14 to page 64, line 8.

³⁰⁰ ICC-01/05-01/08-T-306-CONF-ENG, page 39, line 1 to page 40, line 19.

³⁰¹ ICC-01/05-01/08-2890, paragraph 2.

³⁰² CC-01/05-01/08-2893-Conf-AnxA, page 7.

³⁰³ CC-01/05-01/08-2893-Conf-AnxA, pages 7 and 8.

124. The Chamber notes that CAR-OTP-0069-0303 is a printout of an online document published in a webpage which purports to be the official site of the MLC. The Chamber further notes that the main page contains what appears to be a message from Mr Bemba addressed to the people of the DRC, dated 12 November 2012, and bears what Witnesses D04-21 and D-49 recognised to be Mr Bemba's signature.³⁰⁴ With regard to the relevance of the document, the Chamber is not convinced of the defence's objections to the admission of the document in relation to the testimony of Witness D04-49. Indeed, the fact that a witness was not aware of a public document does not have any impact on the admissibility of such document. In the present case, both witnesses were questioned on the document mainly for the purpose of testing their credibility. In addition, Witness D04-21 testified on Mr Bemba's contacts in 2012 with the MLC.³⁰⁵ As to the relevance of document CAR-OTP-0069-0303, the Majority finds that despite the document falling outside the temporal scope of the charges against Mr Bemba, it is nevertheless relevant as it may assist the Chamber to better contextualise the witnesses' testimonies and assess their credibility and the reliability of their evidence. The Chamber is satisfied of the document's probative value as it appears to be the official webpage of the MLC, the content of which was recognised by Witness D04-21.³⁰⁶ Moreover, the document is dated and signed, contains the accused's photograph, and appears to have been produced in the ordinary course of the activities of the MLC. In addition, the prosecution has provided the Chamber with verifiable information on where the document could be obtained and the Chamber notes that the date of publication provided is in fact correct.³⁰⁷ As to prejudice, the Chamber notes that the defence was in possession of the document in advance of the witness's testimony allowing it to question the witness on the document. The Majority finds that the document is sufficiently

³⁰⁴ ICC-01/05-01/08-T-272-CONF-ENG, page 64, lines 6 and 7; ICC-01/05-01/08-T-306-CONF-ENG, page 39, lines 24 and 25.

³⁰⁵ ICC-01/05-01/08-T-306-CONF-ENG, page 39, line 1 to page 40, line 19.

³⁰⁶ ICC-01/05-01/08-T-306-CONF-ENG, page 39, lines 10 to 18.

³⁰⁷ <http://www.mouvementdeliberationducongo.com/>

relevant and probative to outweigh any prejudice its admission may cause to a fair trial. In these circumstances, 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. The Majority, with Judge Ozaki dissenting, admits document CAR-OTP-0069-0303.

125. Documents **CAR-OTP-0005-0125 (Public)** and **CAR-OTP-0005-0127 (Public)** are media articles that were used during the questioning of Witness D04-45.³⁰⁸ The prosecution supports their admission.³⁰⁹ The defence objects to the admission of these articles, arguing that Witness D04-45 testified that its contents were incorrect.³¹⁰ The defence further reiterates its previous submissions on the admission of media and press articles, and argues that the relevant excerpts from the documents have already been commented on by prosecution Witness 209 and exist in the record of the case.³¹¹

126. The Chamber notes that **CAR-OTP-0005-0125** is a printout of an online news article from the RFI website, dated 27 October 2002, entitled "*Contre-offensive des loyalistes à Bangui*". The article relates to combat between General Bozizé's troops who entered Bangui in 2002-2003 and the reaction by the loyalists forces, alleging that the MLC troops, directed by Jean-Pierre Bemba, could be part of these forces. The Chamber notes that **CAR-OTP-0005-0127** is a printout of an online news article from the RFI website, dated 29 October 2002, entitled "*Guerre ouverte entre Bozizé et Patassé*". The article states that President Patassé, along with his close allies, the Libyan troops and Mr Bemba's MLC soldiers, launched a counteroffensive attack against General Bozizé. The article further states that General Bozizé arrived in Chad from Paris on 27 October 2002, in order to carry an offensive attack in Bangui. The Chamber considers that both articles are

³⁰⁸ Transcript of hearing, 20 March 2013, ICC-01/05-01/08-T-298-CONF-ENG, page 60, line 16 to page 62, line 20;

³⁰⁹ ICC-01/05-01/08-2890, paragraph 2.

³¹⁰ ICC-01/05-01/08-2893-Conf-AnxA, pages 9 to 10.

³¹¹ ICC-01/05-01/08-2893-Conf-AnxA, pages 9 to 10.

relevant as they provide information relevant to issues that are properly to be considered by the Chamber. In addition, the Majority finds that these documents may serve to assess the credibility and testimony of Witness D04-45 as he read out some excerpts of the articles and commented on their content in relation to the date of arrival of the MLC in the CAR.³¹²

127. As to probative value, the Chamber notes that in both articles the dates “27 October 2002” and “29 October 2002” are handwritten at the top of each document. The Chamber also notes that the documents are dated “21 November 2007” at the bottom of the documents. During the testimony of the witness, the issue of the inconsistent dates on the documents was mentioned and the Chamber deferred the issue for later analysis.³¹³ The Chamber accordingly deems it necessary to address the issue in the present Decision. During the witness’s testimony, the prosecution submitted that the “21 November 2007” date appearing at the bottom of the articles was the date the articles were accessed and printed, and not when they were produced.³¹⁴ The Chamber is satisfied with this justification, especially because they are press articles taken from the website of RFI where they are still available in unaltered form, and were prepared contemporaneously with the events under consideration. Although the defence raised an objection as to the hand-written date on both documents, the Chamber recalls that it already admitted two other press articles from RFI, which, despite the defence’s objection, were considered sufficiently probative.³¹⁵ In these circumstances, the Majority finds that the documents bear sufficient indicia of reliability and are probative.

