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**International
Criminal
Court**



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TRIAL CHAMBER III

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

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

Public Redacted version of

**“Third Decision on the prosecution and defence requests for the admission of
evidence”, ICC-01/05-01/08-2864 of 6 November 2013**

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

The Office of the Prosecutor

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Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes
Ms Kate Gibson
Ms Melinda Taylor

Legal Representatives of the Victims

Ms Marie-Edith Douzima Lawson

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REGISTRY

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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 Third Decision on the prosecution and defence requests for the admission of evidence (“Decision”).

I. Background and Submissions

1. On 27 March 2013, the Chamber issued its “Third Order on the submission into evidence of material used during the questioning of witnesses” (“Chamber’s Order”),¹ in which it ordered the parties to identify, by 22 April 2013 at the latest, all materials which they wished to submit ranging in date from the testimony of Witness D04-53 through to that of Witness D04-45.² The Chamber further ordered that any objections to the admission of any items be raised by 6 May 2013 and that any replies be submitted by 20 May 2013.³

Prosecution’s Request

2. On 22 April 2013, the Office of the Prosecutor (“prosecution”) filed the “Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute” (“Prosecution’s Request”),⁴ in which it requests the admission into evidence of 95 items from the “bar table” pursuant to Articles 64(9) and 69(2), (3) and (4) of the Rome Statute (“Statute”) and Rule 63(2) and (5) of the Rules of Procedure and Evidence (“Rules”).⁵

¹ Third Order on the submission into evidence of material used during the questioning of witnesses, 27 March 2013, ICC-01/05-01/08-2565.

² ICC-01/05-01/08-2565, paragraph 6.

³ ICC-01/05-01/08-2565, paragraph 7.

⁴ Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, 22 April 2013, ICC-01/05-01/08-2596-Conf and Confidential Annex A, ICC-01/05-01/08-2596-Conf-AnxA.

⁵ ICC-01/05-01/08-2596-Conf, paragraph 1; ICC-01/05-01/08-2596-Conf-AnxA.

3. The prosecution submits that it tenders the proposed items for the truth of their content and in some cases without calling the authors of the materials, or the individuals who provided the information contained therein, to testify at trial.⁶ Nevertheless, the prosecution alleges that the items are relevant, probative of issues at trial, and bear sufficient indicia of reliability to outweigh any prejudicial effect.⁷ According to the prosecution, the items satisfy the requirements of Articles 64(2) and 67(1) of the Statute by furthering the goal of expeditiousness without infringing on the Chamber's obligation to ensure that the trial is fair.⁸ In addition, the prosecution argues that the Prosecution's Request will not unfairly prejudice the accused, given that the prosecution has put the defence on sufficient notice of its intention to request the admission of the proposed items by virtue of its lists of documents for the questioning of witnesses, and thus the defence was afforded the opportunity to question the witnesses on these items.⁹ Lastly, the prosecution submits specific arguments in support of its assertion that each of the documents it tenders is admissible according to the three-part admissibility test.¹⁰

4. On 6 May 2013, the defence for Mr Jean-Pierre Bemba Gombo ("defence") filed its "Defence Response to the Prosecution's Second Application for Admission of Evidence from the Bar Table" ("Defence's Response"),¹¹ in which it opposes the admission into evidence of 36 out of the 95 items submitted by the prosecution.¹² The defence submits that, rather than complying with the Chamber's Order and the procedure for the admission of evidence established by the Chamber ("Order

⁶ ICC-01/05-01/08-2596-Conf, paragraph 4.

⁷ *Ibid.*

⁸ ICC-01/05-01/08-2596-Conf, paragraph 5.

⁹ *Ibid.*

¹⁰ ICC-01/05-01/08-2596-Conf, paragraphs 6 to 29 and ICC-01/05-01/08-2596-Conf-AnxA.

¹¹ Defence Response to the Prosecution's Second Application for Admission of Evidence from the Bar Table, 6 May 2013, ICC-01/05-01/08-2617-Conf.

