

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



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

Date: 22 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**

**“Second Decision on the admission into evidence of material used during the  
questioning of witnesses”, ICC-01/05-01/08-2688 of 14 June 2013**

**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

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Mr Xavier-Jean Keïta

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”) hereby issues the Second Decision on the admission into evidence of material used during the questioning of witnesses (“Decision”).

## **I. Background and Submissions**

1. On 26 March 2012, the Chamber issued its “Order on the procedure for the submission as evidence of material used during questioning witnesses” (“Order”),<sup>1</sup> in which it ordered the parties to identify, by no later than 16 April 2012, all materials which they wished to submit as evidence pertaining to the testimony commencing with that of Witness 110 through to Witness 36.<sup>2</sup> The Chamber further ordered that any issue regarding the relevance or admissibility of any specific material be raised by 23 April 2012 and that any replies should be filed in writing by 1 May 2012.<sup>3</sup>
2. On 16 April 2012, the Office of the Prosecutor (“prosecution”) filed the “Prosecution’s submission of the second list of materials it requests to be admitted into evidence” (“Prosecution’s Request”),<sup>4</sup> in which it requests the admission of 43 items used during the questioning of witnesses.<sup>5</sup> The prosecution submits that all the items are relevant, probative to the issues in the case and bear sufficient indicia of reliability to warrant their admission into evidence.<sup>6</sup> The prosecution also states that their admission would be in the interests of judicial economy and a fair trial.<sup>7</sup> Further, it submits that the admission of the materials will not unfairly prejudice the accused, since the defence was in possession of the

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<sup>1</sup> Order on the procedure for the submission as evidence of material used during questioning of witnesses, 26 March 2012, ICC-01/05-01/08-2177.

<sup>2</sup> ICC-01/05-01/08-2177, paragraph 5.

<sup>3</sup> ICC-01/05-01/08-2177, paragraph 6.

<sup>4</sup> Prosecution’s submission of the second list of materials it requests to be admitted into evidence, 16 April 2012, ICC-01/05-01/08-2191 and Confidential Annex A, ICC-01/05-01/08-2191-Conf-AnxA-Corr.

<sup>5</sup> ICC-01/05-01/08-2191-Conf-AnxA-Corr.

<sup>6</sup> ICC-01/05-01/08-2191, paragraph 6.

<sup>7</sup> *Ibid.*

items in advance of the witnesses' testimonies and had the opportunity to question all witnesses on their content.<sup>8</sup>

3. On 20 April 2012, following a defence request,<sup>9</sup> the Chamber issued its "Decision on the Defence request for an Extension of Time",<sup>10</sup> in which it granted the defence two additional weeks to comply with the Chamber's Order,<sup>11</sup> and postponed the deadline for the filing of any objections to 7 May 2012, and that for the filing of any replies to 14 May 2012.<sup>12</sup>
4. The defence did not file a response to the Prosecution's Request.
5. On 1 May 2012, the defence filed its "Defence submission in compliance with the Order on the procedure relating to the submission of evidence" ("Defence's Request"),<sup>13</sup> in which it requests the admission into evidence of 59 items.<sup>14</sup> The defence submits that the items are relevant to the charges or directly relevant to the credibility of particular prosecution witnesses and, as such, relate to matters that are properly to be considered by the Chamber.<sup>15</sup> The defence further states that all the items have been discussed by prosecution witnesses during the course of the proceedings and thus provide necessary context to the transcripts.<sup>16</sup> In terms of probative value, the defence submits that, while probative value is a fact-specific enquiry, the items provide various indicia of reliability, and links between the documents and the witnesses who discussed them, identified them, recognised them, or sometimes authored or created them.<sup>17</sup> In addition, the

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<sup>8</sup> *Ibid.*

<sup>9</sup> Defence Request for an Extension of Time, 16 April 2012, ICC-01/05-01/08-2190.

<sup>10</sup> Decision on the Defence Request for an Extension of Time, 20 April 2012, ICC-01/05-01/08-2192.

<sup>11</sup> ICC-01/05-01/08-2192, paragraph 6.

<sup>12</sup> ICC-01/05-01/08-2192, paragraphs 6 and 7.

<sup>13</sup> Defence submission in compliance with the Order on the procedure relating to the submission of evidence, 1 May 2012, ICC-01/05-01/08-2198 with Confidential Annex A, ICC-01/05-01/08-2198-Conf-AnxA.

<sup>14</sup> ICC-01/05-01/08-2198-Conf-AnxA.

<sup>15</sup> ICC-01/05-01/08-2198, paragraph 4.

<sup>16</sup> *Ibid.*

<sup>17</sup> ICC-01/05-01/08-2198, paragraph 5.

defence notes that, although there is no need for each item to be authenticated via witness testimony, each item is what it purports to be, either because it is evident on its face, or because other testimony or evidence demonstrates each item's origin.<sup>18</sup> Finally, the defence submits that the admission of the items will not cause prejudice to a fair trial or to the fair evaluation of the witnesses' testimony.<sup>19</sup>

6. The prosecution did not file a response to the Defence's Request.
7. On 14 May 2012, the legal representative of victims, Maître Marie-Edith Douzima-Lawson, filed her "Requête de la Représentante légale de victims en vue de soumettre des pieces en tant qu'éléments de preuve" ("Legal Representative's Request"),<sup>20</sup> in which she requests the admission into evidence of three statements that were provided by the two victims authorised to testify in the trial proceedings.
8. Neither party filed a response to the Legal Representative's Request.

## II. Analysis

9. In accordance with Article 21(1) of the Rome Statute ("Statute"), in making its determination, the Chamber has considered Articles 64(2), (7), (8)(b), (9)(a), 67 and 69 of the Statute, Rules 63, 64 and 68 of the Rules of Procedure and Evidence ("Rules") and Regulation 23bis(3) of the of the Regulations of the Court ("Regulations").

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<sup>18</sup> *Ibid.*

<sup>19</sup> ICC-01/05-01/08-2198, paragraph 6.

<sup>20</sup> Requête de la Représentante légale de victims en vue de soumettre des pieces en tant qu'éléments de prevue, 14 May 2012, ICC-01/05-01/08-2215.

10. The Chamber recalls its general approach to the admission of evidence. In particular, for an item to be admitted into evidence it must satisfy the three-part test under which it must (i) be relevant to the case; (ii) have probative value; and (iii) be sufficiently relevant and probative as to outweigh any prejudicial effect its admission may cause.<sup>21</sup> Further, the Chamber underlines once more that its determination on the admissibility into evidence of an item has no bearing on the final weight to be afforded to it, which will only be determined by the Chamber at the end of the case when assessing the evidence as a whole.<sup>22</sup>

### *Preliminary issues*

11. At the outset, the Chamber notes that the admissibility of numerous items included in the parties' requests has already been decided upon by the Chamber in previous decisions. In particular, the Chamber considers the question of the admissibility into evidence of the following items moot, and will therefore not address the parties' submissions in relation to:

- a. Documents CAR-ICC-0001-0070, CAR-ICC-0001-0071, CAR-ICC-0001-0077, CAR-ICC-0001-0078, CAR-OTP-0030-0154, CAR-DEF-0001-0832, CAR-OTP-0042-0237, CAR-OTP-0028-0398, CAR-OTP-0028-0400 and CAR-ICC-0001-0076, which have already been admitted into evidence in the Chamber's First Decision on the prosecution and defence requests for the admission of evidence of 15 December 2011 ("Decision 2012");<sup>23</sup> and
- b. Documents CAR-OTP-0032-0167, CAR-DEF-0001-0161, CAR-D04-0002-1514, CAR-D04-0002-1641, CAR-DEF-0002-0001, CAR-DEF-

<sup>21</sup> Public redacted version of the first decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011, 9 February 2012, ICC-01/05-01/08-2012-Red, paragraphs 13 to 16; Public Redacted Version of "Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute" of 6 September 2012, 8 October 2012, ICC-01/05-01/08-2299-Red, paragraphs 7 to 9.

<sup>22</sup> ICC-01/05-01/08-2012-Red, paragraph 18; ICC-01/05-01/08-2299-Red, paragraph 11.

<sup>23</sup> ICC-01/05-01/08-2012-Red, paragraph 163(1).

0001-0155, CAR-DEF-0001-0127, CAR-D04-0002-1481, CAR-D04-0002-1499, CAR-D04-0002-1513, CAR-DEF-0001-0152 and audio recording CAR-OTP-0031-0136, which have already been admitted into evidence 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 of 6 September 2012, ("Decision 2299").<sup>24</sup>

12. In addition, a number of items for which admission is sought by the parties have already been admitted into evidence, although under different ERN numbers. In particular: a) document CAR-DEF-0001-0076, submitted by both the prosecution and the defence, is a duplicate of document CAR-OTP-0017-0363 which was admitted into evidence in Decision 2299;<sup>25</sup> b) document CAR-DEF-0001-0826, submitted by the prosecution, is a duplicate of document CAR-OTP-0033-0209 which was admitted into evidence in Decision 2299;<sup>26</sup> and c) document CAR-DEF-0001-0078, a four-page document submitted by the defence, the first two pages of which are a duplicate of document CAR-OTP-0017-0349 and the last two pages of which are a duplicate of document CAR-OTP-0017-0351, both of which were admitted into evidence in Decision 2299.<sup>27</sup> The Chamber therefore also considers the parties' requests for admission of these documents moot and will not address the parties' submissions in relation to them.

13. Similarly, document DRC-OTP-0098-0005 submitted by the defence is a duplicate of document CAR-OTP-0017-0366, the determination as to the admissibility of which was postponed in Decision 2299.<sup>28</sup> Taking into account that ERN DRC-OTP-0098-0005 is the only version of this document that has been discussed in court and submitted into evidence in relation to three of the witnesses called by

<sup>24</sup> ICC-01/05-01/08-2299-Red, paragraph 164(1).

<sup>25</sup> ICC-01/05-01/08-2299-Red, paragraphs 43 to 52.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> ICC-01/05-01/08-2299-Red, paragraphs 13 and 164(iii).

the prosecution,<sup>29</sup> the Chamber will rule on the admissibility of item DRC-OTP-0098-0005 in the present decision and consider moot the postponed determination as to the admissibility of document CAR-OTP-0017-0366.

14. In the future, in order to avoid unnecessary submissions on items that have already been admitted, the Chamber underlines that the parties should carefully review the relevant metadata for the items concerned in the Ringtail system in order to determine whether they have already been admitted. In addition, in order to ensure the expeditiousness and best management of the proceedings, the Chamber reiterates its order that parties and participants shall ensure that, where an item is registered under more than one ERN and one of them has already been admitted into evidence, they use for their questioning the item registered under the ERN that has already been admitted into evidence.<sup>30</sup>

15. The Chamber has identified ten categories into which the materials for which admission is sought by the parties and the legal representative of victims may be divided. These categories will be considered in turn, in accordance with the three-part test of relevance, probative value and potential prejudice.

#### I. Victim's application form

16. The defence requests the admission into evidence of the application for participation in the trial proceedings of dual status Witness 110, that is document **ICC-01/05-01/08-796-Conf-Anx151-Red2 (Confidential)**. The defence submits that the document is relevant to an assessment of the credibility of the witness and that it originates from the witness, who recognised it and testified that she

<sup>29</sup> Witnesses CAR-OTP-PPPP-0015, CAR-OTP-PPPP-0045 and CAR-OTP-PPPP-0213.

<sup>30</sup> Transcript of hearing of 8 April 2013, ICC-01/05-01/08-T-301-CONF-ENG ET, page 2, line 15 to page 3, line 15; transcript of hearing of 25 February 2013, ICC-01/05-01/08-T-284-Red-ENG WT, page 2, line 19 to page 4, line 3; transcript of hearing of 22 November 2012, ICC-01/05-01/08-T-273-Red-ENG WT, page 1, line 22 to page 2, line 23.

had filled it in and signed it.<sup>31</sup> The defence further submits that the witness was questioned not only on the application form itself, but also on a document annexed to it, the authenticity of which she acknowledged, and which she was given the opportunity to discuss. The defence submits that in such circumstances, notwithstanding the Chamber's previous decision on the admissibility of victims' application forms, this document is admissible given that it is relevant, of sufficient probative value, and there is no indication that the witness was of the view that the admission of the application form was an "unfair" use of this document.<sup>32</sup>

17. The Majority of the Chamber, Judge Kuniko Ozaki dissenting, is of the view that, under exceptional circumstances, victims' application forms may be relevant to properly understand the testimony of a dual status individual.<sup>33</sup> However, the Majority is not persuaded that this is so in the present case. Indeed, during the witness's in-court testimony, when confronted with the information included in the application form, the witness confirmed the relevant statements of fact contained therein or explained any possible contradictions between the application and her in-court testimony.<sup>34</sup> Such questioning is already reflected in the transcripts, and therefore, the relevant contentious accounts are recorded and transcribed into the record of the case. Therefore, in the view of the Majority, admitting the application form and the document attached to it into evidence would be redundant and would not be necessary for the Chamber's understanding and assessment of the witness's testimony.

18. In terms of probative value, the Majority reiterates its view that the probative value of victims' application forms is limited. These forms are administrative

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<sup>31</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 2.

<sup>32</sup> ICC-01/05-01/08-2198, paragraph 11.

<sup>33</sup> ICC-01/05-01/08-2012-Red, paragraph 99.

<sup>34</sup> See, *inter alia*, transcript of the hearing of 13 June 2011, ICC-01/05-01/08-T-127-Red-ENG WT, page 48, line 15 to page 50, line 25.

documents, filled out in the context of a relationship of confidence between potential victims and the Registry and are only intended to serve the limited purpose of providing the Chamber with a basis for determining whether a certain individual qualifies as a victim in order to be granted the right to participate in the proceedings.<sup>35</sup> As to the potential prejudice to the proceedings, the Majority reiterates its view that it may be perceived as unfair to victim applicants to admit into evidence application forms that were provided to the Court for a different and discrete purpose.<sup>36</sup>

19. For these reasons, the Majority of the Chamber, Judge Kuniko Ozaki dissenting, finds that the limited relevance and probative value of the application form, document ICC-01/05-01/08-796-Conf-Anx151-Red2, is outweighed by its potential prejudice to a fair trial. The Majority therefore rejects the admission of document ICC-01/05-01/08-796-Conf-Anx151-Red2.

## II. Documents [REDACTED]

20. The prosecution requests the admission into evidence of document **CAR-OTP-0046-0387 (Confidential)**, which is a notebook belonging to Witness 178. The prosecution submits that the notebook contains a telephone number identified by the witness during his testimony as “Mustapha’s Thuraya number.”<sup>37</sup> Further, the prosecution submits that the document “is relevant and probative to [...] effective authority, control and knowledge” and it is corroborated by item CAR-OTP-0055-0893.<sup>38</sup>
21. The defence requests the admission of three documents [REDACTED]: (i) document **CAR-D04-0002-1988 (Public)**, an extract of certain pages of the book

<sup>35</sup> ICC-01/05-01/08-2012-Red, paragraph 100.