³¹² ICC-01/05-01/08-T-298-CONF-ENG, page 60, line 16 to page 65, line 19.

³¹³ ICC-01/05-01/08-T-298-CONF-ENG, page 62, lines 18 and 19.

³¹⁴ ICC-01/05-01/08-T-298-CONF-ENG, page 61, line 23 to page 62, line 20.

³¹⁵ Third Decision on the prosecution and defence requests for the admission of Evidence, 6 November 2013, ICC-01/05-01/08-2864-Conf, paragraphs 84 to 91.

128. As to the potential prejudice, as previously indicated, the Majority is of the view that this type of material may 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 armed conflict under examination was widely reported. The Majority finds that the documents are sufficiently relevant and probative to outweigh the prejudice their admission may cause. In addition, the documents were in possession of the defence sufficiently in advance of the witness's testimony, thereby affording the defence the opportunity to question Witness D04-45 on them. Lastly, in light of the envisioned limited usage of the information contained in these documents, the Majority is of the view that there is no reason to believe that their admission will have a prejudicial effect on a fair trial. The Chamber, with Judge Ozaki dissenting on the reasoning, admits documents CAR-OTP-0005-0125 and CAR-OTP-0005-0127.

129. Documents **CAR-OTP-0057-0243 (Public)**, **CAR-OTP-0057-0353 (Public)** and **CAR-OTP-0036-0041 (Public)** are transcripts of audio broadcasts from RFI that were used during the questioning of Witness D04-56.³¹⁶ The prosecution supports their admission.³¹⁷ The defence objects to the admission of these audio transcripts, arguing that Witness D04-56 was not aware of their content and contested them during his questioning.³¹⁸ The defence further reiterates its previous submissions on the admission of media and press articles, and their lack of probative value.³¹⁹

130. The Chamber notes that the three items are the transcripts of three RFI audio broadcasts that were previously admitted by Decision 2299, items CAR-OTP-

³¹⁶ Transcript of hearing, 10 May 2013, ICC-01/05-01/08-T-315-Red-ENG, page 41, line 21 to page 46, line 7; ICC-01/05-01/08-T-315-Red-ENG, page 46, line 8 to page 52, line 4; ICC-01/05-01/08-T-315-Red-ENG, page 52, line 5 to page 54, line 9.

³¹⁷ ICC-01/05-01/08-2890, paragraph 2.

³¹⁸ ICC-01/05-01/08-2893-Conf-AnxA, pages 15 to 16.

³¹⁹ ICC-01/05-01/08-2893-Conf-AnxA, pages 15 to 16.

0031-0116, CAR-OTP-0031-0122, and CAR-OTP-0031-0099 respectively.³²⁰ As such, the Majority already decided that the three audio radio recordings containing the accounts of persons interviewed may be considered for limited purposes, to be determined on a case-by-case basis. For these particular RFI radio-broadcasts, the information contained therein may serve to corroborate other pieces of evidence and might be examined when assessing the prosecution's allegation that the conduct described in the charges was widely broadcast which, according to the prosecution, may have implications with regard to the accused's alleged knowledge of the crimes charged. As such, the Majority is of the view that documents CAR-OTP-0057-0243, CAR-OTP-0057-0353 and CAR-OTP-0036-0041, containing the transcription of the audio recordings of evidence CAR-OTP-0031-0116, CAR-OTP-0031-0122, and CAR-OTP-0031-0099, already admitted, have to be analysed in a consistent manner. In light of the envisioned limited usage of the information contained in these transcripts of recordings, namely for the Chamber's determination of whether the CAR events included in the charges were widely broadcasted, the Majority is of the view that there is no reason to believe that the admission of these audio transcripts will have a prejudicial effect on a fair trial. The Chamber, with Judge Ozaki dissenting on reasoning, admits into evidence documents CAR-OTP-0057-0243, CAR-OTP-0057-0353 and CAR-OTP-0036-0041.

131. Documents **CAR-OTP-0036-0039 (level of classification not indicated)** and **CAR-OTP-0056-0278 (level of classification not indicated)** are transcripts of audio materials that were used during the questioning of Witness D04-48.³²¹ The prosecution supports their admission.³²² The defence objects to the admission of the broadcasts, arguing that the relevant excerpts from the documents have

³²⁰ ICC-01/05-01/08-2299-Conf, paragraphs 123 to 124, and paragraphs 127 to 128.

³²¹ Transcript of hearing, 7 November 2013, ICC-01/05-01/08-T-268-CONF-ENG, page 29, line 7 to page 36, line 5.

³²² ICC-01/05-01/08-2890, paragraph 2.

already been commented on by Witness 209 and exist in the record of the case.³²³ The defence further reiterates its previous submissions on the admission of media and press articles, and their lack of probative value.³²⁴

132. The Chamber notes that the documents are the French and English transcripts to a RFI audio broadcast that was previously admitted as evidence in Decision 2299, item CAR-OTP-0031-0093.³²⁵ As such, the Majority already decided that the radio recording containing information on the events taking place in the CAR and the MLC's activity during the time period relevant to the charges may be considered for limited purposes, to be determined on a case-by-case basis. The information contained therein may serve to corroborate other pieces of evidence and might be examined when assessing the prosecution's allegation that the conduct described in the charges was widely broadcast which, according to the prosecution, may have implications with regard to the accused's alleged knowledge of the crimes charged. The Majority is of the view that documents CAR-OTP-0036-0039 and CAR-OTP-0056-0278, containing the transcription of the audio recording CAR-OTP-0031-0093, already admitted into evidence, must be analysed in a consistent manner. In light of the envisioned limited usage of the information contained in these transcripts, namely for the Chamber's determination on whether the CAR events were widely broadcasted, the Majority is of the view that there is no reason to believe that the admission of these audio transcripts will have a prejudicial effect on a fair trial. The Chamber, with Judge Ozaki dissenting on reasoning, admits into evidence documents CAR-OTP-0036-0039 and CAR-OTP-0056-0278.