¹² ICC-01/05-01/08-2617-Conf, paragraph 55.

1470”),¹³ the prosecution has filed a “bar table” motion seeking the admission of a large number of documents, a significant proportion of which were not put to or otherwise used during the questioning of witnesses and some of which did not feature in the prosecution’s lists of documents to be used during questioning witnesses.¹⁴ The defence alleges that the prosecution is seeking to circumvent the established and more restrictive procedure for the admission of evidence set out by the Chamber.¹⁵

5. The defence also argues that there is an inherent unfairness in seeking the admission of documents for the purpose of challenging the credibility of witnesses, without having given the relevant witnesses the opportunity to comment on the documents, which could have allowed the witnesses to explain how the documents were not in fact inconsistent with their testimony or conclusions, or revise or explain their evidence in light of the new information contained therein.¹⁶ Although not disputing that certain material may be admissible in criminal proceedings when introduced other than through a witness who is giving oral evidence, the defence submits that the prosecution’s “attempt to introduce swathes of un-tested documentary material for the truth of its contents, *in lieu* of introducing them through witnesses whose evidence can be tested through questioning”, cannot be reconciled with the principle of the “primacy of orality” enshrined in Article 69(2) of the Statute.¹⁷
6. The defence further argues that the prosecution seeks to evade the obligations of the more specific and detailed regime set out by Order 1470 by using the broader procedure of a bar table motion, without explaining why the admission of the

¹³ The defence refers to the procedure established by the Chamber’s Order on the procedure relating to the submission of evidence, 31 May 2011, ICC-01/05-01/08-1470.

¹⁴ ICC-01/05-01/08-2617-Conf, paragraphs 4-6.

¹⁵ *Ibid.*

¹⁶ ICC-01/05-01/08-2617-Conf, paragraph 7.

¹⁷ ICC-01/05-01/08-2617-Conf, paragraph 9.

tendered documents was not sought during the testimony of witnesses.¹⁸ The defence argues that, absent any concession on its part that the “material ought to be admitted in the interest of justice”, there is no basis for admission where the prosecution has “not justified [such admission] from the bar table pursuant to the test appropriate to such applications.”¹⁹ Lastly, the defence submits specific objections to the admission of each document it opposes.²⁰

7. On 20 May 2013, the prosecution filed its “Prosecution’s Reply to ‘Defence response to the Prosecution’s Second Application for Admission of Evidence from the Bar Table’” (“Prosecution’s Reply”),²¹ in which it requests that the Chamber dismiss the Defence’s Response and admit the items requested.²² The prosecution alleges that the defence’s objections are without merit, and that the prosecution has properly submitted the items for admission based on the requisite time-frame and in accordance with the Chamber’s sole requirement that it adhere to the three-part admissibility test.²³
8. The prosecution stresses that, in addition to the procedure described by the defence, Order 1470 allows for a subsequent request to tender evidence regardless of whether prior indication was provided by the requesting party.²⁴ Further, the prosecution alleges that the Chamber’s Order authorises the prosecution to submit all materials that were and are relevant and probative to the questioning and evaluation of witnesses, with the sole limitation that the

¹⁸ ICC-01/05-01/08-2617-Conf, paragraph 10.

¹⁹ ICC-01/05-01/08-2617-Conf, paragraph 11.

²⁰ ICC-01/05-01/08-2617-Conf, paragraphs 12 to 54.

²¹ Prosecution’s Reply to “Defence response to the Prosecution’s Second Application for Admission of Evidence from the Bar Table”, 20 May 2013, ICC-01/05-01/08-2635-Conf.

²² ICC-01/05-01/08-2635-Conf, paragraph 20.

²³ ICC-01/05-01/08-2635-Conf, paragraph 1.