<sup>36</sup> ICC-01/05-01/08-2012-Red, paragraph 102.

<sup>37</sup> ICC-01/05-01/08-2191-Conf-AnxA, pages 2-3.

<sup>38</sup> ICC-01/05-01/08-2191-Conf-AnxA, page 3.

“*L’Enfer de Gbado*”, which the defence submits [REDACTED] “is relevant to the credibility of his testimony”;<sup>39</sup> (ii) document **CAR-OTP-0022-0273 (Confidential)**, which is a sketch drawn by Witness 65 at the request of the prosecution’s investigators, allegedly depicting the *Mouvement de Libération du Congo* (“MLC”) communication network in the Democratic Republic of the Congo (“DRC”) during the time period relevant to the charges, which the defence submits is “relevant to the question of command responsibility over the MLC troops”;<sup>40</sup> and (iii) document **CAR-OTP-0062-0094\_R01 (Confidential)**, a letter [REDACTED] authored by Witness 213 [REDACTED], which the defence alleges is relevant to the witness’s credibility and was identified by Witness 213 during his testimony.<sup>41</sup>

22. With regard to document CAR-OTP-0046-0387, the Chamber notes that, while giving testimony in court, Witness 178 was questioned by the parties on the content of this document.<sup>42</sup> In particular, when the witness was shown ERN page 0396 of this document, he identified a telephone number under the code “Wisky”, affirming that it was the Thuraya telephone number belonging to “Mustapha”, the MLC’s operations commander.<sup>43</sup> The witness further identified the document and stated that it was a notebook created by him at the time of the events.<sup>44</sup> The page shown to the witness (ERN CAR-OTP-0046-0396) was purportedly created in December 2002.<sup>45</sup> In addition, the Chamber notes that document CAR-OTP-0055-0893, which is a telephone record that includes the same number identified by Witness 178, was already admitted into evidence by the Chamber’s Decision

<sup>39</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 6.

<sup>40</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 8.

<sup>41</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 10.

<sup>42</sup> Transcript of hearing of 30 August 2011, ICC-01/05-01/08-T-150-CONF-ENG ET, page 42, line 19 to page 45, line 7; transcript of hearing of 1 September 2011, ICC-01/05-01/08-T-151-CONF-ENG ET, page 60, line 15 to page 61, line 6.

<sup>43</sup> ICC-01/05-01/08-T-150-CONF-ENG ET, page 43, line 20 and page 44, line 13 to page 45, line 7; ICC-01/05-01/08-T-151-CONF-ENG ET, page 60, line 15 to page 61, line 6.

<sup>44</sup> ICC-01/05-01/08-T-150-CONF-ENG ET, page 43, lines 21 to 25.

<sup>45</sup> ICC-01/05-01/08-T-150-CONF-ENG ET, page 44, lines 1 to 5.

2299.<sup>46</sup> The Chamber therefore considers that the document is relevant as it relates to matters that are properly to be considered by the Chamber and it may assist in the Chamber's assessment and understanding of the witness's testimony and of the evidence as a whole.

23. As to document CAR-OTP-0022-0273, the Chamber notes that during the defence's questioning of Witness 65, this document, which is an annex to the witness's written statement, was shown to the witness in court.<sup>47</sup> The witness acknowledged having drawn the sketch when explaining the communications network within the MLC to the prosecution's investigators.<sup>48</sup> The Chamber notes that the witness further modified this document in court, and that the modified version (ERN CAR-ICC-0001-0074) was admitted into evidence in Decision 2012.<sup>49</sup> Given the above, the Chamber considers that the document is relevant, as it relates to matters that are properly to be considered by the Chamber and may assist in the Chamber's assessment and understanding of the witness's testimony and of the evidence as a whole.

24. In the view of the Chamber, the above documents' probative value stems from the fact that they were authenticated by their authors, Witnesses 178 and 65, during their questioning in court. In terms of potential prejudice, there is no suggestion that admitting the documents would cause any prejudice to a fair trial. In addition, the parties had the opportunity to question the witnesses in court in relation to the documents' content. Documents CAR-OTP-0046-0387 and CAR-OTP-0022-0273 are therefore admitted.

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<sup>46</sup> ICC-01/05-01/08-2299-Red, paragraphs 162 and 163.

<sup>47</sup> Transcript of hearing of 4 October 2011, ICC-01/05-01/08-T-169-CONF-ENG ET, page 58, line 3 to page 60, line 9.

<sup>48</sup> ICC-01/05-01/08-T-169-CONF-ENG ET, page 58, lines 17 to 22.

<sup>49</sup> ICC-01/05-01/08-2012-Conf, paragraph 125.

25. As to document CAR-D04-0002-1988, the Chamber notes that, during the defence's questioning of [REDACTED] this document was shown to the witness in court and he testified in relation to its content.<sup>50</sup> The witness identified the document and, in particular, when confronted with page 34 of the book (ERN CAR-D04-0002-1995), stated that [REDACTED].<sup>51</sup> That notwithstanding, the Majority notes that the document is a limited extract (containing only copies of pages 9, 11, 12, 23, 28, 29, 34, 35, 37, 45, 56, 57 and 87) of a book [REDACTED]. Although in those pages there is some reference to the MLC and the accused, the large number of missing pages precludes the Majority from correctly assessing the relevance of the document.<sup>52</sup> In addition, during the questioning of [REDACTED], the defence referred to page 44 of the book, which was not shown to the witness,<sup>53</sup> and which is not included in the extract submitted into evidence by the defence. The Chamber further notes that during the witness's in-court testimony, when confronted with the information included at page 34 of the book (ERN CAR-D04-0002-1995), the witness explained [REDACTED] are already reflected in the transcripts, and therefore, recorded and transcribed into the record of the case. Thus, in the view of the Chamber, the admission of the document would be redundant and would not assist the Chamber's understanding and assessment of the witness's testimony. Given Majority's principled approach to the admission of documents, in that they should be admitted in full rather than as excerpts,<sup>54</sup> the Majority is of the view that any potential relevance and probative value that this document may have is outweighed by its potential prejudice to a fair trial. The Chamber therefore rejects the admission of document CAR-D04-0002-1988.

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<sup>50</sup> [REDACTED].

<sup>51</sup> [REDACTED].

<sup>52</sup> For the Chamber's approach to incomplete documents, see ICC-01/05-01/08-2299-Red, paragraph 116.

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

<sup>54</sup> Order on the procedure relating to the submission of evidence, 31 May 2011, ICC-01/05-01/08-1470, paragraph 11; ICC-01/05-01/08-2012-Red, paragraph 90; ICC-01/05-01/08-2299-Red, paragraph 116.

26. As to document CAR-OTP-0062-0094\_R01, the Chamber notes that the document was shown to Witness 213 in court, who recognised it and was questioned on the circumstances under which it was written.<sup>55</sup> In addition, the Chamber notes that the same document was used during the questioning of Witness D04-55, who challenged the credibility of Witness 213.<sup>56</sup> [REDACTED] Witness D04-55 challenged the truth of the content of the letter and stated that Witness 213 lied about the events described therein.<sup>57</sup> Taking this discrepancy between the witnesses into account, the Chamber is of the view that the document is relevant to the assessment of the testimony and credibility of Witnesses 213 and D04-55. In terms of probative value, the Chamber is satisfied that the document was authenticated [REDACTED] in-court testimony. In terms of potential prejudice, there is no suggestion that admitting the document would cause any prejudice to a fair trial. In addition, the parties had the opportunity to question the witnesses in relation to the document's content. Document CAR-OTP-0062-0094\_R01 is therefore admitted.

### III. Maps

27. The prosecution requests the admission of four maps. The first, document **CAR-ICC-0001-0072 (Confidential)** is a map of the vicinity of Bangui. The second and the third, documents **CAR-OTP-0046-0349 (Confidential)** and **CAR-ICC-0001-0073 (Confidential)**, are maps of the Central African Republic ("CAR"). These three maps were annotated by Witness 178. The prosecution submits that they are relevant and probative to the movement and locations of the MLC troops in the vicinity of Bangui during the period of the charges.<sup>58</sup> The fourth, document **CAR-ICC-0001-0079 (Confidential)**, is a map of the DRC, annotated by Witness

<sup>55</sup> Transcript of hearing of 17 November 2011, ICC-01/05-01/08-T-189-CONF-ENG ET, page 34, line 21 to page 38, line 16.

<sup>56</sup> Transcript of hearing of 29 October 2012, ICC-01/05-01/08-T-264-CONF-ENG ET; transcript of hearing of 30 October 2012, ICC-01/05-01/08-T-265-CONF-ENG ET; transcript of hearing of 31 October 2012, ICC-01/05-01/08-T-266-CONF-ENG ET.

<sup>57</sup> ICC-01/05-01/08-T-264-CONF-ENG ET, page 42, lines 16 to 20, page 52, lines 16 to 22.

<sup>58</sup> ICC-01/05-01/08-2191-Conf-AnxA, page 3.

15, which the prosecution submits is relevant in that it shows the territories which were under MLC control.<sup>59</sup>

28. The defence requests the admission of a map of the CAR, document **CAR-OTP-0056-0417 (Public)**, which was annotated by Witness 213. The defence submits that the document is relevant to Witness 213's credibility, as it was used during his testimony. The defence further argues that, despite other maps having been admitted into evidence, this map should also be admitted given that specific questions were asked of the witness in relation to this map, the answers to which would be incomprehensible without it.<sup>60</sup>

29. The Chamber notes that, during the prosecution's questioning of Witness 178, the witness was asked to make annotations to a map of the vicinity of Bangui (document CAR-OTP-0030-0153), and the annotated version of that map was assigned ERN CAR-ICC-0001-0072.<sup>61</sup> During his in-court testimony, Witness 178 annotated and commented on the map indicating locations where MLC troops were deployed in the CAR and locations where crimes were allegedly committed.<sup>62</sup> The Chamber also notes that during questioning, Witness 178 was shown another map of the CAR, document CAR-OTP-0046-0349, which he recognised, including the markings previously made by him during an interview with prosecution investigators, indicating the route the MLC troops took through the CAR territory.<sup>63</sup> The same map was further annotated by the witness in court to indicate the various towns in which the MLC troops would have stopped and the crimes allegedly committed in those places. The annotated map of the CAR

<sup>59</sup> ICC-01/05-01/08-2191-Conf-AnxA, page 7.

<sup>60</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 9.

<sup>61</sup> ICC-01/05-01/08-T-151-CONF-ENG CT, page 70, line 3 to page 77, line 10; transcript of hearing of 2 September 2011, ICC-01/05-01/08-T-152-CONF-ENG ET, page 1, line 24 to page 2, line 1.

<sup>62</sup> ICC-01/05-01/08-T-151-CONF-ENG CT, page 73, line 6 to page 76, line 14.

<sup>63</sup> ICC-01/05-01/08-T-152-CONF-ENG ET, page 3, line 18 to page 5, line 4.

was assigned ERN CAR-ICC-0001-0073.<sup>64</sup> As such, the Chamber is satisfied that the three maps are relevant as a visual representation of the movements and locations of MLC troops during the time period relevant to the charges and the crimes allegedly committed by them. These three maps relate to matters that are properly to be considered by the Chamber and will assist in the Chamber's assessment of the witness's testimony and of the evidence as a whole.

30. The Chamber notes that during the testimony of Witness 15, the witness was asked by the prosecution to make annotations to a map of the DRC (document CAR-OTP-0066-0122);<sup>65</sup> the annotated version was assigned ERN CAR-ICC-0001-0079.<sup>66</sup> The witness made notes as requested and commented on the map, indicating the DRC territories under the control of the MLC during the time period relevant to the charges.<sup>67</sup> As such, the Chamber is satisfied that the document is relevant, as it relates to matters that are properly to be considered by the Chamber, in particular the capacity of the MLC to operate in and control a large territory, which may be relevant to the assessment of whether the MLC was an organised armed group capable of entering into an armed conflict, which, in turn, may reflect on the nature and extent of the authority of the accused.<sup>68</sup> In addition, it may assist in the Chamber's assessment of the witness's testimony.

31. The Chamber notes that during the testimony of Witness 213, the witness was shown a map of the CAR, document CAR-OTP-0056-0417, which he had previously marked and signed during an interview with prosecution

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<sup>64</sup> ICC-01/05-01/08-T-152-CONF-ENG ET, page 5, line 10 to page 11, line 20.

<sup>65</sup> Transcript of hearing of 7 February 2012, ICC-01/05-01/08-T-207-CONF-ENG CT, page 22, lines 8 to 11. The map shown to the witness in-court was document number 32 of the amended prosecution list of documents, circulated by email on 27 January 2012 at 20.34 by the Prosecution Trial Support Assistant.

<sup>66</sup> ICC-01/05-01/08-T-207-CONF-ENG CT, page 27, line 4.

<sup>67</sup> ICC-01/05-01/08-T-207-CONF-ENG CT, page 22, line 8 to page 25, line 19.

<sup>68</sup> This consideration may be of relevance to issues related to the "State or organizational policy" as a contextual element of the crimes against humanity charged. See Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ICC-01/05-01/08-424, paragraph 81.

investigators,<sup>69</sup> and was questioned in relation to it by the defence.<sup>70</sup> The defence used the map to question the witness on the locations of Chad and Mongumba,<sup>71</sup> as the witness testified that [REDACTED] Mr Bemba to encourage the soldiers”<sup>72</sup> and that “[t]he soldiers even went beyond there. They went to Chad and even returned to the border between the Central African Republic and Chad.”<sup>73</sup> As such, the Chamber is satisfied that the document is relevant as a visual representation of the movements of MLC troops and the places allegedly visited by Mr Bemba during the time period relevant to the charges and may assist in the Chamber’s assessment of the witness’s testimony.

32. In light of the above, the relevance and probative value of the documents derive from their creation and use. There is no suggestion that admitting the maps would cause any prejudice, in particular because the parties had the opportunity to question the witnesses about them. Documents CAR-ICC-0001-0072, CAR-OTP-0046-0349, CAR-ICC-0001-0073, CAR-ICC-0001-0079 and CAR-OTP-0056-0417 are therefore admitted.

#### IV. MLC documents

33. The parties request the admission of the twenty-two documents allegedly emanating from the MLC: **CAR-DEF-0001-0105 (Public)**, **CAR-DEF-0001-0167 (Public)**, **CAR-DEF-0001-0106 (Public)**, **CAR-OTP-0009-0140 (Confidential)**, **CAR-OTP-0009-0142 (Confidential)**, **CAR-OTP-0009-0152 (Confidential)**, **CAR-OTP-0009-0180 (Confidential)**, **CAR-OTP-0009-0220 (Confidential)**, **CAR-D04-0002-1432 (Public)**, **CAR-D04-0002-1444 (Confidential)**, **CAR-OTP-0017-0358 (Public)**, **CAR-OTP-0009-0162\_R01 (Public)**, **CAR-DEF-0002-0667 (Public)**,

<sup>69</sup> See Translation of evidence, CAR-OTP-0058-0296, at 0300 to 0301.