³²³ ICC-01/05-01/08-2893-Conf-AnxA, page 7.

³²⁴ ICC-01/05-01/08-2893-Conf-AnxA, page 7.

³²⁵ ICC-01/05-01/08-2299-Conf, paragraphs 127 to 128.

133. Document **CAR-OTP-0013-0098 (Public)**,³²⁶ was used by the prosecution during the questioning of Witness D04-02.³²⁷ The prosecution supports its admission.³²⁸ The defence objects to the admission of this document, arguing that there is no way to verify the source of the article and the details of the author are not provided.³²⁹ The defence further argues that the witness to whom the document was shown could neither identify nor authenticate it, given his testimony that he did not read this particular newspaper during the events.³³⁰ Lastly, the defence submits that the Chamber has previously refused to admit excerpts from "*Le Citoyen*", citing the prejudice such admission would cause to the defence.³³¹

134. The Chamber notes that CAR-OTP-0013-0098 is a single-page article entitled "*Bossebele: Silence! Les Nyamamulenge de Jean-Pierre Bemba démocratisent*" from the edition of the newspaper "*Le Citoyen*", dated 29 January 2003. The article states that Mr Bemba's soldiers have chosen the civilian population of Bossembélé as their enemy, rather than General Bozizé's troops. The article goes on to state that Mr Bemba's "Nyamamulengués" have been accused of looting, pillaging, murders and rapes, while the USP stood by and has done nothing to stop them. The Chamber notes that the document was put to Witness D04-02, who recognised the newspaper but testified that he did not read this particular article.³³² Based on this article, the witness was, *inter alia*, questioned by the prosecution on whether he heard the MLC soldiers being referred to as the "Nyamamulengués".³³³ As such, the Chamber finds the document relevant as it contains information which relates to issues which are properly to be considered

³²⁶ See Oral Order by the Presiding Judge in Transcript of hearing, 12 June 2013, ICC-01/05-01/08-T-321bis-CONF-ENG ET, page 28, line 13.

³²⁷ ICC-01/05-01/08-T-321bis-CONF-ENG, page 28, line 4 to page 29, line 24.

³²⁸ ICC-01/05-01/08-2890, paragraph 2.

³²⁹ ICC-01/05-01/08-2893-Conf-AnxA, page 19.

³³⁰ ICC-01/05-01/08-2893-Conf-AnxA, page 19.

³³¹ ICC-01/05-01/08-2893-Conf-AnxA, page 19.

³³² ICC-01/05-01/08-T-321bis-CONF-ENG, page 28, line 24 to page 29, line 14.

³³³ ICC-01/05-01/08-T-321bis-CONF-ENG, page 28, lines 15 and 16.

by the Chamber, such as, *inter alia*, information regarding the alleged commission of crimes in Bossembélé by Mr Bemba's soldiers. The Majority also finds this document relevant to assist the Chamber to better contextualise the witness's testimony and assess his credibility.

135. Turning to probative value, the Chamber notes that this document is a single-page article which appears to be complete as it concludes with the reference to its author "*De notre envoyé special à Bossembélé*". The Chamber notes that it has admitted pages of the newspaper "*Le Citoyen*" previously, and notes further that the formatting and layout of document CAR-OTP-0013-0098 corresponds to that of, for example, the articles contained in documents CAR-OTP-0013-0114 and CAR-OTP-0004-0336, admitted in Decision 2864³³⁴ and Decision 2299.³³⁵ Moreover, the page submitted contains a footer detailing the name of the newspaper, the date, and the issue number. 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 the one under consideration, can comprise complete documents in themselves which can be properly assessed in their context.³³⁶ Given the above, the Chamber is of the view that document CAR-OTP-0013-0098 bears sufficient indicia of authenticity for the Chamber to determine that it is an authentic copy of a single page of a well-known Central African newspaper.

136. As to the potential prejudice, as previously indicated, the Majority is of the view that this type of material 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 broadcast. In addition, taking into account

³³⁴ ICC-01/05-01/08-2864-Conf, paragraphs 75 to 76.

³³⁵ ICC-01/05-01/08-2299-Red, paragraphs 96 to 97.

³³⁶ ICC-01/05-01/08-2299-Red, paragraph 96.

that the prosecution questioned the witness in relation to the content of the article, the Majority is of the view that it may also serve to facilitate the Chamber's assessment of and contextualise the testimony of Witness D04-02. Lastly, the Chamber notes that the defence was in possession of the document in advance of the witness's testimony, thereby allowing it to question the witness on the document. In these circumstances, the Majority is of the view that the document is sufficiently relevant and probative to outweigh the potential prejudice its admission may cause to a fair trial or the fair evaluation of Witness D04-02's testimony. The Chamber, with Judge Ozaki dissenting on the reasoning, admits document CAR-OTP-0013-0098.

137. Documents **CAR-OTP-0030-0269 (Public)** and **CAR-D04-0002-2027 (Public)** are media reports that were used by the prosecution during the questioning of Witness D04-18.³³⁷ The prosecution supports their admission.³³⁸ The defence objects to the admission of these documents, arguing that they are printouts from unofficial open sources from the Internet and provide no details of their author.³³⁹ The defence further argues that CAR-OTP-0030-0269 is, in fact, second-hand hearsay evidence, as it purports to be a report of a report of an alleged statement given by Mr Bemba.³⁴⁰ Moreover, it submits that the report was put to Witness D04-18 who could not authenticate the report or its contents.³⁴¹ Lastly, the defence argues that the Chamber should reject the admission of these documents, as it has done in the past with regard to similar documents, as they have insufficient indicia of reliability due to their prejudicial effect on a fair trial.³⁴²

³³⁷ ICC-01/05-01/08-T-319-CONF-ENG, page 42, line 8 to page 44, line 13; ICC-01/05-01/08-T-319-CONF-ENG, page 47, line 20 to page 54, line 7.