²⁴ ICC-01/05-01/08-2635-Conf, paragraph 7, referring to ICC-01/05-01/08-1470 paragraph 8, which states: “The procedure as set out in paragraph 7 above does not preclude the parties from requesting the submission as evidence of any item, listed or not, either in the course of the questioning of a witness or at a later stage during the proceedings through a motion. The Chamber will decide, after giving the opposing party and participants the opportunity to raise any objections they may have.”

temporal scope runs from the testimony of Witness D04-53 to that of Witness D04-45.²⁵ Therefore, the prosecution submits, the Chamber's Order and Order 1470 are fully consistent with the Chamber's power to rule on the admissibility of evidence in accordance with Article 64(9)(a) of the Statute and Rule 63(2) of the Rules, provided that the three-part admissibility test is satisfied.²⁶ The prosecution further submits, in relation to the defence's claim that the prosecution's approach cannot be reconciled with the principle of orality, that in fact all the materials it tenders for admission were used by the prosecution at some point to question witnesses and therefore the defence had a full opportunity to test them.²⁷ In addition, the prosecution submits that the Chamber has previously accepted the submission of evidence through "bar table" motions by both parties, and that it has ruled that whether an item is submitted via a "bar table" or otherwise is a "distinction without a difference" as regardless of the manner in which an item's admission is sought, its admissibility will be determined according to the three-part admissibility test.²⁸ Lastly, the prosecution replies to the particular objections submitted by the defence in relation to specific items.²⁹

Defence's Request

9. On 22 April 2013, the defence filed its "Defence submission in compliance with the *Third Order on the submission into evidence of material used during the questioning of witnesses*" ("Defence's Request"),³⁰ in which it requests the admission into evidence of 29 items.³¹ The defence submits that the items are relevant to the

²⁵ ICC-01/05-01/08-2635-Conf, paragraph 8.

²⁶ *Ibid.*

²⁷ ICC-01/05-01/08-2635-Conf, paragraph 9.

²⁸ ICC-01/05-01/08-2635-Conf, paragraph 10.

²⁹ ICC-01/05-01/08-2635-Conf, paragraphs 11 to 18.

³⁰ Defence submission in compliance with the *Third Order on the submission into evidence of material used during the examination of witnesses*, 22 April 2013, ICC-01/05-01/08-2590 and Confidential Annex A, ICC-01/05-01/08-2590-Conf-AnxA.

³¹ ICC-01/05-01/08-2590-Conf-AnxA.

charges or to the credibility of the prosecution case, or witnesses, and were used during the questioning of witnesses and will accordingly assist the Chamber in its assessment and understanding of the witnesses' testimony while providing necessary context to the transcripts.³²

10. 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 with the witnesses who discussed them.³³ In addition, the defence notes that each item is what it purports to be, either because it is evident on its face, or because other testimony or evidence demonstrates its provenance.³⁴ The defence further submits that the admission of the items will not cause prejudice to a fair trial, or to the fair evaluation of the testimony of witnesses.³⁵ The defence further submits individualised arguments in support of its assertion that each of the documents is admissible according to the three-stage admissibility test.³⁶

11. On 6 May 2013, the prosecution filed its "Prosecution's Response to 'Defence submission in compliance with the Third Order on the submission into Evidence of materials used during the examination of witnesses'" ("Prosecution's Response"),³⁷ in which it opposes the admission into evidence of 24 out of the 29 items submitted by the defence.³⁸ The prosecution submits that the Defence's Request should be partially rejected because it: (i) provides incorrect references that do not properly identify some documents; (ii) seeks to admit certain documents that have already been admitted by the Chamber; and (iii) provides justifications for certain documents that fail to meet the threshold required by

³² ICC-01/05-01/08-2590, paragraph 11.

³³ ICC-01/05-01/08-2590, paragraph 12.

³⁴ *Ibid.*

³⁵ ICC-01/05-01/08-2590, paragraph 13.

³⁶ ICC-01/05-01/08-2590-Conf-AnxA.

³⁷ Prosecution's Response to « Defence submission in compliance with the Third Order on the submission into Evidence of materials used during the examination of witnesses », 6 May 2013, ICC-01/05-01/08-2616 with Confidential Annex A, ICC-01/05-01/08-2616-Conf-Anx.