<sup>70</sup> Transcript of hearing of 21 November 2011, ICC-01/05-01/08-T-191-CONF-ENG ET, page 23, line 16 to page 24, line 21.

<sup>71</sup> ICC-01/05-01/08-T-191-CONF-ENG ET, page 23, line 16 to page 24, line 9.

<sup>72</sup> ICC-01/05-01/08-T-191-CONF-ENG ET, page 24, lines 16 and 17.

<sup>73</sup> ICC-01/05-01/08-T-191-CONF-ENG ET, page 24, lines 17 to 18.

**CAR-D04-0002-1768 (Public), CAR-DEF-0002-0567 (Public), CAR-D04-0002-1512 (Public), DRC-OTP-0098-0005 (Public), CAR-DEF-0001-0107 (Public), CAR-D04-0002-1427 (Public), CAR-OTP-0032-0210 (Confidential), CAR-OTP-0032-0097 (Confidential) and CAR-DEF-0001-0634 (Public).**

*a. MLC documents submitted through Witness 33*

34. The defence submits that document CAR-DEF-0001-0105, is relevant to the question of the scope of the accused's role and authority over the MLC generally. In addition, the defence submits that the item is an official MLC document, signed and stamped, which was identified by Witness 33 during his testimony.<sup>74</sup> The Chamber notes that document CAR-DEF-0001-0105 indeed appears to be an MLC Decision No. 006/SG/MLC/12/2001, dated 26 December 2001 and signed by the MLC Secretary-General, Olivier Kamitatu, which deals with the suspension of a judge. The document was shown to Witness 33, a member of the MLC's [REDACTED], who was requested to read it out and questioned by the defence on whether the suspension of judges was among the Secretary-General's functions.<sup>75</sup> As such, although the date of the document lies outside the time period of the charges, the Chamber is satisfied that the document may be of relevance to the issue of the scope of Mr Bemba's role in the MLC and more generally the issue of command and control within the MLC.

35. In terms of probative value, the Chamber notes that [REDACTED]. In addition, the Chamber notes that, contrary to the defence's allegations, Witness 33 did not recognise or identify the document during his testimony; he only commented on its content after reading it out in court at the request of the defence.<sup>76</sup> That notwithstanding, the Chamber is satisfied that the document bears sufficient

<sup>74</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 2.

<sup>75</sup> Transcript of hearing of 13 September 2011, ICC-01/05-01/08-T-160-CONF-ENG ET, page 54, line 20 to page 55, line 22.

<sup>76</sup> *Ibid.*

indicia of reliability such as signature and stamp, and appears to have been produced in the ordinary course of operations within the MLC. There is no suggestion that the admission of the document would have a prejudicial effect on a fair trial. Document CAR-DEF-0001-0105 is therefore admitted.

36. The defence submits that document CAR-DEF-0001-0167 is relevant to the power of other MLC officials to make decisions.<sup>77</sup> The defence further states that it is a signed official document from the MLC, specifically from the National Secretary of Justice, and that it was identified during Witness 33's testimony.<sup>78</sup> In addition, the defence requests the admission of the same document through Witness 15, arguing that the document is also relevant to the credibility of that witness.<sup>79</sup>

37. The Chamber notes that document CAR-DEF-0001-0167 appears to be an MLC *Arrete* No. 006-SNJ/MLC/03/2003, dated 26 March 2003, on the requisition of an officer to assume the role of Prosecutor of the MLC's Supreme War Council. The document was shown to Witness 33 during the defence's questioning and the witness was requested to read it out and comment on its content.<sup>80</sup> After having been asked to read the document, the witness, although stating that he was not an expert on military matters, stated that the Supreme War Council had to deal with military matters.<sup>81</sup> Later during his testimony, Witness 33 requested to clarify his answer.<sup>82</sup> The witness first explained that the War Council was set up in order to conduct the Mambasa operation as "an official cover to demonstrate to the world that [the MLC was] acting within the standards and the norms, legal

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<sup>77</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 3.

<sup>78</sup> *Ibid.*

<sup>79</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 11.

<sup>80</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 59, lines 1 to page 60, line 13; transcript of hearing of 14 September 2011, ICC-01/05-01/08-T-161-CONF-ENG ET, page 10, line 12 to page 11, line 1, 8; transcript of hearing of 15 September 2011, ICC-01/05-01/08-T-162-CONF-ENG ET, page 3, line 18 to page 4, line 1, page 6, line 1 to page 8, line 1.

<sup>81</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 59, line 1 to page 60, line 13.

<sup>82</sup> ICC-01/05-01/08-T-161-CONF-ENG ET, page 10, line 12 to page 11, line 6.

and otherwise”.<sup>83</sup> However, he stressed that he was not aware of any meeting of the War Council in March 2003 in Gbadolite (the location of the MLC headquarters), and that, according to his recollection, the War Council met before the Mambasa operation, which took place around December 2002.<sup>84</sup> The Chamber notes that the same document was used during the questioning of Witness 15, [REDACTED] who did not recognise the document.<sup>85</sup> As such, the Chamber is of the view that the document, the date of which lies outside the time frame of the charges, is of little relevance to the matters that are to be considered by the Chamber.

38. In terms of probative value, the Chamber notes that, contrary to the defence’s allegations, Witness 33 did not recognise or identify the document; he only commented on its content after reading it in court at the request of the defence.<sup>86</sup> Witness 15, [REDACTED] did not recognise or authenticate it,<sup>87</sup> nor did he recognise [REDACTED].<sup>88</sup> In addition, the Chamber notes that the [REDACTED] on this document does not correspond to the [REDACTED] that was inserted, *inter alia*, in documents CAR-DEF-0001-0105, CAR-DEF-0001-0106, CAR-OTP-0009-0152, CAR-D04-0002-1432, CAR-OTP-0009-0162 and CAR-DEF-0002-0667, all analysed in the present decision. In light of the fact that it has not been recognised or authenticated by any witness, the Chamber is of the view that this document has low, if any, probative value and will not assist in the determination of the case. The Chamber therefore rejects the admission of document CAR-DEF-0001-0167.

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<sup>83</sup> ICC-01/05-01/08-T-162-CONF-ENG ET, page 6, lines 15 to 22.

<sup>84</sup> ICC-01/05-01/08-T-162-CONF-ENG ET, page 7, lines 5 to 10.

<sup>85</sup> Transcript of hearing of 10 February 2012, ICC-01/05-01/08-210-CONF-ENG ET, page 47, line 5 to page 49, line 2.

<sup>86</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 59, line 1 to page 60, line 13.

<sup>87</sup> ICC-01/05-01/08-210-CONF-ENG ET, page 47, line 13.

<sup>88</sup> ICC-01/05-01/08-210-CONF-ENG ET, page 47, line 24 to page 48, line 3.

39. The defence submits that document CAR-DEF-0001-0106, is relevant to the power of other MLC officials to make decisions and that it is an official MLC document, stamped and signed, which was identified by Witness 33 during his testimony.<sup>89</sup> The Chamber notes that document CAR-DEF-0001-0106 appears to be an MLC Decision No. 008/SG/MLC/12/2001, on the appointment of a Prosecutor, dated 27 December 2001 and signed by the MLC Secretary-General, Olivier Kamitatu. This document was shown to Witness 33 in court, who commented on its content.<sup>90</sup> In particular, after reading the document, the witness recognised the signatory of the document as the MLC Secretary-General.<sup>91</sup> Later during his testimony, Witness 33 requested to clarify his answer.<sup>92</sup> He explained the way in which magistrates were appointed within the MLC in the absence of the “Supreme Council for the Magistracy”,<sup>93</sup> and submitted that the content of document CAR-DEF-0001-0106 contradicted his previous testimony and stated that his previous answer had “simply focused on the instruments that [he] was aware of”.<sup>94</sup> As such, although the date of the document lies outside the time frame of the charges, the Chamber is satisfied that the document may be of relevance to the scope of Mr Bemba’s role in the MLC and more generally to the issue of command and control within the MLC. In addition, the document may be relevant for the assessment of the witness’s credibility.

40. In terms of probative value, the Chamber notes that the alleged [REDACTED] document, [REDACTED]. In addition, the Chamber notes that, contrary to the defence’s allegations, Witness 33 did not recognise or identify the document during his testimony; he only commented on its content after reading it out in

<sup>89</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 3.

<sup>90</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 57, line 11 to page 58, line 15; ICC-01/05-01/08-T-162-CONF-ENG ET, page 4, line 5 to page 5, line 22.

<sup>91</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 57, line 11 to page 58, line 15.

<sup>92</sup> ICC-01/05-01/08-T-161-CONF-ENG ET, page 10, line 12 to page 11, line 6.

<sup>93</sup> *Conseil Supérieur de la Magistrature*.

<sup>94</sup> ICC-01/05-01/08-T-162-CONF-ENG ET, page 4, line 11 to page 5, line 4.

court at the request of the defence.<sup>95</sup> That notwithstanding, the Chamber is satisfied that the document bears sufficient indicia of reliability such as a signature and stamp, and appears to have been produced in the ordinary course of operations within the MLC. There is no suggestion that admission of the document would have a prejudicial effect on a fair trial. Document CAR-DEF-0001-0106 is therefore admitted.

41. The defence submits that document CAR-OTP-0009-0140 is relevant to the credibility of Witness 33's testimony and that it is an official MLC document that is stamped and signed and that was identified by the witness during his testimony.<sup>96</sup> The Chamber notes that document CAR-OTP-0009-0140, which appears to be an MLC *procès-verbal de notification*, dated 12 November 2002, was indeed shown to Witness 33 during his testimony.<sup>97</sup> The witness recognised the document and identified it as a notification of [REDACTED] the MLC's *Conseil Politico-Militaire* as of 11 November 2002.<sup>98</sup> The Chamber therefore considers that the document may be of relevance in the assessment of the witness's credibility. As to the document's probative value, the Chamber is satisfied that the document was recognised by the witness, [REDACTED]. In addition, the Chamber is satisfied that the document bears sufficient indicia of reliability such as signature and stamp, and appears to have been produced in the ordinary course of operations within the MLC. There is no suggestion that admission of the document would have a prejudicial effect on a fair trial. Document CAR-OTP-0009-0140 is therefore admitted.

42. The defence submits that document CAR-OTP-0009-0142, is relevant to the witness's credibility and that it is an official MLC document that was identified

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<sup>95</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 57, line 13 to page 58, line 15.

<sup>96</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 3.

<sup>97</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 43, lines 4 to 23.

<sup>98</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 43, lines 8 to 15.

by Witness 33 during his testimony.<sup>99</sup> The Chamber notes that document CAR-OTP-0009-0142, which appears to be an MLC List of [REDACTED], dated 22 March 2003, was indeed shown to Witness 33 who recognised the document [REDACTED].<sup>100</sup> In the view of the Chamber, the document, which falls outside the temporal scope of the charges, is of no relevance to the assessment of the witness's testimony or credibility. The Chamber therefore rejects the admission of document CAR-OTP-0009-0142.

43. The defence submits that document CAR-OTP-0009-0152, is relevant to the Witness 33's credibility and to allegations as to the accused's military rank and the power of other MLC officials to make decisions.<sup>101</sup> The defence further submits that it is an official MLC document which is stamped and signed and was identified by Witness 33 during his testimony.<sup>102</sup> The Chamber notes that document CAR-OTP-0009-0152, which appears to be a letter of convocation for a meeting of the *Conseil Politico-Militaire*, dated 4 April 2003 and signed by the MLC Secretary General, was indeed shown to and discussed with Witness 33 during his testimony.<sup>103</sup> The witness explained that the purpose of the meeting convened by this document was to adopt the statute of the MLC as a political party, an event that took place in the DRC after the events under examination in the present case.<sup>104</sup> In the view of the Chamber, the document, which falls outside the temporal and geographical scope of the charges, is of no relevance to the assessment of the witness's credibility and does not provide information on the accused's military rank at the time period the relevant to the charges. The Chamber therefore rejects the admission of document CAR-OTP-0009-0152.

<sup>99</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 4.

<sup>100</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 44, lines 1 to 16.

<sup>101</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 4.

<sup>102</sup> *Ibid.*

<sup>103</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 44, line 19 to page 46, line 7.

<sup>104</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 45, lines 1 to 9.

44. The defence submits that document CAR-OTP-0009-0180 is relevant to Witness 33's credibility, including his knowledge of events in the CAR, and that it was identified by the witness during his testimony.<sup>105</sup> The Chamber notes that document CAR-OTP-0009-0180, which is titled "*liste des agents et cadres par niveau d'études*", dated 5 April 2003, was indeed shown to and discussed with Witness 33 during his testimony.<sup>106</sup> In the view of the Chamber, the document, which simply provides a list of professional qualifications apparently indicating the number of officials who attained such degree, is of no relevance to the assessment of the witness's credibility as it does not provide any information on the witness's knowledge of the events in the CAR. The Chamber therefore rejects the admission of document CAR-OTP-0009-0180.

45. The defence submits that document CAR-OTP-0009-0220, is relevant to the "credibility and motivation" of Witnesses 33 and 15, and that it is an official MLC document [REDACTED] identified by Witness 33 during his testimony.<sup>107</sup> The Chamber notes that Document CAR-OTP-0009-0220, which appears to be the MLC Decision No. 001/CF-MLC/12-05, concerning the removal of a founding member of the MLC, dated 5 December 2005, was indeed shown to and discussed with Witness 33 during his testimony.<sup>108</sup> The witness recognised the document, which [REDACTED].<sup>109</sup> The witness explained that the document deals with the dismissal of the MLC Secretary-General, Olivier Kamitatu, after a disagreement he had with the MLC President.<sup>110</sup> As such, although the date of the document lies outside the time frame of the charges, the Chamber is satisfied that the document may be of relevance to the assessment of the credibility of Witnesses 15 and 33. In addition, the Chamber is of the view that the document

<sup>105</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 4.

<sup>106</sup> ICC-01/05-01/08-T-162-CONF-ENG ET, page 24, line 10 to page 25, line 25.

<sup>107</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 4.

<sup>108</sup> Transcript of hearing of 16 September 2011, ICC-01/05-01/08-T-163-CONF-ENG ET, page 57, line 21 to page 59, line 7.

<sup>109</sup> ICC-01/05-01/08-T-163-CONF-ENG ET, page 58, lines 9 to 11.