³³⁸ ICC-01/05-01/08-2890, paragraph 2.

³³⁹ ICC-01/05-01/08-2893-Conf-AnxA, pages 17 to 18.

³⁴⁰ ICC-01/05-01/08-2893-Conf-AnxA, page 17.

³⁴¹ ICC-01/05-01/08-2893-Conf-AnxA, pages 17 to 18.

³⁴² ICC-01/05-01/08-2893-Conf-AnxA, pages 17 to 18.

138. The Chamber notes that CAR-OTP-0030-0269 is a printout of an online news article from the “Integrated Regional Information Networks” (“IRIN”) website, dated 8 June 2001, entitled “*Central African Republic: Coup thwarted, civilians begin returning to Bangui*”. The article appears to reproduce an interview of Mr Bemba by RFI stating that he had sent his troops to Bangui to restore peace, security and stability, and to prevent the security situation from spilling over to Zongo. The article also states that according to Mr Bemba, the army has a disciplinary council and a code of conduct, and should the MLC soldiers commit crimes, they will have to appear before a disciplinary council. The Chamber notes that the document was shown to Witness D04-18, who was asked to comment on its content and was questioned on the disciplinary council within the MLC army and about possible investigations that would have been carried out in relation to alleged crimes if committed by Mr Bemba’s troops.³⁴³ As such, the Majority is satisfied that the document may be relevant to issues properly to be considered by the Chamber as it describes, *inter alia*, the context in which the MLC troops intervened in the CAR in 2001 and Mr Bemba’s capacity to repress potential abuses by the MLC troops. Turning to the document’s probative value, the Chamber notes that the article is a printout of an online media article, available on the website of “IRIN” and refers to the interview of the accused by a well-known media, RFI, which was carried out in the course of its normal activities. The prosecution has provided the Chamber with verifiable information on where the document could be obtained, which has allowed the Chamber to verify that the document is what it purports to be and that the date of publication provided is in fact correct.³⁴⁴

139. Regarding the issue of prejudice, the Chamber notes that the document reproduces an interview by a third media agency and that the defence’s argument

³⁴³ ICC-01/05-01/08-T-319-CONF-ENG, page 42, line 8 to page 44, line 13.

³⁴⁴ <http://www.irinnews.org/printreport.aspx?reportid=22038>.

that it is “double hearsay” goes to the assessment of the weight that will be given to this evidence in the Chamber’s final analysis but not to the admissibility assessment. The Chamber reiterates that the admissibility inquiry has no bearing on the Chamber's final determination of the weight that it will give to any particular item of evidence. Indeed, the admissibility determination does not in any way predetermine the Chamber's final assessment of the evidence or the weight to be afforded to it. This will only be determined by the Chamber when assessing the entirety of the evidence admitted for the purpose of the trial. Lastly, the Chamber notes that the defence was in possession of the document in advance of the witness’s testimony allowing it to question the witness on the document. 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. The Chamber, Judge Ozaki dissenting, admits document CAR-OTP-0030-0269.

140. The Chamber notes that **CAR-D04-0002-2027** is a printout of an online article of “Afrique Express” dated 13 June 2001, entitled “*Centrafrique chronologie d’un coup d’État raté (mai 2001)*”. The article contains a chronology of events between 27 May 2001 and 8 June 2001, after the 2001 attempted coup in the CAR. It relates to the MLC intervention in the CAR at the request of President Patassé, its legitimacy and reports on allegations of crimes possibly committed by “*les hommes de M. Bemba*”. The Chamber notes that Witness D04-18 was shown the document and asked to comment on its content.³⁴⁵ As such, although the document falls outside the temporal scope of the charges, the Majority finds the document is relevant as it may assist the Chamber to better contextualise the witness’s testimony and assess his credibility and the reliability of his evidence.

141. With regard to probative value, the Majority notes that the document is dated and complete. It bears sufficient indicia of reliability as it contains verifiable

³⁴⁵ ICC-01/05-01/08-T-319-CONF-ENG, page 47, line 25 to page 54, line 7.

information on where the document could be obtained, which has enabled the Chamber to access the document from the Internet to verify that the document is what it purports to be and that the date of publication provided is in fact correct.³⁴⁶ As to the potential prejudice, as previously indicated, the Majority is of the view that the document is sufficiently relevant and probative to outweigh any prejudice it may cause to a fair trial. In addition, this type of material can be considered for a limited purpose, in particular, to corroborate other pieces of evidence. Lastly, the Chamber notes that the defence was in possession of the document in advance of the witness's testimony allowing it to question the witness on the document. In these circumstances, 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. The Majority, Judge Ozaki dissenting, admits document CAR-D04-0002-2027.

Tenth Category: Other documents

142. The Chamber requested observations from the parties and participants on the admission as evidence of eight "other documents", namely documents **CAR-OTP-0028-0437**, **CAR-DEF-0002-0343**, **CAR-OTP-0071-0019**, **CAR-OTP-0037-0126**, **CAR-OTP-0029-0110**, **CAR-OTP-0029-0266**, **CAR-OTP-0032-0096** and **CAR-OTP-0044-0037**.