³⁸ ICC-01/05-01/08-2616, paragraph 4.

Article 69(4) of the Statute. The prosecution therefore submits that the admission of these items would be prejudicial to a fair trial or the fair evaluation of the testimony of witnesses.³⁹ Lastly, the prosecution submits specific objections to the admission of each item it opposes.⁴⁰

12. On 20 May 2013, the defence filed its “Defence Reply to the Prosecution Response to the Defence Motion to Admit Materials pursuant to the Chamber’s Third Order (ICC-01/05-01/08-2565)” (“Defence’s Reply”),⁴¹ in which it replies to the specific objections submitted by the prosecution.⁴²

II. Analysis

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

14. The Chamber recalls its general approach to the admission of evidence. In particular, for an item to be admitted into evidence it must satisfy the three-part test, according to which it must (i) be relevant to the case; (ii) have probative value; and (iii) be sufficiently relevant and probative as to outweigh any prejudicial effect its admission may cause.⁴³ Further, the Chamber underlines once more that its determination on the admissibility of an item as evidence will

³⁹ ICC-01/05-01/08-2616, paragraph 4.

⁴⁰ ICC-01/05-01/08-2616-Conf-AnxA.

⁴¹ Defence Reply to the Prosecution Response to the Defence Motion to Admit Materials pursuant to the Chamber’s Third Order (ICC-01/05-01/08-2565), 20 May 2013, ICC-01/05-01/08-2636-Conf.

⁴² ICC-01/05-01/08-2636-Conf, paragraphs 1 to 11.

⁴³ Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011, 9 February 2012, ICC-01/05-01/08-2012-Red, paragraphs 13 to 16; Public Redacted Version of "Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute" of 6 September 2012, 8 October 2012, ICC-01/05-01/08-2299-Red, paragraphs 7 to 9.

have no bearing on the final weight to be afforded to it, which will only be determined by the Chamber at the end of the case when assessing the evidence as a whole.⁴⁴

Preliminary issues

15. At the outset, the Chamber notes that the admissibility of some items included in the parties' requests has already been decided upon by the Chamber in previous decisions. The Chamber considers the question of the admissibility of these items moot, and will not address the parties' submissions thereon.

16. In particular, the defence requests the admission of documents "CAR-DEF-0001-076" and "CAR-DEF-0001-0830", which, as pointed out by the prosecution, are incorrect ERN references and should in fact read "CAR-DEF-0001-0076" and "CAR-DEF-0001-0826" respectively. These two documents were 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"), under the ERN CAR-OTP-0017-0363 and CAR-OTP-0033-0209 respectively.⁴⁵ In addition, the defence requests the admission of a document bearing ERN "CAR-D04-PPPP-0019", which is an incorrect reference to an end of mission report ("4 May 2003 Report") already admitted into evidence in the Chamber's "Second Decision on the admission into evidence of material used during the questioning of witnesses" ("Decision 2688"), under ERN CAR-DEF-0002-0567.⁴⁶

⁴⁴ ICC-01/05-01/08-2012-Red, paragraph 18; ICC-01/05-01/08-2299-Red, paragraph 11.

⁴⁵ ICC-01/05-01/08-2299-Red, paragraphs 48, 49 and 52.

⁴⁶ Second Decision on the admission into evidence of material used during the questioning of witnesses, 14 June 2013, ICC-01/05-01/08-2688-Conf, paragraphs 57 to 60.