<sup>110</sup> ICC-01/05-01/08-T-163-CONF-ENG ET, page 58, line 12 to page 59, line 4.

may be of relevance to the issue of the scope of Mr Bemba's role in the MLC and more generally to the issue of command and control within the MLC.

46. In terms of probative value, the Chamber notes that [REDACTED].<sup>111</sup> In addition, the Chamber is satisfied that the document bears sufficient indicia of reliability, such as what appear to be the signatures of the founding members of the MLC. Moreover, the document appears to have been produced in the ordinary course of operations within the MLC. There is no suggestion that admission of the document would have a prejudicial effect on a fair trial. Document CAR-OTP-0009-0220 is therefore admitted.

47. The defence submits that document CAR-D04-0002-1432 is relevant to the power of the Secretary-General to appoint people to senior positions, the scope of Mr Bemba's role in the MLC, and the credibility of Witness 33.<sup>112</sup> The defence further states that the document is an official MLC document, stamped and signed, and that it was identified by the witness during his testimony.<sup>113</sup> The Chamber notes that document CAR-D04-0002-1432, which appears to be the MLC Notification No. 027/CAB/SG/MLC/01/2003, on the designation of the National Secretary of Finance and Budget, signed by the Secretary General of the MLC, was indeed shown to and discussed with Witness 33 during his testimony.<sup>114</sup> After reading the document, the witness explained that it referred to the notification of an interim position and not an appointment.<sup>115</sup> The witness was not surprised that such an appointment would have come under the prerogatives of the Secretary-General as the one in charge of coordinating the MLC's activities.<sup>116</sup> Although the document has no date, it appears, from the reference number of the decree and a

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<sup>111</sup> [REDACTED].

<sup>112</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 4.

<sup>113</sup> *Ibid.*

<sup>114</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 55, line 25 to page 57, line 10.

<sup>115</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 56, line 24 to page 57, line 6.

<sup>116</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 57, lines 6 to 10.

hand-written note in its upper left corner that the document was issued at the beginning of the year 2003. As such, the Chamber is satisfied that the document may be of relevance to the understanding of the extent of Mr Bemba's role within the MLC and the functions assigned to the MLC's Secretary General.

48. In terms of probative value, the Chamber notes that [REDACTED]. In addition, the Chamber notes that, contrary to the defence's allegations, Witness 33 did not recognise or identify the document during his testimony; he only commented on its content after reading it out in court at the request of the defence.<sup>117</sup> That notwithstanding, the Chamber is satisfied that the document bears sufficient indicia of reliability such as a signature and stamp, and appears to have been produced in the ordinary course of operations within the MLC. There is no suggestion that admission of the document would have a prejudicial effect on a fair trial. Document CAR-D04-0002-1432 is therefore admitted.

49. The defence submits that document CAR-D04-0002-1444, is relevant to the training of the MLC troops and the credibility of Witness 33's testimony in relation to, *inter alia*, his knowledge of the events in the CAR.<sup>118</sup> The defence further argues that it is an official MLC document, which is stamped and signed and was identified by the witness during his testimony. The Chamber notes that item CAR-D04-0002-1444, appears to be the MLC document No. 05/DG/BSI/BSF/GBDO/002/2003, containing a proposal for the redeployment of the *Bureau de Sécurité Intérieure* ("BSI") and *Bureau de Sécurité aux Frontières* ("BSF") agents who had received ideological training. Although the document has no date, it appears, from the reference number of the decree, to have been issued at the beginning of 2003. The Chamber notes that document CAR-D04-

<sup>117</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 55, line 25 to page 57, line 10.

<sup>118</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 4.

0002-1444 was shown to Witness 33 [REDACTED].<sup>119</sup> The witness explained that the list refers to MLC agents, who were to be deployed on the ground after having received training on the ideology of the movement.<sup>120</sup> The witness further stressed that this training was provided to equip the recruits with knowledge about the MLC and to ensure that they would defend the cause of the movement.<sup>121</sup> As such, the Chamber is satisfied that the document may be of relevance to the Chamber's assessment of the MLC's appointment and training system, which may be of relevance to the scope of Mr Bemba's role in the MLC and more generally to the issue of command and control within the MLC.

50. In terms of probative value, the Chamber is satisfied that Witness 33, [REDACTED] authenticated it and recognised [REDACTED] the stamp inserted on it.<sup>122</sup> In addition, the Chamber is satisfied that the document bears sufficient indicia of reliability such as a signature and stamp, and appears to have been produced in the ordinary course of operations within the MLC. There is no suggestion that admission of the document would have a prejudicial effect on a fair trial. Document CAR-D04-0002-1444 is therefore admitted.

51. The defence submits that document CAR-OTP-0017-0358, is relevant to the measures taken by the MLC to prevent and punish criminal activity, and to the credibility of Witness 33's allegations.<sup>123</sup> The defence further submits that it is an official document from the Martial Court of Gbadolite, which was discussed during the testimony of Witnesses 33.<sup>124</sup> In addition, the defence requests the admission of the same document through Witness 45, arguing that the document is also relevant to the credibility of that witness. The Chamber notes that

<sup>119</sup> ICC-01/05-01/08-T-162-CONF-ENG ET, page 26, lines 7 to 15.

<sup>120</sup> ICC-01/05-01/08-T-162-CONF-ENG ET, page 27, lines 5 to 25.

<sup>121</sup> ICC-01/05-01/08-T-162-CONF-ENG ET, page 27, line 14 to page 28, line 9.

<sup>122</sup> ICC-01/05-01/08-T-162-CONF-ENG ET, page 26, line 7 to page 29, line 1.

<sup>123</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 5.

<sup>124</sup> *Ibid.*

Document CAR-OTP-0017-0358, which appears to be a report on the Gbadolite Trials dated 12 December 2002, was indeed shown to and extensively addressed by Witnesses 33 and 45 during their respective testimonies.<sup>125</sup> In addition, defence Witness D04-16 was also questioned in relation to this document.<sup>126</sup> The Chamber notes that, when commenting on the document, Witness 33 referred to a public trial in relation to the events in Bangui which was conducted by a martial court as a result of Mr Mondonga's investigations.<sup>127</sup> The witness was unsure about the date on which the trial was conducted<sup>128</sup> and added that he did not monitor the trial closely because it was not a matter [REDACTED]. He stated that he was therefore not in a position to give details as to the convictions or identity of those tried and convicted.<sup>129</sup> Witness 45, [REDACTED] explained the reason why the trial was organised,<sup>130</sup> and commented on sentences imposed.<sup>131</sup> Witness D04-16 read the document in court but did not comment on its content.<sup>132</sup> As such, the Chamber is satisfied that this document may be of relevance to the Chamber's assessment of Mr Bemba's capacity to repress the crimes allegedly committed by the MLC, to the actions taken by him in this regard and to the assessment and credibility of Witnesses 33 and 45.

52. In terms of probative value, the Chamber notes that none of the witnesses to whom this document was shown recognised it. Notably, Witness 45 and Witness D04-16 contested the authenticity of the document given its lack of signatures.<sup>133</sup> In this regard, the Chamber notes that the document appears to be a facsimile,

<sup>125</sup> ICC-01/05-01/08-T-162-CONF-ENG ET, page 57, line 13 to page 58, line 20, page 61, line 10 to page 63, line 7; transcript of hearing of 1 February 2012, ICC-01/05-01/08-T-203-CONF-ENG ET, page 68, line 1 to page 71, line 16.

<sup>126</sup> Transcript of hearing of 27 November 2012, ICC-01/05-01/08-T-276-CONF-ENG ET, page 4, line 16 to page 6, line 24.

<sup>127</sup> ICC-01/05-01/08-T-162-CONF-ENG ET, page 57, lines 16 to 23.

<sup>128</sup> ICC-01/05-01/08-T-162-CONF-ENG ET, page 58, lines 1 to 6.

<sup>129</sup> ICC-01/05-01/08-T-162-CONF-ENG ET, page 58, lines 10 to 17.

<sup>130</sup> ICC-01/05-01/08-T-203-CONF-ENG ET, page 69, line 24 to page 70, line 11.

<sup>131</sup> ICC-01/05-01/08-T-203-CONF-ENG ET, page 69, lines 1 to 8.

<sup>132</sup> ICC-01/05-01/08-T-276-CONF-ENG ET, page 4, line 16 to page 6, line 24.

<sup>133</sup> ICC-01/05-01/08-T-203-CONF-ENG ET, page 68, line 1 to page 71, line 16; ICC-01/05-01/08-T-276-CONF-ENG ET, page 6, lines 9 to 24.

which does not bear any indicia of reliability such as letterheads, signatures or stamps. In light of the above, although the document appears to address relevant issues, given its limited probative value, the Chamber is of the view that, if admitted for the truth of its content, it may prejudice the fairness of the trial. That notwithstanding, the Chamber notes that the document has been disclosed by the prosecution and submitted into evidence by the defence. In these circumstances, the Chamber considers that the document may be admitted for the limited purpose of assessing the credibility of Witnesses 33 and 45, and to provide the context to the testimony of the witnesses that testified on its content. In light of the envisioned limited usage of the document, the Chamber is of the view that admission of this document would not have a prejudicial effect on a fair trial. Document CAR-OTP-0017-0358 is therefore admitted.

53. The defence submits that document CAR-OTP-0009-0162\_R01 is relevant to the allegations concerning the character and operations of the MLC, and to the motivation, bias and credibility of Witness 33.<sup>134</sup> The defence further submits that it is an official document and a public record, which is signed, and which was identified by the witness during his testimony. The Chamber notes that document CAR-OTP-0009-0162\_R01, which appears to be the MLC Statute adopted on 5 April 2003, was indeed shown to and discussed with Witness 33 during his testimony.<sup>135</sup> When questioned by the defence, the witness recognised the document<sup>136</sup> and, after reading out the preamble,<sup>137</sup> acknowledged that he agreed with it at that time.<sup>138</sup> The Chamber finds that, although it was used to question Witness 33, the document lies outside the time frame of the charges and does not appear to be of relevance to the matters that are to be considered by the

<sup>134</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 5.

<sup>135</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 30, line 15 to page 32, line 10, page 39, line 2 to page 42, line 22; ICC-01/05-01/08-T-161-CONF-ENG ET, page 45, line 10 to page 48, line 13.

<sup>136</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 30, line 19.

<sup>137</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 31, line 11 to page 32, line 10.

<sup>138</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 32, lines 11 to 23.

Chamber. Indeed, as clarified by Witness 33, the MLC's Statute which was in force during the time relevant to the charges is a different document; and therefore, any description of the "character and operations of the MLC" that this document contains are of no relevance to the Chamber's determination. In addition, the Chamber fails to see the link between this document and the "motivation, bias and credibility of Witness 33", as alleged by the defence. The Chamber therefore rejects the admission of document CAR-OTP-0009-0162\_R01.

54. The defence submits that document CAR-DEF-0002-0667, is relevant to Witness 33's credibility, the power of other MLC officials and the decision-making process within the MLC.<sup>139</sup> The defence further notes that it is an official MLC document, which is signed, and which was identified by the witness during his testimony.<sup>140</sup> The Chamber notes that document CAR-DEF-0002-0667, which appears to be the MLC Document No. 0197/SG/MLC/07/2000, dated 10 July 2000, signed by the Secretary General of the MLC, Olivier Kamitatu, calling for a meeting of the Executive Committee, was shown to and discussed with Witness 33 during his testimony.<sup>141</sup> Witness 33 [REDACTED] gave details about the nature and purpose of the type of meetings mentioned therein.<sup>142</sup> The witness explained that the "expanded or enlarged executive meetings" were held within the MLC to discuss issues of direction and general policies for the movement and in cases of a crisis within the MLC.<sup>143</sup> In addition, Witness 33 affirmed that these meetings, which were not held on a regular basis,<sup>144</sup> were chaired by the MLC's President himself,<sup>145</sup> or by the Secretary General, in the absence of the

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<sup>139</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 6.

<sup>140</sup> *Ibid.*

<sup>141</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 60, line 20 to page 62, line 3; ICC-01/05-01/08-T-161-CONF-ENG ET, page 5, line 9 to page 9, line 8.

<sup>142</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 60, line 23 to page 62, line 3; ICC-01/05-01/08-T-161-CONF-ENG ET, page 5, line 8 to page 9, line 10.

<sup>143</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 61, lines 16 to 22.

<sup>144</sup> ICC-01/05-01/08-T-161-CONF-ENG ET, page 6, lines 24 to 25.

<sup>145</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 62, line 3.

President.<sup>146</sup> As such, although the date of the document lies outside the time frame of the charges, the Chamber is satisfied that the document may be of general relevance to the issue of the power of the MLC's officials and the decision-making process within the MLC.

55. In terms of probative value, the Chamber notes that [REDACTED]. In addition, the Chamber notes that, contrary to the defence's allegations, Witness 33 did not recognise or identify the document during his testimony; he only [REDACTED] commented on its content after reading it out in court at the request of the defence.<sup>147</sup> That notwithstanding, the Chamber is satisfied that the document bears sufficient indicia of reliability such as a signature and stamp, and appears to have been produced in the ordinary course of operations within the MLC. There is no suggestion that admission of the document would have a prejudicial effect on a fair trial. Document CAR-DEF-0002-0667 is therefore admitted.

*b. MLC document submitted through Witness 32*

56. The defence submits that document CAR-D04-0002-1768, is relevant to the credibility of Witness 32's testimony.<sup>148</sup> The defence further submits that the document is signed and stamped and that it was discussed during the witness's testimony.<sup>149</sup> The Chamber notes that document CAR-D04-0002-1768, which appears to be the *Armée de Libération du Congo* ("ALC") note No. ALC/061/G2-EMG/FLC/2001 on the conclusions of an investigation regarding the "Beni Conspiracy", dated 28 June 2001, apparently signed by the G2 of the ALC, was shown to Witness 32 and discussed during his testimony.<sup>150</sup> After reading some paragraphs at the request of the defence, the witness clarified that the note was

<sup>146</sup> ICC-01/05-01/08-T-161-CONF-ENG ET, page 7, lines 3 to 23.

<sup>147</sup> ICC-01/05-01/08-T-160-CONF-ENG ET, page 60, line 20 to page 62, line 3; ICC-01/05-01/08-T-161-CONF-ENG ET, page 9, lines 1 to 2.

<sup>148</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 7.