143. Document **CAR-OTP-0028-0437 (Confidential)** was used by the defence during the questioning of Witness 47.³⁴⁷ The prosecution supports the admission of this document, as it may assist the Chamber to better contextualise the

³⁴⁶ <http://www.afrique-express.com/archive/CENTRALE/rca/rcapol/chronologie230.htm> (last accessed 21 January 2014).

³⁴⁷ Transcript of hearing, 1 November 2011, ICC-01/05-01/08-T-179-CONF-ENG, page 17, line 4 to page 26, line 7.

testimony.³⁴⁸ The defence supports the admission of this document, adding that it is directly relevant to the claim made by Witness 47 concerning [REDACTED].³⁴⁹ The defence further submits that the document was disclosed by the prosecution, and authenticated by the witness during his testimony, and as such, has sufficient probative value warranting admission. Lastly, the defence submits that there is no prejudice to a fair trial arising from its admission, given that it was disclosed by the prosecution and was available to it during its questioning of the witness.³⁵⁰

144. The Chamber notes that the document is [REDACTED] issued by the “Central African Society of River Transport” (“SOCATRAF”). The Chamber further notes that the document [REDACTED]. When the witness was presented with the document, he stated that it was “controversial” as it contains inaccuracies regarding [REDACTED].³⁵¹ The witness also testified on the alleged [REDACTED] misuse of SOCATRAF for something “purely military in nature” [REDACTED].³⁵² The Chamber finds that the document is relevant to issues to be properly analysed by it and may assist the Chamber in contextualising Witness 47’s testimony, as well as to assess his credibility. As to the probative value [REDACTED] the witness attested its authenticity during his testimony.³⁵³ Although the dates contained in the document are reported to be incorrect by the witness, the Chamber is satisfied of the document’s probative value as it bears sufficient indicia of reliability, namely a date, stamp and signature and [REDACTED] appears to have been produced in the ordinary course of the activities of SOCATRAF. The Chamber considers that the document is sufficiently relevant and probative to outweigh any prejudice its admission may cause. In addition, the Chamber notes that both parties support its admission. The

³⁴⁸ ICC-01/05-01/08-2890, paragraph 2.

³⁴⁹ ICC-01/05-01/08-2893-Conf-AnxA, page 4.

³⁵⁰ ICC-01/05-01/08-2893-Conf-AnxA, page 4.

³⁵¹ ICC-01/05-01/08-T-179-CONF-ENG, page 17, line 4 to page 23, line 4.

³⁵² ICC-01/05-01/08-T-179-CONF-ENG, page 17, line 22 to page 25, line 23.

³⁵³ ICC-01/05-01/08-T-179-CONF-ENG, page 17, lines 13 to 21.

Chamber is of the view that there is no reason to believe that the admission of this document would cause any prejudice to a fair trial. Document CAR-OTP-0028-0437 is therefore admitted.

145. Document **CAR-DEF-0002-0343 (Public)** was used by the defence during the questioning of Witness D04-21.³⁵⁴ Both parties support the admission of this document, adding that it may assist the Chamber to better contextualise the testimony.³⁵⁵ The defence adds that the document is relevant to the charges against the accused concerning the legitimacy of decisions taken by the MLC during the relevant period and that no prejudice arises from its admission as it was disclosed to the prosecution, who raised no objections to the document.³⁵⁶

146. The Chamber notes that the document appears to be a collection of decisions by the DRC transitional government as of 30 June 2003.³⁵⁷ Witness D04-21 was questioned on a specific provision of this document, stating that the transitional government had recognised as valid some decisions made by the MLC at the time it was a belligerent.³⁵⁸ The Chamber finds that the document is relevant as it relates to issues to be properly considered by the Chamber, *inter alia*, the position of authority held by the accused immediately after the relevant period under consideration and the recognition of rulings and the validity of MLC decisions taken during the DRC war, which partly cover the period of the CAR events.³⁵⁹ The Chamber is satisfied of the document's probative value as it appears to be an official document that is publicly available and appears to have been produced in the ordinary course of the activities of the DRC government. The Chamber notes that the parties support its admission. The Chamber is of the view that there is no

³⁵⁴ ICC-01/05-01/08-T-306-CONF-ENG, page 85, line 18 to page 89, line 13.

³⁵⁵ ICC-01/05-01/08-2890, paragraph 2; ICC-01/05-01/08-2893-Conf-AnxA, page 14.

³⁵⁶ ICC-01/05-01/08-2893-Conf-AnxA, page 14.

³⁵⁷ ICC-01/05-01/08-T-306-CONF-ENG, page 85, line 24 to page 86, line 2.

³⁵⁸ ICC-01/05-01/08-T-306-CONF-ENG, page 89, lines 2 to 13.

³⁵⁹ ICC-01/05-01/08-T-306-CONF-ENG, page 87, line 5 to page 89, line 13.

reason to believe that the admission of this document would cause any prejudice to a fair trial. Document CAR-DEF-0002-0343 is therefore admitted.

147. Document **CAR-OTP-0071-0019 (Public)**, is an international agreement used by the prosecution during the questioning of Witness D04-21.³⁶⁰ The prosecution supports the admission of this document, arguing that it is relevant and probative to counter the defence's allegation that the MLC intervention in the CAR was not pursuant to the regional protocol on intervention to ensure peace and security.³⁶¹ The prosecution further argues that the DRC government was the only signatory to the international agreement and not the MLC.³⁶² Lastly, the prosecution submits that the defence had adequate notice of the document as it was disclosed in advance and used by the prosecution to examine witness, thereby affording the opportunity for any additional questions.³⁶³ The defence "takes no position" on the admission of this international agreement.³⁶⁴

148. The Chamber notes that the document is an international agreement entitled "Protocol relating to the Peace and Security Council for Central Africa, COPAX" that was signed on 24 February 2000. The document refers to a regional agreement dealing with various conflict situations, including preventing, managing and settling conflicts and carrying out actions for the promotion, maintenance and consolidation of peace and security in the sub-region. When presented with the document, Witness D04-21 was asked to comment on the impact of this agreement in the MLC intervention in CAR.³⁶⁵ The Chamber therefore finds this agreement relevant to better assess the witness's testimony on the MLC's intervention in the CAR at the relevant period under examination. The

³⁶⁰ ICC-01/05-01/08-T-306-CONF-ENG, page 22, line 19 to page 28, line 10.