17. Moreover, with respect to the defence's argument that the prosecution is seeking to evade the stricter requirements of the Chamber's Order 1470,⁴⁷ the Chamber recalls its view that such a distinction is a "distinction without a difference because, regardless of the manner in which an item's admission is sought, its admissibility will be determined under the three part test".⁴⁸
18. With regard to the materials related to and/or mentioned in the prosecution's "Request to Reject Admission into Evidence of Several Fraudulent Documents Disclosed by the Defence on 12 July 2012 and Submitted on 16 August 2012",⁴⁹ the Chamber decides that their admissibility will be dealt with separately. Therefore, in the present Decision the Chamber will not analyse the following materials:
- a. Written Statements, items **CAR-OTP-0069-0010** and **CAR-OTP-0069-0083_R01**;
 - b. Central African Republic ("CAR") Presidential Decrees, items **CAR-OTP-0069-0043** and **CAR-OTP-0069-0045**;
 - c. CAR internal documents, items **CAR-D04-0003-0128**, **CAR-D04-0003-0130**, **CAR-D04-0003-0131**, **CAR-D04-0003-0132**, **CAR-D04-0003-0133**, **CAR-D04-0003-0136**, **CAR-D04-0003-0137**, **CAR-D04-0003-0138**, **CAR-D04-0003-0139**, **CAR-D04-0003-0140**, **CAR-D04-0003-0129**, **CAR-D04-0003-0134** and **CAR-D04-0003-0141**; and
 - d. Expert Reports, items **CAR-D04-0003-0342** and **CAR-D04-0003-0398**.

Analysis

19. The Chamber has identified 12 categories into which the materials for which admission is sought by the parties may be divided. These categories will be

⁴⁷ See paragraph 6 above.

⁴⁸ ICC-01/05-01/08-2012-Red, paragraph 55.

⁴⁹ Request to Reject Admission into Evidence of Several Fraudulent Documents Disclosed by the Defence on 12 July 2012 and Submitted on 16 August 2012, 6 September 2012, ICC-01/05-01/08-2301-Conf and Confidential Annex A, ICC-01/05-01/08-2301-Conf-AnxA.

considered in turn, in accordance with the three-part test of relevance, probative value, and potential prejudice.

First Category: CAR Documents

20. The prosecution requests the admission of seven documents allegedly emanating from the CAR. The first six items are submitted through Witness D04-19 and are all internal CAR memoranda; documents **CAR-OTP-0042-0235 (Public)**, **CAR-OTP-0042-0236 (Public)**, **CAR-OTP-0042-0242 (Public)**, **CAR-OTP-0042-0243 (Public)**, **CAR-OTP-0042-0246 (Public)**, and **CAR-OTP-0042-0253 (Public)**. The prosecution also submits an internal CAR memorandum through Witness D04-45; document **CAR-OTP-0042-0255 (Public)**.
21. As to the items submitted through Witness D04-19, the prosecution alleges that they are internal CAR memoranda emanating from units such as the *Gendarmerie Nationale* and were prepared between November and December 2002 in the ordinary course of operations.⁵⁰ The prosecution submits that the documents are important in providing a better understanding of the nature of the relationship between the CAR authorities and the regular *Mouvement de Libération du Congo* (“MLC”) soldiers in the field; which would be relevant to the credibility of Witness D04-19 and would show, *inter alia*, that CAR authorities lacked power to assert control over the MLC soldiers operating in the CAR, corroborating the testimony of witnesses called by the prosecution.⁵¹ The defence objects to the admission of these documents submitting that the prosecution has failed to provide any particularised submissions as regards the provenance or probative

⁵⁰ ICC-01/05-01/08-2596-Conf, paragraph 12.

⁵¹ ICC-01/05-01/08-2596-Conf, paragraph 12 and ICC-01/05-01/08-2596-Conf-AnxA, page 8.

value of the documents.⁵² In relation to the relevance of the items submitted through Witness D04-19, the Chamber notes the following:

22. Document **CAR-OTP-0042-0235** appears to be an unsigned *message-porté*, dated 18 November 2002, from the CAR's *Directeur Général* of the *Gendarmerie Nationale Centrafricaine* addressed to the *Ministre de la Défense Nationale*, the *Chef D'Etat-Major des Armées*, and the *Directeur Général* of the *Unité de Sécurité Présidentielle* ("USP"). The Chamber notes that the message states that a Congolese military group based at PK12 said that they have been called by the Chief of State but they are suffering from hunger. In addition, the message states that the soldiers demand that the problem be solved within 48 hours, otherwise they threaten to, first, require anyone and everyone to hand over means of subsistence using force; and, second, return to the Congo to hand over arms to President Bemba and follow President Kabila.