<sup>149</sup> *Ibid.*

<sup>150</sup> Transcript of hearing of 27 September 2011, ICC-01/05-01/08-T-167-CONF-ENG ET, page 40, line 9 to page 42, line 13 and page 44, lines 1 to 22.

addressed to the MLC's Chief of General Staff and copied for information to the National President of the *Front de Liberation du Congo* ("FLC").<sup>151</sup> In addition, the Chamber notes that during his testimony the witness gave detailed evidence on a trial conducted against General Kibonge,<sup>152</sup> who is also mentioned in this document. In light of the above, although the date of the document lies outside the time frame of the charges, the Chamber is satisfied that the document may be of general relevance to the issue of the power of the MLC's officials and will enable the Chamber to assess the witness's credibility. In terms of probative value, the Chamber is satisfied that the document bears sufficient indicia of reliability such as a date, signature and stamp, and appears to have been produced in the ordinary course of operations within the MLC. There is no suggestion that the admission of the document would have a prejudicial effect on a fair trial. Document CAR-D04-0002-1768 is therefore admitted.

*c. MLC document submitted through witnesses 65 and 36*

57. The defence submits that document CAR-DEF-0002-0567 demonstrates that the MLC troops were under the command of the CAR Army during the events, which is directly relevant to the question of command responsibility.<sup>153</sup> The defence further submits that Witness 65 recognised the document and confirmed its authenticity.<sup>154</sup> The prosecution submits that the document is relevant to the contextualisation of Witness 36's testimony.<sup>155</sup>

58. The Chamber notes that document CAR-DEF-0002-0567, which appears to be a report on the military operations of the ALC's troops in Bangui from 29 October 2002 to 15 March 2003, issued on 4 May 2003, signed by Colonel Mustapha

<sup>151</sup> ICC-01/05-01/08-T-167-CONF-ENG ET, page 40, lines 9 to 23.

<sup>152</sup> Transcript of hearing 23 September 2011, ICC-01/05-01/08-T-165-CONF-ENG CT, page 43, line 17 to page 44, line 14, page 46, lines 21 to 22 page 47, line 4 to page 51, line 8; ICC-01/05-01/08-T-167-CONF-ENG ET, page 37, lines 2 to 7, page 46, lines 13 to 14, page 47, lines 8 to 16.

<sup>153</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 7.

<sup>154</sup> *Ibid.*

<sup>155</sup> ICC-01/05-01/08-2191-Conf-AnxA, page 15.

Mukiza and addressed to the President of the MLC, was indeed shown to and discussed with Witnesses 65 and 36 during their testimony. In particular Witness 65, to whom the document was read by the defence but who was not questioned on its content by the defence, confirmed that he had seen it before.<sup>156</sup> When questioned by the prosecution, Witness 65 affirmed that he had seen the document [REDACTED] in Gbadolite in 2003, and that it was on the basis of this report that he affirmed that M[o]ustapha received orders “from the other side” and that from this report he learned the name of “Bombayake”.<sup>157</sup> Although stating that he had never seen the document before,<sup>158</sup> Witness 36 commented on the military structure described therein and the role of certain officials during the time period relevant to the charges, such as General Bombayake.<sup>159</sup> In addition, Witness 36 commented on the reference made in the document to “violence committed by Bozize’s troops” and explained the investigations conducted by Colonel Mondonga and the arrest of Lieutenant Bomengo.<sup>160</sup>

59. The Chamber notes that, in addition to Witnesses 36 and 65, the parties also questioned Witness 173 and Witness D04-19, [REDACTED] in relation to its content. Although Witness 173 was never asked whether he recognised the document, he was questioned by the defence based on information gathered from the document, in relation to the command relationship between and the roles of Abdoulaye Miskine, General Bombayake, General André Mazi, General Ernest Mbeti-Ti-Bangui and Major Tutu Kuese.<sup>161</sup> During his testimony, Witness D04-19 was extensively questioned about the document’s content by both

<sup>156</sup> Transcript of hearing of 5 October 2011, ICC-01/05-01/08-T-170-CONF-ENG ET, page 53, lines 21 to 24, page 58, lines 9 to 12.

<sup>157</sup> Transcript of hearing of 6 October 2011, ICC-01/05-01/08-T-171-CONF-ENG ET, page 35, line 9 to page 36, line 2.

<sup>158</sup> Transcript of hearing of 15 March 2012, ICC-01/05-01/08-T-215-CONF-ENG ET, page 51, line 25.

<sup>159</sup> ICC-01/05-01/08-T-215-CONF-ENG ET, page 55, line 20 to page 56, line 20.

<sup>160</sup> ICC-01/05-01/08-T-215-CONF-ENG ET, page 57, line 8 to page 59, line 1.

<sup>161</sup> Transcript of hearing of 25 August 2011, ICC-01/05-01/08-T-146-CONF-ENG ET, page 28, line 8 to page 32, line 10.

parties.<sup>162</sup> The Chamber is therefore satisfied that, in spite of the date of the document which lies outside the time frame of the charges, the document relates to matters that are properly to be considered by the Chamber and would assist in the Chamber's assessment of the witnesses' testimony.

60. In terms of probative value, the Chamber notes that Witness 65 recognised the document and confirmed that it was authentic.<sup>163</sup> However, Witness 36 affirmed that he had never seen the document before.<sup>164</sup> In addition, Witness 36 stated that, although the format is somewhat consistent with the documents produced by the MLC General Staff,<sup>165</sup> the document would breach the MLC's administrative procedure since it was addressed directly to the President, without going through the hierarchy, and did not receive an identification number.<sup>166</sup> Witness 36 further stated that it was not normal practice for this type of report to be drafted,<sup>167</sup> and that, in his view, the "document has been drawn up, or is intended to provide some coverage – to cover – to provide a certain defence, perhaps in the event that later on perhaps the author thought that later on there will be a prosecution, or some investigations".<sup>168</sup> Witness D04-19, [REDACTED] recognised it,<sup>169</sup> and declared that [REDACTED].<sup>170</sup> In light of the above, and given that several witnesses, [REDACTED] were questioned concerning the authenticity of the document, its admission into evidence will assist the Chamber in evaluating its authenticity. Noting that the document was disclosed by the defence and its admission requested by both parties, there is no suggestion that

<sup>162</sup> ICC-01/05-01/08-T-284-CONF-ENG ET; transcript of hearing of 26 February 2013, ICC-01/05-01/08-T-285-CONF-ENG ET; transcript of hearing of 27 February 2013, ICC-01/05-01/08-T-286-CONF-ENG ET; transcript of hearing of 28 February 2013, ICC-01/05-01/08-T-287-CONF-ENG ET; transcript of hearing of 11 March 2013, ICC-01/05-01/08-T-291-CONF-ENG ET; transcript of hearing of 13 March 2013, ICC-01/05-01/08-T-293-CONF-ENG ET.

<sup>163</sup> ICC-01/05-01/08-T-170-CONF-ENG ET, page 58, lines 9 to 14.

<sup>164</sup> ICC-01/05-01/08-T-215-CONF-ENG ET, page 51, lines 24 to 25.

<sup>165</sup> ICC-01/05-01/08-T-215-CONF-ENG ET, page 52, lines 8 to 10.

<sup>166</sup> ICC-01/05-01/08-T-215-CONF-ENG ET, page 52, lines 10 to 15.

<sup>167</sup> ICC-01/05-01/08-T-215-CONF-ENG ET, page 53, line 17 to page 54, line 1.

<sup>168</sup> ICC-01/05-01/08-T-215-CONF-ENG ET, page 59, lines 7 to 11.

<sup>169</sup> ICC-01/05-01/08-T-284-CONF-ENG ET, page 21, line 24.

<sup>170</sup> ICC-01/05-01/08-T-284-CONF-ENG ET, page 22, line 2, page 23, line 11.

its admission would cause any prejudice to a fair trial. Document CAR-DEF-0002-0567 is therefore admitted.

*d. MLC document submitted through Witness 65*

61. The defence submits that document CAR-D04-0002-1512, is relevant as an illustration of the measures taken by the MLC against criminal conduct on the part of its troops.<sup>171</sup> The defence further submits that Witness 65 confirmed that the content of this document was corroborative of his testimony.<sup>172</sup> The Chamber notes that the document, a letter apparently signed by the accused, under the title of the MLC's National President, and addressed to the National Secretary responsible for military and intelligence activities in Gbadolite, dated 30 October 2000, was shown to Witness 65.<sup>173</sup> The Chamber notes that the letter contains an instruction from the accused to the MLC's Secretary General to arrest an individual accused of having committed an attempted murder and Witness 65 confirmed that the document corroborated his testimony.<sup>174</sup> In light of the above, the Chamber is satisfied that, in spite of the date of the document lying outside the time frame of the charges, the document may be of general relevance to the issue of the measures at the disposal of the accused to prevent or repress the commission of crimes and may assist in the Chamber's assessment of Witness 65's testimony.

62. In terms of probative value, the Chamber is satisfied that the document bears sufficient indicia of reliability such as a date, signature and stamp, and appears to have been produced in the ordinary course of operations within the MLC. There is no suggestion that the admission of the document would have a

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<sup>171</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 7.

<sup>172</sup> *Ibid.*

<sup>173</sup> ICC-01/05-01/08-T-170-CONF-ENG ET, page 40, lines 3 to 25.

<sup>174</sup> ICC-01/05-01/08-T-170-CONF-ENG ET, page 40, lines 22 to 25.

prejudicial effect on a fair trial. Document CAR-D04-0002-1512 is therefore admitted.

*e. MLC document submitted through Witness 213*

63. The defence submits that document DRC-OTP-0098-0005, is relevant to the credibility of Witness 213's testimony and, more generally, to the measures taken by the MLC against criminal conduct.<sup>175</sup> The Chamber notes that document DRC-OTP-0098-0005, an MLC report dated 26 February 2003 and entitled "*Rapport sur le déroulement du procès des militaires de l'Armée de Libération du Congo, ALC, impliqués dans les violations des droits de l'homme dans l'Ituri*", was shown to Witness 213 who stated that he had never seen the document before.<sup>176</sup> However, the Chamber notes that the same document was also used during the questioning of Witness 45<sup>177</sup> and Witness 15, [REDACTED].<sup>178</sup> The Chamber notes that the document appears to have been produced by the MLC in February 2003, in order to detail the military procedures followed in relation to ALC soldiers accused of having committed crimes in the Ituri region. Although it refers to events which occurred outside the geographical scope of the case, the document provides information on the organisation of the *Conseil de Guerre de Garnison* in Gbadolite, the hearings, the proceedings and the decisions of this Council of War. As such, it relates to matters that are properly to be considered by the Chamber, particularly in relation to the issue of the measures at the disposal of the accused to repress the commission of crimes. It may also assist the Chamber in contextualising other pieces of evidence and the evaluation of the abovementioned witnesses' testimony. The document is therefore relevant.

<sup>175</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 10.

<sup>176</sup> ICC-01/05-01/08-T-189-CONF-ENG ET, page 54, line 8 to page 55, line 5.

<sup>177</sup> Transcript of hearing of 2 February 2012, ICC-01/05-01/08-T-204-CONF-ENG ET, page 48, line 19 to page 51, line 6.

<sup>178</sup> Transcript of hearing of 13 February 2012, ICC-01/05-01/08-T-211-CONF-ENG ET, page 8, line 5 to page 9, line 25.

64. In terms of probative value, although not signed, the Chamber is satisfied that the document bears sufficient indicia of reliability such as a logo and date, and appears to have been produced in the ordinary course of operations within the MLC. There is no suggestion that admission of this document would have a prejudicial effect on a fair trial. Document DRC-OTP-0098-0005 is therefore admitted.

*f. MLC documents submitted through Witness 15*

65. The defence submits that documents CAR-DEF-0001-0107 and CAR-D04-0002-1427, are relevant to the measures taken by the MLC to prevent and punish crimes, to the allegations of impunity within the MLC and to the credibility of Witness 15.<sup>179</sup> The Chamber notes that the documents, two letters apparently signed by the MLC's Secretary General and addressed to the UN Special Representative in Kinshasa, dated 17 and 21 February 2003, were shown to Witness 15 [REDACTED] who explained the circumstances in which they were [REDACTED].<sup>180</sup> The letters refer to allegations brought by the MLC in relation to UN Organization Mission in the Democratic Republic of Congo ("MONUC")'s involvement in an initial refusal on the part of the government in Kinshasa to facilitate the appearance of lawyers and journalists at the trials conducted by the MLC in Gbadolite. In light of the above, the Chamber is satisfied that the documents are relevant to matters that are properly to be considered by the Chamber, particularly the measures taken by the accused to repress the commission of crimes, and may enable the Chamber to contextualise Witness 15's testimony.

66. In terms of probative value, the Chamber is satisfied that the documents bear sufficient indicia of reliability such as a date, signature and stamp, and appear to

<sup>179</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 11.

<sup>180</sup> ICC-01/05-01/08-T-211-CONF-ENG ET, page 5, line 8 to page 6, line 15, page 7, lines 2 to 22.

have been produced in the ordinary course of operations within the MLC. There is no suggestion that the admission of the documents would have a prejudicial effect on a fair trial. Documents CAR-DEF-0001-0107 and CAR-D04-0002-1427 are therefore admitted.

67. The prosecution submits that document CAR-OTP-0032-0210 concludes an agreement for co-administration of the MLC and *Rassemblement Congolais pour la Démocratie – Kisangani/Mouvement de Libération* (“RCD-K/ML”) territories, which were effectively controlled by the ALC at the time. The prosecution states that the document is signed by the President of the FLC – which was made up of the two movements – and also by Major Okelo, of the Ugandan forces, who was the commander of an artillery training centre.<sup>181</sup> The prosecution submits that the document is relevant to and probative of the level of MLC sophistication in concluding bilateral agreements with outside parties.<sup>182</sup>

68. The Chamber notes that, contrary to the prosecution’s allegations, document CAR-OTP-0032-0210 does not bear any signature. Indeed, the document appears to be a blank diploma of participation in an army training and not a document concluding any agreement. That notwithstanding, the Chamber notes that the document was shown in-court to Witness 15 during his testimony and he recognised it, discussed its origin and commented on its content.<sup>183</sup> The witness explained that the document reflected an agreement for the co-administration of the territories of the MLC and the RCD-K/ML. He stated that the Ugandan officers provided artillery training for the FLC and that the document was a sample of a certificate to be signed by the Commander responsible for the training and Mr Bemba, which would be awarded at the end of artillery

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<sup>181</sup> ICC-01/05-01/08-2191-Conf-Anx, pages 7 and 8.

<sup>182</sup> ICC-01/05-01/08-2191-Conf-Anx, page 7.

<sup>183</sup> Transcript of the hearing of 7 February 2012, ICC-01/05-01/08-T-207-CONF-ENG CT, from page 50, line 18 to page 52, line 21.

training.<sup>184</sup> Consequently, the Chamber finds that the document is relevant as it may enable the Chamber to understand Mr Bemba's role within the MLC and the MLC's relationships with other armed groups or forces. It may also assist the Chamber in its assessment of Witness 15's testimony. In the view of the Chamber, the probative value of the document derives from its source and the reason for its creation, as explained by Witness 15 in-court. There is no suggestion that the admission of this document would cause any prejudice to a fair trial. Document CAR-OTP-0032-0210 is therefore admitted.