³⁶¹ ICC-01/05-01/08-2890-Red-Anx1, page 4.

³⁶² ICC-01/05-01/08-2890-Red-Anx1, page 4.

³⁶³ ICC-01/05-01/08-2890-Red-Anx1, page 4.

³⁶⁴ ICC-01/05-01/08-2893-Conf-AnxA, page 12.

³⁶⁵ ICC-01/05-01/08-T-306-CONF-ENG, page 22, line 19 to page 28, line 10.

Chamber is satisfied of the document's probative value as it appears to be an official document that is publicly available, which is dated and signed. Moreover, it appears to have been produced in the ordinary course of the peace agreement. The Chamber notes that the defence "takes no position" as to its admission. The Chamber is of the view that admitting this document would not cause any prejudice to a fair trial. Document CAR-OTP-0071-0019 is therefore admitted.

149. Document **CAR-OTP-0037-0126_R01 (Confidential)** is a document that was used by the prosecution during the questioning of Witness 108.³⁶⁶ The prosecution supports the admission of this document, adding that it may assist the Chamber to better contextualise the witness's testimony.³⁶⁷ The defence takes no position on the admission of this document.³⁶⁸

150. The Chamber notes that the document is a four page report entitled "*Rapport d'occupation illégale et forcée d'une maison d'habitation, pillages, vols et destructions de biens.*" The witness testified in court that this report was compiled by him and relates to items allegedly looted at his own house by the "Banyamulengue of Jean-Pierre Bemba", between 2 November 2002 and the end of February 2003, including an estimate of their value.³⁶⁹ The Chamber finds that the report on the witness's looted goods is relevant to, *inter alia*, the alleged charge of pillaging by Mr Bemba's troops during the relevant period. With regard to the document's probative value, the Chamber finds that the report has sufficient indicia of reliability, as it was signed and dated by the witness during his meeting with the legal representative of victims on 1 September 2008 and recognised by the witness

³⁶⁶ Transcript of hearing, 27 June 2011, ICC-01/05-01/08-T-132-CONF-ENG, page 30, line 19 to page 36, line 18; ICC-01/05-01/08-T-134-CONF-ENG, page 6, line 1 to page 8, line 11.

³⁶⁷ ICC-01/05-01/08-2890, paragraph 2.

³⁶⁸ CC-01/05-01/08-2893-Conf-AnxA, page 4.

³⁶⁹ CAR-OTP-0037-0126, at 0127; ICC-01/05-01/08-T-132-CONF-ENG, page 19, lines 14 and 15, page 29, lines 12 to 16, page 29, line 24 to page 30, line 4, page 32, line 17 to page 33, line 6 .

during his testimony in court.³⁷⁰ As the defence was provided with this document before the witness's testimony, it had the opportunity to question him on this judicial report in court. The Chamber notes that none of the parties object to its admission and finds that admitting the report would not cause any prejudice to a fair trial. Document CAR-OTP-0037-0126_R01 is therefore admitted.

151. Document **CAR-OTP-0029-0110 (Confidential)** is a document that was used by the prosecution during the questioning of [REDACTED].³⁷¹ The prosecution supports the admission of this document, adding that it may assist the Chamber in better contextualising the testimony.³⁷² The defence objects to the admission of this document, submitting that the document was not recognised by the witness, who was unaware of its existence.³⁷³ The defence argues that the document lacks probative value, "given that there is no indication that it was received by the court registry in which it was purportedly filed, appears to be in draft form, and has no official status."³⁷⁴ Lastly, the defence submits that the document relates to proceedings at a time before Mr Bemba's surrender at the Court and specify that it is a different case, which of no relevance to the charges against the accused.³⁷⁵

152. The Chamber notes that the document is a complaint addressed by a counsel to *Le Juge D'Instruction Tribunal de Première Instance de Bruxelles*, dated 7 November 2001. The complaint relates to charges of genocide, crimes against humanity, massacres, killings, rape, torture, murder, and the disappearance of civilian and military populations in Bangui against, [REDACTED]. The Chamber notes that the document is dated 7 November 2001, as it relates to the 28 May 2001 attempted coup. The Chamber further notes that the witness was shown the

³⁷⁰ ICC-01/05-01/08-T-132-CONF-ENG, page 32, line 17 to page 33, line 23.

³⁷¹ [REDACTED].

³⁷² ICC-01/05-01/08-2890, paragraph 2.

³⁷³ ICC-01/05-01/08-2893-Conf-AnxA, page 6.

³⁷⁴ ICC-01/05-01/08-2893-Conf-AnxA, page 6.

³⁷⁵ ICC-01/05-01/08-2893-Conf-AnxA, page 6.

document and asked to comment on its content.³⁷⁶ The witness testified that he was not aware of such a complaint.³⁷⁷ Although the witness [REDACTED] allowing the Chamber to better assess [REDACTED] credibility, the Chamber finds that such document is of little relevance to assist it in its evaluation of the testimony since it relates to a Belgian judicial procedure for events outside the period under examination.