23. Document **CAR-OTP-0042-0236** appears to be an unsigned *message-porté*, dated 6 December 2002, from the CAR's *Magistrat, Directeur Général de la Gendarmerie Nationale* addressed to the *Premier Ministre, Chef du Gouvernement*, the *Ministre des Finances*, the *Ministre de la Défense Nationale*, the *Ministre de l'Intérieur*, and the *Chef d'Etat-Major des Armées*. The Chamber notes that the message states that "transporteurs" from the route Cameroon-Bangui have considered stopping their movements as of 5 December 2002 until favourable conditions are obtained. The message continues stating that their goods (money, watches, jewellery, clothing, etc.) were taken at checkpoints by Mr Bemba's troops in the area of Yaloke and Bossembelé.

24. Document **CAR-OTP-0042-0242** appears to be a signed letter dated 8 December 2002, from *Le Colonel, Chef d'Etat-Major chargé des Sapeurs-Pompiers* addressed to

⁵² ICC-01/05-01/08-2617-Conf, paragraph 23.

the *Chef d'Etat-Major des Armées*. The Chamber notes that the subject indicates that the letter contains a report on the pillaging of the office of the technical advisers of the fire brigade. In the letter, it is reported that Mr Bemba's troops have broken into the office of the technical advisers of the fire brigade and taken the printer, the photocopier, some emergency medication, and some cooperation documents.

25. Document **CAR-OTP-0042-0243** appears to be an internal memorandum from the *Ministère de l'Intérieur*, dated 2 December 2002, bearing a stamp from the "*Bureau Centrafricain des Renseignements Généraux*" but without any signature and/or the name of the author. The Chamber notes that the memorandum brings to the attention of the hierarchical superiors information reported by two truck drivers coming from Douala. The memorandum states that "Banyamoulengue" troops based in Bossembelé have been carrying out searches of persons, luggage and goods in the course of which, under the threat of using their weapons, they have taken money and objects of their choice.

26. Document **CAR-OTP-0042-0246** is an unsigned *note d'information* from the *Ministère de l'Intérieur*, dated 12 December 2002, bearing what appears to be an official stamp but without the name of the author. The Chamber notes that the memo refers to information collected from inhabitants of the Yembi 2 neighbourhood, Bégoua, on 11 December 2002, who report that uncontrolled troops of Jean-Pierre Bemba based in the neighbourhood, who fled from the battlefield on the route of Damara and Bossembelé, continue to carry out abuses on persons in order to pillage their property.

27. Document **CAR-OTP-0042-0253** is an unsigned *Bulletin du renseignement spécial* from the *Ministère de la Défense*, dated 20 November 2002. The Chamber notes that the document refers, *inter alia*, to a payment of a reward of 500,000 francs

that Mr Bemba's troops demanded for their support in the CAR. Mr Bemba's troops threatened to bring about disorder before leaving the CAR if they were not given this reward.

28. The Chamber notes that all the documents mentioned above were used during the prosecution's questioning of Witness D04-19,⁵³ who submitted he did not have any information in relation to them.⁵⁴ Nonetheless, the Chamber is satisfied that the above documents may be relevant to issues properly to be considered by the Chamber, such as allegations of the commission of crimes by MLC troops in the CAR during the period under examination, the relation of authority between the MLC and the CAR troops, and the conditions under which the MLC troops were deployed. In terms of probative value, although some of the documents do not bear any signature, the Chamber is satisfied that the documents bear sufficient indicia of reliability – such as letter heads, dates, and official stamps – and appear to have been produced in the ordinary course of operations within the CAR's National Gendarmerie, Ministry of Defence, or Ministry of Interior. In terms of potential prejudice, the Chamber sees no reason to believe that the documents' admission would have a prejudicial effect on a fair trial. Documents CAR-OTP-0042-0235, CAR-OTP-0042-0236, CAR-OTP-0042-0242, CAR-OTP-0042-0243, CAR-OTP-0042-0246, and CAR-OTP-0042-0253 are therefore admitted.