69. In relation to document CAR-OTP-0032-0097, the prosecution states that it was signed by Commander Louis Roger Kibonge and was sent to MLC President, Jean-Pierre Bemba, concerning the budget estimates for food for 900 to 1500 police recruits during a three-month training period.<sup>185</sup> The prosecution submits that the document is relevant to and probative of the accused's level of control over budgetary and logistical aspects of the MLC.<sup>186</sup>

70. The Chamber notes that document CAR-OTP-0032-0097 was shown to Witness 15 during his testimony and that he recognised it, discussed its origin and commented on its contents.<sup>187</sup> In particular, the witness confirmed that the document, although not dated, was produced during or after the month of March 2003,<sup>188</sup> and that it is a document detailing police logistics submitted to the MLC's President for a decision, since he was the person who ordered expenditures.<sup>189</sup> As such, the Chamber is satisfied that the document is relevant, as it relates to matters that are properly to be considered by the Chamber, in

<sup>184</sup> Transcript of the hearing of 7 February 2012, ICC-01/05-01/08-T-207-CONF-ENG CT, from page 50, line 23 to page 51, line 9.

<sup>185</sup> ICC-01/05-01/08-2191-Conf-Anx, page 9.

<sup>186</sup> *Ibid.*

<sup>187</sup> ICC-01/05-01/08-T-207-CONF-ENG CT, page 62, line 17 to page 64, line 25.

<sup>188</sup> ICC-01/05-01/08-T-207-CONF-ENG CT, page 63, line 22 to page 64, line 1.

<sup>189</sup> ICC-01/05-01/08-T-207-CONF-ENG CT, page 64, lines 1 to 12.

particular Mr Bemba's role within the MLC, and it may also assist in the Chamber's assessment of Witness 15's testimony.

71. In terms of probative value, the Chamber is satisfied that the document bears sufficient indicia of authenticity and reliability, such as a letterhead and signature, and appears to have been produced in the ordinary course of operations within the MLC. The document was also recognised by Witness 15 in court. There is no suggestion that admission of this document would cause any prejudice to a fair trial. Document CAR-OTP-0032-0097 is therefore admitted.

*g. MLC document submitted through Witness 36*

72. In relation to document CAR-DEF-0001-0634 the prosecution submits that it is relevant to the contextualisation of Witness 36's testimony.<sup>190</sup> The Chamber notes that the document consists of two ALC memoranda allegedly written by Brigade General Mongapa Sumi, dated 19 September 2008 and 25 June 2008 respectively, relating the 2002-2003 intervention of the ALC in the CAR and the structure of the ALC at the time. The document was shown to and discussed with Witness 36 during his testimony.<sup>191</sup> Although the witness stated that he had never seen the document before and that he was not familiar with it,<sup>192</sup> he was nevertheless extensively questioned on the veracity of its content.<sup>193</sup> In addition, the same document was used by the parties during the questioning of Witness 33, in relation to the role of General Amuli within the MLC during the operations in the CAR in 2002.<sup>194</sup> The Chamber is therefore satisfied that, in spite of the date of the document which lies outside the time frame of the charges, the document relates to matters that are properly to be considered by the Chamber, particularly

<sup>190</sup> ICC-01/05-01/08-2191-Conf-AnxA, page 15.

<sup>191</sup> ICC-01/05-01/08-T-215-CONF-ENG ET, page 32, line 17 to page 50, line 25.

<sup>192</sup> ICC-01/05-01/08-T-215-CONF-ENG ET, page 33, line 24 to page 34, line 2.

<sup>193</sup> ICC-01/05-01/08-T-215-CONF-ENG ET, page 32, line 21 to page 50, line 25.

<sup>194</sup> ICC-01/05-01/08-T-161-CONF-ENG ET, page 14, line 15 to page 19, line 18; transcript of hearing of 19 September 2011, ICC-01/05-01/08-T-164-CONF-ENG ET, page 43, line 3 to page 44, line 25.

in relation to the MLC's intervention in the CAR in 2002-2003. In addition, the document may assist in the Chamber's assessment of the abovementioned witnesses' testimony and that of the evidence as a whole.

73. In terms of probative value, the Chamber notes that Witness 33 identified the signature on the document as that of General Mongapa Sumi, the G1 of the ALC.<sup>195</sup> However both Witness 36 and Witness 33 raised doubts as to the authenticity and reliability of the document. Witness 36 affirmed that at the dates indicated in the document, the ALC no longer existed.<sup>196</sup> In addition, Witness 36 noted that the document "does not have the format corresponding to logic or what we might talk or speak in terms of military correspondence [...] there is no true logic in this document in terms of military correspondence. There is no sender. There is no numbering system. It does not bear a reference number. The signature formula does not really correspond to military reality, if you like, so you can see that there is no logic behind this kind of drafting."<sup>197</sup> Witness 33 affirmed that given the place where the document was drafted and its date – a long time after the 2002-2003 MLC's intervention in the CAR – it was not possible to "give much credit to this document",<sup>198</sup> and that the document does not have "the habitual format of a document that could have been issued either by the presidency, or by the secretary-general."<sup>199</sup>

74. In light of the above, although the document appears to address relevant issues, given its limited probative value, the Chamber is of the view that, if admitted for the truth of its content, it has the potential to prejudice the fairness of the trial. That notwithstanding, the Chamber notes that the document was disclosed by the defence and submitted into evidence by the prosecution in order to provide

<sup>195</sup> ICC-01/05-01/08-T-161-CONF-ENG ET, page 16, lines 2 to 6.

<sup>196</sup> ICC-01/05-01/08-T-215-CONF-ENG ET, page 34, line 5 to line 7.

<sup>197</sup> ICC-01/05-01/08-T-215-CONF-ENG ET, page 35, lines 16 to 23.

<sup>198</sup> ICC-01/05-01/08-T-161-CONF-ENG ET, page 17, lines 10 to 13.

<sup>199</sup> ICC-01/05-01/08-T-164-CONF-ENG ET, page 43, line 25 to page 44, line 25.

context to the testimony of Witness 36. The Chamber considers that the document may be admitted for the limited purpose of providing context to the testimony of the witnesses that testified on its content. In light of the envisioned limited usage of the document, the Chamber is of the view that its admission would not have a prejudicial effect on a fair trial. Document CAR-DEF-0001-0634 is therefore admitted.

#### V. Photographs

75. The defence requests the admission of two photographs, documents **CAR-OTP-0035-0275 (Public)** and **CAR-OTP-0035-0282 (Public)**, and submits that they are relevant to the credibility of Witness 33's allegations.<sup>200</sup> The prosecution requests the admission of 18 photographs, documents **CAR-OTP-0032-0399 (Confidential)**, **CAR-OTP-0046-0256 (Confidential)**, **CAR-OTP-0046-0254 (Confidential)**, **CAR-OTP-0032-0387 (Confidential)**, **CAR-OTP-0032-0389 (Confidential)**, **CAR-OTP-0046-0064 (Confidential)**, **CAR-OTP-0046-0073 (Confidential)**, **CAR-OTP-0046-0075 (Confidential)**, **CAR-OTP-0046-0077 (Confidential)**, **CAR-OTP-0046-0081 (Confidential)**, **CAR-OTP-0046-0083 (Confidential)**, **CAR-OTP-0046-0084 (Confidential)**, **CAR-OTP-0046-0090 (Confidential)**, **CAR-OTP-0046-0106 (Confidential)**, **CAR-OTP-0046-0111 (Confidential)**, **CAR-OTP-0046-0116 (Confidential)**, **CAR-OTP-0046-0170 (Confidential)** and **CAR-OTP-0046-0224 (Confidential)**, which are allegedly relevant in that they contextualise Witness 15's testimony.<sup>201</sup>

76. The Chamber notes that photographs CAR-OTP-0035-0275 and CAR-OTP-0035-0282 were shown to Witness 33 during his testimony, and he identified the vehicle shown in them as the type of car that was given to [REDACTED]General

<sup>200</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 5.

<sup>201</sup> ICC-01/05-01/08-2191-Conf-AnxA, pages 6 to 13.

Amuli.<sup>202</sup> Witness 33 explained that there were several pick-up trucks of this kind that had CAR number plates and these plates were removed before the vehicles entered the DRC.<sup>203</sup> In relation to the vehicle said to have been received by General Amuli, Witness 33 explained that it had blood inside which had to be cleaned up,<sup>204</sup> and that [REDACTED].<sup>205</sup> The Chamber notes that Witness 36 stated that there were some vehicles that were driven to Gbadolite from Bangui, though he did not know whether they were pillaged goods.<sup>206</sup> The witness explained that the vehicles went to Gbadolite by road from Bangui and were later used in Gbadolite by some MLC officials, including Witness 33, with the knowledge of Mr Bemba.<sup>207</sup> However, Witness 36 stated that [REDACTED]<sup>208</sup>

77. As Witness 33 used the above photographs to identify a vehicle from the CAR used by the MLC in the DRC, which may be of relevance to the determination of the specific elements of the war crime of pillaging, and as the photographs would serve to contextualise Witnesses 33 and 36's testimony, the Chamber is satisfied that the photographs are relevant. In terms of probative value, the Chamber notes that, although Witness 33 was not the photographer, he nevertheless used the photographs to identify a vehicle he referred to during his testimony, and therefore, the documents are of sufficient probative value to be admitted at this stage. There is no suggestion that admission of the photographs would have a prejudicial effect on a fair trial. Documents CAR-OTP-0035-0275 and CAR-OTP-0035-0282 are therefore admitted.

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<sup>202</sup> ICC-01/05-01/08-T-163-CONF-ENG ET, page 39, lines 3 to 10.

<sup>203</sup> ICC-01/05-01/08-T-163-CONF-ENG ET, page 39, line 20, page 40, line 25 to page 41, line 2.

<sup>204</sup> ICC-01/05-01/08-T-163-CONF-ENG ET, page 38, line 22, page 40, line 6.

<sup>205</sup> ICC-01/05-01/08-T-163-CONF-ENG ET, page 41, line 10, page 45, lines 13 to 14, page 46, line 24, page 47, lines 5 to 6.

<sup>206</sup> Transcript of hearing on 14 March 2012, ICC-01/05-01/08-T-214-CONF-ENG ET, page 54, lines 3 to 6, page 55, lines 5 to 14.

<sup>207</sup> ICC-01/05-01/08-T-214-CONF-ENG ET, page 56, lines 8 to 23; ICC-01/05-01/08-T-215-CONF-ENG ET, page 4, line 12 to page 5, line 25.

<sup>208</sup> ICC-01/05-01/08-T-214-CONF-ENG ET, page 55, line 15 to page 56, line 7.

78. The Chamber notes that, during his testimony, Witness 15 was asked to comment on several photographs. In relation to photograph CAR-OTP-0032-0399, the witness recognised [REDACTED] in the picture and identified the three other persons who were [REDACTED] a Colonel whose name he had forgotten, and [REDACTED].<sup>209</sup> The witness indicated that the photograph was most probably taken in Gbadolite in 2000 or at the beginning of 2001, after a brief military training session and an annual military parade celebrating the anniversary of the MLC.<sup>210</sup> In addition the witness explained that the photograph showed [REDACTED] Motorola telephone, which was the only means of communication among senior staff of the movement at that time.<sup>211</sup> In relation to photograph CAR-OTP-0046-0256, the witness identified Commander Alain Munanga and Jean-Pierre Singo shown standing next to an air defence weapon. However, he could neither provide the date nor the circumstances in which the photograph was taken.<sup>212</sup> In relation to photograph CAR-OTP-0046-0254, which depicts a group of at least a dozen military men, the witness was able to identify Colonel Amuli, Commander Munanga and Jean-Pierre Singo. He explained that Colonel Amuli was holding a communication device in his left hand and that another soldier was carrying an AK-47 weapon. However, he could neither describe the place nor the circumstances in which the photograph was taken.<sup>213</sup> In relation to photograph CAR-OTP-0032-0387, the witness identified members of the ALC during a parade in Gbadolite, either celebrating the taking of the town of Gbadolite in 1999 or the first anniversary of the MLC.<sup>214</sup> The witness further noted that the soldiers wore rubber boots.<sup>215</sup> In relation to photograph CAR-OTP-0032-0389, the witness stated that it depicts either a parade or the celebration of

<sup>209</sup> ICC-01/05-01/08-T-207-CONF-ENG CT, page 16, line 21 to page 17, line 2.

<sup>210</sup> ICC-01/05-01/08-T-207-CONF-ENG CT, page 17, lines 6 to 14; ICC-01/05-01/08-T-207-CONF-FRA ET, page 17, line 28 to page 18, line 1.

<sup>211</sup> ICC-01/05-01/08-T-207-CONF-ENG CT, page 17, lines 21 to 25.

<sup>212</sup> ICC-01/05-01/08-T-207-CONF-ENG CT, page 48, line 19 to page 49, line 19.

<sup>213</sup> ICC-01/05-01/08-T-207-CONF-ENG CT, page 49, line 21 to page 50, line 15.

<sup>214</sup> ICC-01/05-01/08-T-207-CONF-ENG CT, page 56, lines 5 to 24.

<sup>215</sup> ICC-01/05-01/08-T-207-CONF-ENG CT, page 56, line 25 to page 57, line 4.

the first anniversary of the capture of Gbadolite some time between 1999 and the beginning of 2000.<sup>216</sup> The Chamber is satisfied that these photographs, although not confirmed by the witness to have been taken during the time-period under examination, are relevant as they may enable the Chamber to contextualise and assess the credibility of Witness 15's testimony may lead to a better understanding of the military activities carried out within the MLC, the nature of the attire of the MLC troops and their means of communication.

79. In terms of probative value, although the photographer did not testify in court, Witness 15 identified [REDACTED] MLC officials in the photographs, and therefore, they are of sufficient probative value to be admitted at this stage. There is no suggestion that admission of the photographs would have a prejudicial effect on a fair trial. Photographs CAR-OTP-0032-0399, CAR-OTP-0046-0256, CAR-OTP-0046-0254, CAR-OTP-0032-0387 and CAR-OTP-0032-0389 are therefore admitted.

80. The Chamber notes that, according to the testimony of Witness 15, items CAR-OTP-0046-0064, CAR-OTP-0046-0073, CAR-OTP-0046-0075, CAR-OTP-0046-0077, CAR-OTP-0046-0081, CAR-OTP-0046-0083, CAR-OTP-0046-0084, CAR-OTP-0046-0090, CAR-OTP-0046-0106, CAR-OTP-0046-0111, CAR-OTP-0046-0116 and CAR-OTP-0046-0170, are all photographs taken during a ceremony in Gbadolite, which was organised for the promotion of MLC officers.<sup>217</sup> The Chamber notes that although asked to indicate when the photographs were taken,<sup>218</sup> the witness did not specify the date on which that ceremony was held. However, when referring to one of the photograph, the witness did not refute the prosecution's

<sup>216</sup> ICC-01/05-01/08-T-207-CONF-ENG CT, page 57, line 10 to page 58, line 10.