153. With regard to probative value, the Chamber notes that during the testimony of the witness, the defence raised issues regarding the document's probative value.³⁷⁸ The Chamber finds that the document emanates from a counsel and does not bear sufficient indicia that such a complaint was officially filed before the Tribunal de Première Instance de Bruxelles. Indeed, questioned on the proof of receipt of this complaint before a Belgian judge, the prosecution referred to another document, namely CAR-OTP-0029-0266 at page 0269. The Chamber notes that during the testimony of the witness, the prosecution provided document CAR-OTP-0029-0266, purporting to be related to document CAR-OTP-0029-0110 and being a receipt showing that document CAR-OTP-0029-0110 was received by the Court Registry in Brussels.³⁷⁹ However, when comparing this latter document and the complaint CAR-OTP-0029-0110, the Chamber notes that both documents relate to different proceedings initiated by different plaintiffs and involving different authors of alleged crimes. The Chamber finds that document CAR-OTP-0029-0110 constitutes only a complaint written by a counsel without any indication that it has been officially filed before a Belgian judge. The Chamber therefore is of the view that the document is not sufficiently relevant and probative to outweigh the prejudice that it may cause to a fair trial. The Chamber therefore does not admit document CAR-OTP-0029-0110.

³⁷⁶ [REDACTED].

³⁷⁷ [REDACTED].

³⁷⁸ [REDACTED].

³⁷⁹ [REDACTED].

154. Document **CAR-OTP-0029-0266 (level of classification not indicated)** is a document that was used by the prosecution during the questioning of [REDACTED].³⁸⁰ The prosecution supports the admission of this document, adding that it may assist the Chamber to better contextualise his testimony.³⁸¹ The defence objects to the admission of this document, submitting that the document was not recognised by the witness, who was unaware of its existence.³⁸² The defence argues that the document lacks probative value, as there is no indication it was received by the court registry in Brussels where it was filed, and it further has no official status.³⁸³ Lastly, the defence submits that the document is of questionable relevance to the credibility of the witness's testimony, and of no relevance to the charges against the accused.³⁸⁴

155. The Chamber notes that document CAR-OTP-0029-0266 is a *Procès-verbal de constitution de partie civile* received on 4 December 2001 by an investigative judge before the *Tribunal de Première Instance de Bruxelles*. The complaint relates to charges of genocide, crimes against humanity, war crimes and violations of international law [REDACTED]. The Chamber finds the document relevant as it [REDACTED]. Although the witness testified that he was not aware of such a complaint, he nevertheless commented on it and explained [REDACTED].³⁸⁵ As such, the Chamber is satisfied that this document may assist the Chamber in assessing the witness's credibility and the reliability of his evidence. As to the probative value, the Chamber finds that the document emanates from a Belgian investigative judge, is signed, dated and appears to have been produced in the ordinary course of judicial proceedings before a Belgian tribunal. In these circumstances the Chamber is of the view that the document is sufficiently

³⁸⁰ [REDACTED].

³⁸¹ ICC-01/05-01/08-2890, paragraph 2.

³⁸² ICC-01/05-01/08-2893-Conf-AnxA, page 6.

³⁸³ ICC-01/05-01/08-2893-Conf-AnxA, page 6.

³⁸⁴ ICC-01/05-01/08-2893-Conf-AnxA, page 6.

³⁸⁵ [REDACTED].

relevant and probative to outweigh any prejudice its admission may cause to a fair trial. Document CAR-OTP-0029-0266 is therefore admitted.

156. Document [REDACTED] is a document that was used by the prosecution during the questioning of Witness 15.³⁸⁶ The prosecution supports the admission of this document, as it may assist the Chamber in better contextualising the testimony.³⁸⁷ The defence objects to the admission of this document, arguing that it is irrelevant to the charges against the accused as set out in the Document Containing the Charges and of no assistance to the Chamber in evaluating the evidence or credibility of the Witness in question.³⁸⁸

157. The Chamber notes that the document is a correspondence with the subject “Achat local imprimante,” dated 19 September 2001. The Chamber notes that the correspondence relates to a request for authorisation from the President of the MLC to purchase a printer locally. Although not contemporaneous with the CAR 2002-2003 events, the Chamber notes that the document was shown to Witness 15 in relation to questions about Mr Bemba’s role within the ALC and the MLC, in particular the mode of operations when an expenditure needed to be made by the *Chef d’Etat Major* of the ALC.³⁸⁹ As such, the Chamber is satisfied that the document is relevant to issues properly to be decided by the Chamber. Furthermore, the document may assist the Chamber to better contextualise the witness’s testimony and to assess his credibility and the reliability of his evidence.

158. With regard to probative value, the Chamber notes that the document bears sufficient indicia of reliability, as it is not only dated and signed, [REDACTED].³⁹⁰ In these circumstances, the Chamber finds that the document is sufficiently

³⁸⁶ Transcript of hearing, 7 February 2012, ICC-01/05-01/08-T-207-CONF-ENG, page 65, line 1 to page 66, line 22.

³⁸⁷ ICC-01/05-01/08-2890, paragraph 2.

³⁸⁸ ICC-01/05-01/08-2893-Conf-AnxA, page 5.

³⁸⁹ ICC-01/05-01/08-T-207-CONF-ENG, page 65, line 8 to page 66, line 22.

³⁹⁰ ICC-01/05-01/08-T-207-CONF-ENG, page 65, line 12.

relevant and probative to outweigh the potential prejudice its admission may cause to a fair trial or the fair evaluation of Witness 15's testimony. Document [REDACTED] is therefore admitted.