<sup>217</sup> Transcript of hearing of 8 February 2012, ICC-01/05-01/08-T-208-CONF-ENG ET, page 9, lines 16 to 17, page 10, line 25 to page 11, line 1, page 11, lines 21 to 22, page 13, lines 12 to 13, page 22, lines 24 to 25, page 25, lines 14 to 15.

<sup>218</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 9, lines 14 to 15, page 10, line 24, page 11, line 19, page 13, line 10, page 22, line 22, page 25, line 12.

stated understanding that the event depicted took place in March 2003.<sup>219</sup> In addition, during the course of his testimony, Witness 15 explained that a ceremony for pinning stripes of ranks awarded to soldiers was celebrated in a military parade organised in March 2003, at which various epaulets or stars of the military were conferred on individuals.<sup>220</sup>

81. In relation to photograph CAR-OTP-0046-0064, Witness 15 identified Mr Bemba, holding the baton of command while greeting the crowd, and General Amuli right next to him, also holding a swagger stick.<sup>221</sup> The witness explained that the baton of command symbolises authority and power over the soldiers.<sup>222</sup> In relation to photograph CAR-OTP-0046-0073, the witness identified [REDACTED] Mr Bemba, [REDACTED].<sup>223</sup> The witness further explained that Mr Bemba was holding the baton of command and wearing the military uniform, which he wore on a regular basis while in Gbadolite.<sup>224</sup> In relation to photograph CAR-OTP-0046-0075, the witness identified Mr Bemba addressing the local people and the soldiers.<sup>225</sup>

82. In relation to photograph CAR-OTP-0046-0077, the witness identified [REDACTED] and explained that was probably reading out the decisions granting the new ranks to the MLC officers.<sup>226</sup> In addition, the witness believed that the photograph depicted the moment at which Colonel Amuli read the decree conferring the rank of Major-General on Mr Bemba, and, as a symbol of the *Conseil Politico-Militaire*, [REDACTED].<sup>227</sup> In relation to photograph CAR-OTP-0046-0081, the witness identified the members of the *Conseil Politico-Militaire*

<sup>219</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 25, lines 6 to 8, page 26, lines 8 to 12.

<sup>220</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 8, lines 23 to 25, page 9, lines 1 to 3.

<sup>221</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 9, line 8 to page 10, line 16.

<sup>222</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 10, lines 9 to 13.

<sup>223</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 11, lines 2 to 5.

<sup>224</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 11, lines 7 to 12.

<sup>225</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 11, lines 22 to 25.

<sup>226</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 13, lines 13 to 16.

<sup>227</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 14, lines 3 to 9.

of the MLC, François Mwamba, Colonel Mongapa, Samuel Simene, Jean-Pierre Bemba, and Alain Munanga. He explained that this photograph was likely taken while Colonel Amuli was reading out the decision raising Mr Bemba to the rank of Major-General.<sup>228</sup> In addition, the witness identified a soldier carrying a Kalashnikov as the bodyguard of Mr Bemba.<sup>229</sup> In relation to photograph CAR-OTP-0046-0083, the witness identified Colonel Amuli, Colonel Alongaboni, François Mwamba and Colonel Mongapa.<sup>230</sup> In relation to document CAR-OTP-0046-0084, the witness explained that the photograph shows [REDACTED] Colonel Amuli pinning epaulets and stars on the shoulders of Mr Bemba increasing his rank to that of Major-General.<sup>231</sup>

83. In relation to photograph CAR-OTP-0046-0090, the witness stated that it shows Mr Bemba increasing the rank of Colonel Amuli to that of Major-General, in accordance with a decree that Mr Bemba had just signed.<sup>232</sup> In relation to photograph CAR-OTP-0046-0106, the witness recognised three officials being raised to the rank of General, among them Colonel Mongapa and Colonel Moustapha, and noted the presence of some observers from the MONUC on the podium wearing blue berets.<sup>233</sup> In relation to photograph CAR-OTP-0046-0111, the witness identified Mr Bemba awarding stars to Colonel Moustapha, who was in charge of the CAR operation between 2002 and 2003.<sup>234</sup> In relation to photograph CAR-OTP-0046-0116, the witness affirmed this photograph was taken at the end of the ceremony at which ranks were conferred upon the MLC officers. The witness stated that it shows Mr Bemba talking to Colonel Moustapha.<sup>235</sup> In relation to photograph CAR-OTP-0046-0170, the witness

<sup>228</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 23, lines 1 to 9.

<sup>229</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 23, lines 14 to 17.

<sup>230</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 23, line 22 to page 24, line 11.

<sup>231</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 24, lines 13 to 18.

<sup>232</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 25, lines 3 to 5.

<sup>233</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 25, line 10 to page 26, line 12.

<sup>234</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 27, lines 11 to 25.

<sup>235</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 32, lines 8 to 16.

explained that the photograph was taken at a reception thrown after the ceremony at which officers of the MLC had their new ranks conferred upon them, pursuant to Mr Bemba's decree.<sup>236</sup> The witness identified individuals in the photograph as: Commander Kitenge, Colonel Peter, Colonel Alongaboni, Colonel Moustapha, Colonel Samba, President Bemba, Colonel Mongapa, Commander Ndima, and General Bule.<sup>237</sup>

84. In light of the above, the Chamber is satisfied that photographs CAR-OTP-0046-0064, CAR-OTP-0046-0073, CAR-OTP-0046-0075, CAR-OTP-0046-0077, CAR-OTP-0046-0081, CAR-OTP-0046-0083, CAR-OTP-0046-0084, CAR-OTP-0046-0090, CAR-OTP-0046-0106, CAR-OTP-0046-0111, CAR-OTP-0046-0116 and CAR-OTP-0046-0170, are all relevant to matters that are properly to be considered by the Chamber, particularly in relation to the scope of Mr Bemba's role within the MLC and his position as a military commander. In addition, the photographs may be relevant to the issue of the promotion of some MLC officials who allegedly took part in the CAR events. In addition, the Chamber finds that the documents will assist in the Chamber's assessment of Witness 15's testimony and credibility and that of the evidence as a whole. In terms of probative value, the Chamber is satisfied that Witness 15, [REDACTED] provided sufficient information regarding the photographs for the Chamber to consider them having sufficient probative value to be admitted at this stage. There is no suggestion that the admission of the photographs would have a prejudicial effect on a fair trial. Photographs CAR-OTP-0046-0064, CAR-OTP-0046-0073, CAR-OTP-0046-0075, CAR-OTP-0046-0077, CAR-OTP-0046-0081, CAR-OTP-0046-0083, CAR-OTP-0046-0084, CAR-OTP-0046-0090, CAR-OTP-0046-0106, CAR-OTP-0046-0111, CAR-OTP-0046-0116 and CAR-OTP-0046-0170 are therefore admitted.

<sup>236</sup> ICC-01/05-01/08-T-208-CONF-ENG ET, page 33, lines 11 to 14.

<sup>237</sup> , ICC-01/05-01/08-T-208-CONF-ENG ET, page 33, line 17 to page 34, line 8.

85. In relation to photograph CAR-OTP-0046-0224, Witness 15 recognised the blue helicopter depicted in the photograph, bearing the registration number 9T-BMT, as belonging to Mr Bemba.<sup>238</sup> The witness had previously explained that a helicopter was used in a mission conducted by Mr Luhaka to Sibut, and he presumed that the photograph was taken during that mission to the CAR, based upon the presence of the media shown in the photograph.<sup>239</sup> Similarly, Witness V20-0002 was also questioned in relation to this photograph and stated that the blue and white helicopter depicted in the photograph was the one in which Mr Bemba travel to Sibut.<sup>240</sup> In addition, Witness D04-21, [REDACTED] identified the helicopter depicted in the photograph as the one used in a mission that went from the DRC to Sibut (through Bangui) in February 2003, which included a journalist as part of the delegation.<sup>241</sup> As such, the Chamber is satisfied that the document is relevant to matters that are properly to be considered by the Chamber, particularly in relation to the assessment of the abovementioned witnesses' testimony and that of the evidence as a whole. In terms of probative value, there is no suggestion that the photograph is anything other than what it appears to be. There is no suggestion that admission of the photograph would have a prejudicial effect on a fair trial. Photograph CAR-OTP-0046-0224 is therefore admitted.

#### VI. Official documents

86. The defence requests the admission of document **CAR-OTP-0056-0384 (Confidential)**, a copy of Witness 213's passport. The defence submits that the document is relevant to the witness's credibility and that it was identified by him

<sup>238</sup> Transcript of hearing of 9 February 2012, ICC-01/05-01/08-T-209-CONF-ENG CT, page 4, lines 9 to 15.

<sup>239</sup> ICC-01/05-01/08-T-209-CONF-ENG CT, page 2, line 17 to page 4, line 7.

<sup>240</sup> Transcript of hearing of 7 May 2012, ICC-01/05-01/08-T-224-CONF-ENG ET, page 30, line 18 to page 31, line 5.

<sup>241</sup> Transcript of hearing of 10 April 2013, ICC-01/05-01/08-304-CONF-ENG ET, page 55, line 2 to page 62, line 14.

during his testimony.<sup>242</sup> The Chamber notes that Witness 213 was indeed shown the document during his testimony and that he recognised some pages of his passport.<sup>243</sup> The Chamber however notes that when the defence questioned the credibility of the witness in relation to the [REDACTED] contained therein,<sup>244</sup> the witness responded that the information sought by the defence was to be found in the passport itself.<sup>245</sup> However, the defence did not look through the pages referred to by the witness during his testimony, nor are these pages a part of the document submitted into evidence.<sup>246</sup> In addition, the Chamber notes that the document is a limited excerpt (containing only copies of pages 2, 3, 12, 13, 20 and 21) of the witness's passport. In the view of the Majority, Judge Ozaki dissenting, although those pages contain some references to the issues discussed in court with the witness, the high number of missing pages precludes the Chamber from sufficiently assessing the relevance of the document.<sup>247</sup> Given the Chamber's principled approach to the admission of documents, which calls for them to be admitted in full rather than as excerpts,<sup>248</sup> the Majority is of the view that any potential relevance and probative value that this document may have is outweighed by its potential prejudice to a fair trial. The Majority therefore rejects the admission of document CAR-OTP-0056-0384.

87. The prosecution requests the admission of document **CAR-OTP-0035-0032 (Confidential)**, a death certificate issued in relation to Witness 69's sister. The prosecution submits that this document is relevant to and probative of counts 6 and 7 of the charges,<sup>249</sup> namely the charge of murder constituting a war crime and of murder constituting a crime against humanity. The prosecution alleges

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<sup>242</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 9.

<sup>243</sup> ICC-01/05-01/08-T-189-CONF-ENG ET, page 12, lines 6 to 17, page 18, lines 9 to 14.

<sup>244</sup> ICC-01/05-01/08-T-189-CONF-ENG ET, page 12, line 21 to page 19, line 19.

<sup>245</sup> ICC-01/05-01/08-T-189-CONF-ENG ET, page 18, line 11 to page 19, line 9.

<sup>246</sup> ICC-01/05-01/08-T-189-CONF-ENG ET, page 18, lines 19 to 20, page 19, lines 1 to 2, 5 to 6.

<sup>247</sup> For the Chamber's approach to incomplete documents, see ICC-01/05-01/08-2299-Red, paragraph 116.

<sup>248</sup> ICC-01/05-01/08-1470, paragraph 11; ICC-01/05-01/08-2012-Red, paragraph 90; ICC-01/05-01/08-2299-Red, paragraph 116.

<sup>249</sup> ICC-01/05-01/08-2191-Conf-AnxA, page 4.

that the document referred to by the witness in his evidence, declares the death of a person – the witness’s sister – which occurred on 10 January 2002 in Bégoua.<sup>250</sup> The Chamber notes that this document was shown to Witness 69 during his testimony. He testified that he had requested the issuance of this document by the relevant authorities in 2005, upon the recommendation of Ms Sayo.<sup>251</sup> Although the witness could not read or write he was questioned by the parties as to the information contained in the document.<sup>252</sup> The Chamber notes that the witness was questioned in court on the discrepancy between the date on which he stated that his sister was killed, 9 November 2002,<sup>253</sup> and the date of death mentioned in the certificate, 10 January 2002.<sup>254</sup> In this respect, the witness explained that it was a mistake of the person issuing the certificate, and as he could not read, he only retrieved the document and did not pay attention to the information contained therein.<sup>255</sup> In spite of this discrepancy, the Chamber is of the view that the document is relevant to the Chamber’s assessment of the witness’s testimony and of his credibility.

88. In terms of probative value, the Chamber notes that the defence questioned the admissibility of the certificate.<sup>256</sup> However, in the view of the Chamber, the document provides sufficient indicia of authenticity and reliability as it appears to be an signed official document – “*d’etat civil*” –, indicating that the witness was the person who reported the death of a woman, allegedly his sister. There is no suggestion that admission of the document would have a prejudicial effect on a fair trial. Document CAR-OTP-0035-0032 is therefore admitted.

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<sup>250</sup> *Ibid.*

<sup>251</sup> Transcript of hearing of 28 November 2011, ICC-01/05-01/08-T-192-CONF-ENG ET, page 40, lines 1 to 14.

<sup>252</sup> ICC-01/05-01/08-T-192-CONF-ENG ET, page 39, line 15 to page 45, line 3.

<sup>253</sup> ICC-01/05-01/08-T-192-CONF-ENG ET, page 32, lines 8 to 10.

<sup>254</sup> ICC-01/05-01/08-T-192-CONF-ENG ET, page 41, lines 4 to 7.

<sup>255</sup> ICC-01/05-01/08-T-192-CONF-ENG ET, page 41, lines 4 to 14.

<sup>256</sup> ICC-01/05-01/08-T-192-CONF-ENG ET, page 43, lines 11 to 18.

VII. Expert-related materials

89. The prosecution requests the admission of two expert-related materials through Witness 219. Document **CAR-OTP-0064-0547 (Confidential)**, Witness 219's expert report, which, according to the prosecution, provides an overview of the military structure of the MLC during the 2002-2003 conflict in the CAR and the identity of the MLC's military commanders. Document **CAR-OTP-0064-0759 (Public)**, is an organisational diagram of the MLC Military, which, according to the prosecution, explains the structure of the MLC. The prosecution submits that both documents are relevant to and probative of the effective authority and control of the accused over the MLC and that they will aid the Chamber's understanding of the expert witness's testimony.<sup>257</sup>
90. The Chamber notes that document CAR-OTP-0064-0547 appears to provide an overview of the military structure of the MLC during the 2002-2003 conflict in the CAR, including information as to the MLC's overall military commander during the conflict, and explain the level of interaction between the MLC and other security forces in the CAR.<sup>258</sup> The document was thoroughly discussed during Witness 219's testimony.<sup>259</sup> As such, the Chamber is satisfied that the document is relevant to matters that are properly to be addressed by the Chamber and it may assist in the Chamber's assessment of the witness's testimony. In terms of probative value, the Chamber is satisfied that the document was authored by Witness 219, who was questioned by the parties in relation to the report's conclusions during his testimony, and that it contains sufficient information regarding its methodology and sources of information. There is no suggestion that admission of the document would have a prejudicial effect on a fair trial. Document CAR-OTP-0064-0547 is therefore admitted.

<sup>257</sup> ICC-01/05-01/08-2191-Conf-AnxA, pages 5 to 6.

<sup>258</sup> CAR-OTP-0064-0547, at ERN 0556 to 0559.

<sup>259</sup> See Transcript of hearing of 6 December 2011, ICC-01/05-01/08-T-197-CONF-ENG ET; transcript of hearing of 7 December 2011, ICC-01/05-01/08-T-198-CONF-ENG ET; transcript of hearing of 9 December 2011, ICC-01/05-01/08-T-200-CONF-ENG ET.

91. The Chamber notes that document CAR-OTP-0064-0759 was also thoroughly discussed during Witness 219's testimony.<sup>260</sup> In addition, the Chamber notes that the same document was discussed during the questioning of Witnesses D04-53<sup>261</sup> and D04-59.<sup>262</sup> As such, the Chamber is satisfied that the document is relevant as it relates to matters that are properly to be addressed by the Chamber and it may assist in the assessment of these witnesses' testimony. In terms of probative value, the Chamber is satisfied that the document was authored by Witness 219, who was questioned in court by the parties in relation to his conclusions. There is no suggestion that admission of the document would have a prejudicial effect on a fair trial. Document CAR-OTP-0064-0759 is therefore admitted.

#### VIII. Audio recording-related material

92. The prosecution requests the admission into evidence of an audio recording, item **CAR-OTP-0031-0136 (Confidential)**, along with its transcript in French, document **CAR-OTP-0036-0055 (Confidential)** and its translation into English, document **CAR-OTP-0056-0300 (Confidential)**. The prosecution submits that the item is relevant to and probative of the accused's knowledge of the ALC operations in Mongoumba.<sup>263</sup> As indicated in paragraph 11 (b) above, the audio recording was already admitted into evidence in the Chamber's Decision 2299. The Chamber considers that the transcript and the translation of the audio recording are also relevant, as they will enable the Chamber to gain a better understanding of the content of the audio recording to which they relate. In terms of probative value, the Chamber is satisfied that there are sufficient indicia of reliability and authenticity of the transcript and translation of the audio recording. There is no suggestion that their admission would have a prejudicial

<sup>260</sup> ICC-01/05-01/08-T-197-CONF-ENG ET, page 41, line 4 to page 42, line 15; transcript of hearing of 8 December 2011, ICC-01/05-01/08-T-199-CONF-ENG ET, page 19, line 20 to page 21, line 5.

<sup>261</sup> Transcript of hearing of 15 August 2012, ICC-01/05-01/08-T-230-CONF-FRA ET WT, page 60, line 5.

<sup>262</sup> Transcript of hearing of 4 September 2012, ICC-01/05-01/08-T-237-CONF-FRA ET, page 52, line 2.

<sup>263</sup> ICC-01/05-01/08-2191-Conf-AnxA, page 14.

effect on a fair trial. Documents CAR-OTP-0036-0055 and CAR-OTP-0056-0300 are therefore admitted.

#### IX. Other documents

93. The defence requests the admission into evidence of two miscellaneous documents: (i) Document **CAR-DEF-0002-0389 (Public)**, a copy of certain pages of the 1972 Code of Military Justice of the former *République du Zaïre*; and (ii) Document **CAR-DEF-0001-0033 (Public)**, a copy of the Pretoria Agreement of 17 December 2002.

94. The defence submits that document CAR-DEF-0002-0389 is relevant to the credibility of Witness 32's allegations "and inter alia the appointment of judicial officers".<sup>264</sup> The defence further submits that the document was identified by Witness 32 during his testimony and that it is a public record "and admissible as such without more."<sup>265</sup> The Chamber notes that document CAR-DEF-0002-0389 is a copy of certain pages<sup>266</sup> of the 1972 *Code de Justice Militaire* of the Republic of Zaïre (now the DRC), some of which were indeed read out to and discussed with Witness 32 in court.<sup>267</sup> In particular, the defence counsel read out to the witness Articles 6, 7, 8, 196, 212 and 241 of that Code and asked the witness to confirm his knowledge of such provisions. When asked by the Chamber until when this Code was in force, the witness did not know the exact time but added that modifications were introduced.<sup>268</sup> In the view of the Chamber, as stressed in previous decisions, the admission into evidence of legislation is unnecessary since, under Article 69(6) of the Statute, the Chamber may take judicial notice of facts that are of common knowledge such as the content of publicly available

<sup>264</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 6.

<sup>265</sup> *Ibid.*

<sup>266</sup> Pages 18 to 20, 51, 52, 55 to 60, 62, 64, 68 to 73, 75 and 77 to 99 of the Code are not included in the document.

<sup>267</sup> ICC-01/05-01/08-T-167-CONF-ENG ET, page 49, line 8 to page 58, line 16.

<sup>268</sup> ICC-01/05-01/08-T-167-CONF-ENG ET, page 57, lines 16 to 24.

legislation.<sup>269</sup> Consequently, the Chamber rejects the defence's request for admission of document CAR-DEF-0002-0389.

95. The defence submits that document CAR-DEF-0001-0033 is relevant to Witness 45's credibility and that it is an official agreement which was identified by the witness during his testimony.<sup>270</sup> The defence further submits that the document is a public record and admissible as such without more. The Chamber notes that the document was shown to the witness in court, [REDACTED] negotiations which led to the adoption of this agreement. He confirmed that it was signed in Pretoria on 17 December 2002, and was questioned in relation to [REDACTED].<sup>271</sup> As such, the Chamber is satisfied that the document is relevant to its assessment of the witness's testimony and his credibility. In terms of probative value, the Chamber is satisfied that the document is self-authenticating as it is an official document which is publicly available.<sup>272</sup> There is no suggestion that admission of the document would have a prejudicial effect on a fair trial. Document CAR-DEF-0001-0033 is therefore admitted.

#### X. Witnesses' written statements

96. The legal representative of victims, Maître Douzima-Lawson, requests the admission into evidence of the statements of two dual-status witnesses who were authorised by the Chamber to testify before the Court:<sup>273</sup> (i) document **CAR-V20-0001-0001 (Confidential)**, a statement of Witness V20-0001; and (ii) documents **CAR-V20-0001-0018 (Public)** and **CAR-V20-0001-0128 (Public)**, both statements of Witness V20-0002.

<sup>269</sup> ICC-01/05-01/08-2012-Red, paragraph 81.

<sup>270</sup> ICC-01/05-01/08-2198-Conf-AnxA, page 10.

<sup>271</sup> ICC-01/05-01/08-T-203-CONF-ENG ET, page 51, line 20 to page 52, line 20.

<sup>272</sup> ICC-01/05-01/08-2299-Red, paragraph 9.

<sup>273</sup> Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, 22 February 2012, ICC-01/05-01/08-2138.

97. The Chamber recalls its prior ruling that, when the admission of written statements of witnesses who have testified before the Chamber is sought, before entering into an analysis of the relevance and probative value of written statements, it should be first determined whether the requirements of Rule 68(b) of the Rules are met.<sup>274</sup>
98. The first requirement under Rule 68(b) of the Rules is that the parties and the Chamber should have had the opportunity to question the relevant witness during the proceedings. In relation to both Witness V20-0001 and Witness V20-0002, this requirement has been met.<sup>275</sup> The second requirement is the consent of the witnesses as to the submission of their statements into evidence. The Chamber is satisfied that this requirement has also been met.<sup>276</sup>
99. In terms of relevance, the Chamber is satisfied that the statements are relevant, since they refer to the events under examination and will not only assist the Chamber in understanding the progression of the events in the CAR, but will also be relevant to the Chamber's assessment of these witnesses' credibility and the veracity of their testimony before the Court. In terms of probative value, the Chamber is satisfied that Witness V20-0001 and Witness V20-0002 signed the statements prepared with the assistance of their legal representative who co-signed the witnesses' declarations. In addition, both witnesses testified in court as to the accuracy of their statements.<sup>277</sup> There is no suggestion that the admission into evidence of these statements would give rise to any potential prejudice to a fair trial. This is particularly so because none of the parties objected to the

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<sup>274</sup> ICC-01/05-01/08-2012-Red, paragraphs 132 to 139.

<sup>275</sup> For Witness CAR-V20-PPPP-0001, see the transcript of hearing of 1 May 2012, ICC-01/05-01/08-T-220-ENG CT; for Witness CAR-V20-PPPP-0002, see the transcript of hearing of 3 May 2012, ICC-01/05-01/08-T-222-ENG CT.

<sup>276</sup> ICC-01/05-01/08-T-220-ENG CT, page 8, lines 16 to 19; ICC-01/05-01/08-T-222-ENG CT, page 43, lines 1 to 4.

<sup>277</sup> ICC-01/05-01/08-T-220-ENG CT, page 8, lines 10 to 15; ICC-01/05-01/08-T-222-ENG CT, page 42, lines 1 to 24.

admission of such written statements. Furthermore, the witnesses gave *viva voce* evidence and were questioned by the parties and the Chamber. Finally is the fact that the statements are to be used for the limited purpose of complementing their oral evidence, which favours their admission. Documents CAR-V20-0001-0001, CAR-V20-0001-0018 and CAR-V20-0001-0128 are therefore admitted.

### III. Conclusions

100. In view of the foregoing, the Chamber:

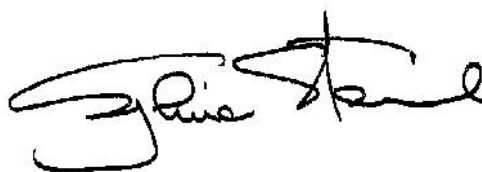
- a. ADMITS into evidence the following items: CAR-OTP-0046-0387; CAR-OTP-0022-0273; CAR-OTP-0062-0094\_R01; CAR-ICC-0001-0072; CAR-OTP-0046-0349; CAR-ICC-0001-0073; CAR-ICC-0001-0079; CAR-OTP-0056-0417; CAR-DEF-0001-0105; CAR-DEF-0001-0106; CAR-OTP-0009-0140; CAR-OTP-0009-0220; CAR-D04-0002-1432; CAR-D04-0002-1444; CAR-OTP-0017-0358; CAR-DEF-0002-0667; CAR-D04-0002-1768; CAR-DEF-0002-0567; CAR-D04-0002-1512; DRC-OTP-0098-0005; CAR-DEF-0001-0107; CAR-D04-0002-1427; CAR-OTP-0032-0210; CAR-OTP-0032-0097; CAR-DEF-0001-0634; CAR-OTP-0035-0275; CAR-OTP-0035-0282; CAR-OTP-0032-0399; CAR-OTP-0046-0256; CAR-OTP-0046-0254; CAR-OTP-0032-0387; CAR-OTP-0032-0389; CAR-OTP-0046-0064; CAR-OTP-0046-0073; CAR-OTP-0046-0075; CAR-OTP-0046-0077; CAR-OTP-0046-0081; CAR-OTP-0046-0083; CAR-OTP-0046-0084; CAR-OTP-0046-0090; CAR-OTP-0046-0106; CAR-OTP-0046-0111; CAR-OTP-0046-0116; CAR-OTP-0046-0170; CAR-OTP-0046-0224; CAR-OTP-0035-0032; CAR-OTP-0064-0547; CAR-OTP-0064-0759; CAR-OTP-0036-0055; CAR-OTP-0056-0300; CAR-DEF-0001-0033; CAR-V20-0001-0001; CAR-V20-0001-0018; and CAR-V20-0001-0128;

- b. REJECTS the admission into evidence of items: CAR-D04-0002-1988; CAR-DEF-0001-0167; CAR-OTP-0009-0142; CAR-OTP-0009-0152; CAR-OTP-0009-0180; CAR-OTP-0009-0162\_R01; and CAR-DEF-0002-0389;
- c. CONSIDERS MOOT the request to admit items: CAR-ICC-0001-0070, CAR-ICC-0001-0071, CAR-ICC-0001-0077, CAR-ICC-0001-0078, CAR-OTP-0030-0154, CAR-DEF-0001-0832, CAR-OTP-0042-0237, CAR-OTP-0028-0398, CAR-OTP-0028-0400, CAR-ICC-0001-0076, CAR-OTP-0032-0167, CAR-DEF-0001-0161, CAR-D04-0002-1514, CAR-D04-0002-1641, CAR-DEF-0002-0001, CAR-DEF-0001-0155, CAR-DEF-0001-0127, CAR-D04-0002-1481, CAR-D04-0002-1499, CAR-D04-0002-1513, CAR-DEF-0001-0152, CAR-OTP-0031-0136, CAR-DEF-0001-0076, CAR-DEF-0001-0826, CAR-DEF-0001-0078 and DRC-OTP-0098-0005;
- d. ORDERS that any EVD-T numbers previously assigned to any of the above items shall remain unchanged;
- e. INSTRUCTS the Registry to assign new EVD-T numbers to those items which currently do not have one; and
- f. INSTRUCTS the Registry to transfer the metadata related to the in-court use of documents, if any, as follows: (i) from item CAR-DEF-0001-0076 to item CAR-OTP-0017-0363; (ii) from item CAR-DEF-0001-0826 to item CAR-OTP-0033-0209; (iii) from item CAR-DEF-0001-0078 to items CAR-OTP-0017-0349 and CAR-OTP-0017-0351; and (iv) from item CAR-OTP-0017-0366 to item DRC-OTP-0098-0005;
- g. ORDERS the parties to file by 28 June 2013 public redacted versions of the corresponding annexes to their filings or inform the Chamber that they may be reclassified as public without redactions;

101. Further, the Majority of the Chamber, Judge Kuniko Ozaki dissenting, REJECTS the admission into evidence of items: ICC-01/05-01/08-796-Conf-Anx151-Red2 and CAR-OTP-0056-0384.

102. The partially dissenting opinion of Judge Kuniko Ozaki will follow in due course.

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



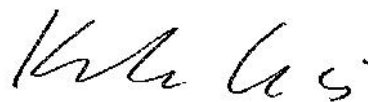
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**Judge Sylvia Steiner**



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**Judge Joyce Aluoch**



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**Judge Kuniko Ozaki**

Dated this 22 June 2016

At The Hague, The Netherlands