159. Document **CAR-OTP-0044-0037 (level of classification not indicated)** is a document that was used by the prosecution during the questioning of Witness D04-66.³⁹¹ The prosecution supports the admission of this record of telephone numbers, adding that they may assist the Chamber to better contextualise the testimony of the witness.³⁹² The defence objects to the admission of this document, arguing that it was neither recognised nor authenticated by the witness and it only shows that Mr Bemba made "a particular call on a particular day."³⁹³ The defence further adds that the alleged phone record simply notes an "outgoing" phone call with no indication that the maker of the call and the recipient were actually in contact.³⁹⁴ Moreover, the defence argues that document does not possess sufficient indicia of reliability and is irrelevant to the charges against the accused as set out in the Document Containing the Charges.³⁹⁵

160. The Chamber notes that the document is a record allegedly showing, *inter alia*, messages sent and received from a phone number apparently belonging to the accused, calls dialled, received and missed, and the contact details saved in the telephone. The Chamber further notes that [REDACTED].³⁹⁶ As such, the Chamber finds that the document is relevant as it will assist it, *inter alia*, in its evaluation of Witness D04-66's testimony and his credibility. Turning to probative value, the Chamber is satisfied of the document's probative value as it is an official document that is dated and signed by the [REDACTED] and appears

³⁹¹ Transcript of hearing, 3 December 2012, ICC-01/05-01/08-T-280-CONF-ENG, page 59, line 4 to page 60, line 25; page 60, line 7 to page 61, line 4.

³⁹² ICC-01/05-01/08-2890, paragraph 2.

³⁹³ ICC-01/05-01/08-2893-Conf-AnxA, page 8.

³⁹⁴ ICC-01/05-01/08-2893-Conf-AnxA, page 8.

³⁹⁵ ICC-01/05-01/08-2893-Conf-AnxA, page 8.

³⁹⁶ ICC-01/05-01/08-T-280-CONF-ENG, page 59, line 4 to page 61, line 4; CAR-OTP-0044-0037, at 0057.

to have been produced in the ordinary course of their activities. The Chamber finds that the document is sufficiently relevant and probative to outweigh any potential prejudice that its admission may cause to a fair trial or the fair evaluation of the witness's testimony. Document CAR-OTP-0044-0037 is therefore admitted.

II. Conclusions

161. In view of the foregoing, the Chamber:

- i. ADMITS into evidence the following items: CAR-OTP-0069-0372, CAR-OTP-0070-0138, CAR-ICC-0001-0010, CAR-ICC-0001-0081, CAR-ICC-0001-0083, CAR-ICC-0001-0088, CAR-ICC-0001-0095, CAR-ICC-0001-0097, CAR-ICC-0001-0096, CAR-ICC-0001-0091, CAR-D04-0002-1377, CAR-OTP-0046-0218, CAR-OTP-0046-0199, CAR-OTP-0046-0229, CAR-OTP-0046-0196, CAR-D04-0004-0041, CAR-D04-0004-0040, CAR-OTP-0046-0222, CAR-OTP-0046-0195, CAR-OTP-0046-0216, CAR-OTP-0046-0212, CAR-OTP-0046-0204, CAR-OTP-0028-0446, CAR-OTP-0035-0133, CAR-OTP-0035-0057, CAR-OTP-0035-0058, CAR-OTP-0035-0059, CAR-D04-0003-0513, CAR-OTP-0048-0383, CAR-OTP-0036-0162, CAR-OTP-0019-0137, CAR-OTP-0037-0122_R01, CAR D04-0002-1380, CAR-OTP-0005-0125, CAR-OTP-0005-0127, CAR-OTP-0057-0243, CAR-OTP-0057-0353, CAR-OTP-0036-0041, CAR-OTP-0036-0039, CAR-OTP-0056-0278, CAR-OTP-0013-0098, CAR-OTP-0028-0437, CAR-DEF-0002-0343, CAR-OTP-0071-0019, CAR-OTP-0037-0126_R01, CAR-OTP-0029-0266, [REDACTED], and CAR-OTP-0044-0037.
- ii. DOES NOT ADMIT into evidence items: CAR-OTP-0046-0206, CAR-OTP-0071-0068, CAR-DEF-0001-0075, and CAR-OTP-0029-0110.

iii. CONSIDERS MOOT the request to admit item: CAR-DEF-0002-0713.

162. The Majority, Judge Kuniko Ozaki dissenting, ADMITS into evidence items: CAR-OTP-0073-0624, CAR-OTP-0073-0627, CAR-OTP-0073-0623, CAR-OTP-0042-0254, CAR-D04-0004-0030, CAR-D04-0004-0032, CAR-OTP-0071-0043, CAR-OTP-0071-0049, CAR-OTP-0071-0063, CAR-OTP-0071-0051, CAR-DEF-0001-0205, CAR-OTP-0069-0146, CAR-OTP-0069-0271, CAR-OTP-0069-0272, CAR-OTP-0069-0303, CAR-OTP-0030-0269, and CAR-D04-0002-2027.

163. The Majority, Judge Steiner dissenting, DOES NOT ADMIT into evidence items CAR-OTP-0066-0002 and CAR-OTP-0066-0067.

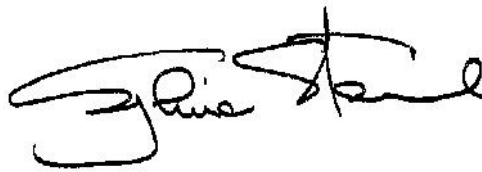
164. The Chamber further:

- i. INSTRUCTS the Registry to assign EVD-T numbers to those items which currently do not have one; and
- ii. ORDERS the prosecution and the defence to review the level of confidentiality of the items admitted by the present Decision and:
 - (a) provide 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) inform the Chamber, within 10 days of notification of the present Decision, on the possible reclassification as public, with or without redactions, of items in relation to which the reasons for maintaining their confidentiality no longer exist and/or inform the Chamber of the reasons for maintaining

the confidentiality of all items for which no reclassification as public is justified.

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

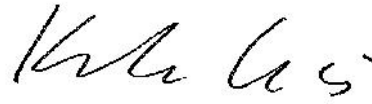
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 28 June 2016

At The Hague, the Netherlands