29. As to document **CAR-OTP-0042-0255**, submitted through Witness D04-45, the prosecution submits that it is an internal memorandum emanating from the CAR's *Gendarmerie Nationale*, dated 7 March 2003.⁵⁵ The prosecution further

⁵³ **Document CAR-OTP-0042-0235**: transcript of hearing of 4 March 2013, ICC-01/05-01/08-T-289-CONF-ENG ET, page 5, line 19 to page 7, line 3, page 13, lines 13 to 21; **document CAR-OTP-0042-0236**: ICC-01/05-01/08-T-289-CONF-ENG ET, page 7, line 23 to page 8, line 17; **document CAR-OTP-0042-0242**: ICC-01/05-01/08-T-289-CONF-ENG ET, page 8, line 18 to page 9, line 12; **document CAR-OTP-0042-0243**: ICC-01/05-01/08-T-289-CONF-ENG ET, page 9, line 17 to page 10, line 11; **document CAR-OTP-0042-0246**: ICC-01/05-01/08-T-289-CONF-ENG ET, page 10, line 12 to page 12, line 18; **document CAR-OTP-0042-0253**: ICC-01/05-01/08-T-289-CONF-ENG ET, page 12, line 19 to page 14, line 4.

⁵⁴ ICC-01/05-01/08-T-289-CONF-ENG ET, page 11, line 1 to page 12, line 18.

⁵⁵ ICC-01/05-01/08-2596-Conf, paragraph 14.

submits that the document provides information regarding crimes committed by MLC soldiers that were reported to the CAR authorities and is important in providing a better understanding of the lack of authority that CAR officials had over the MLC troops and the alleged lack of coordination between the MLC and CAR soldiers, particularly the troops of the USP.⁵⁶ The prosecution alleges that the document undermines Witness D04-45's contention that the CAR authorities asserted control over the *Armée de Libération du Congo* ("ALC") troops in the CAR.⁵⁷ The defence objects to this document's admission submitting that the prosecution has failed to provide any particularised submission as regards the provenance or indicia of reliability of the document.⁵⁸

30. The Chamber notes that document CAR-OTP-0042-0255 appears to be a signed and authored *message-porté*, dated 7 March 2003, from the CAR's *Magistrat, Directeur Général de la Gendarmerie Nationale* addressed to the *Ministre de la Défense Nationale*, the *Chef d'Etat-Major des Armées*, and the *Directeur Général de l'USP*. The Chamber notes that the document states that on 3 March 2003, approximately 40 to 50 Congolese men on board a vehicle coming from Bangui going towards Bossangoa or Bozoum opened fire on USP troops based at Boali check-point. The message states that one USP soldier was forced to remove his clothes, a pair of ranger boots and a rocket were looted, and a number of people were badly beaten up, one of whom was evacuated to the local health centre. In addition, the Chamber notes that the document was used during the prosecution's questioning of Witness D04-45.⁵⁹

31. The Chamber is satisfied that the document may be relevant to issues properly to be considered by the Chamber, such as allegations of the commission of crimes

⁵⁶ *Ibid.*

⁵⁷ ICC-01/05-01/08-2596-Conf-AnxA, page 9.

⁵⁸ ICC-01/05-01/08-2617-Conf, paragraph 38.

⁵⁹ Transcript of hearing of 19 March 2013, ICC-01/05-01/08-T-297-CONF-ENG ET, page 44, line 8 to page 47, line 20.

by the MLC troops in the CAR and the relation of authority between the Congolese and the CAR troops during the period under examination. In addition, the document may be relevant to the Chamber's assessment and understanding of Witness D04-45's testimony. In terms of probative value, the Chamber is satisfied that the document bears sufficient indicia of reliability – such as a letter head, date, stamp, and signature – and appears to have been produced in the ordinary course of operations within the CAR's *Gendarmerie Nationale*. In terms of potential prejudice, the Chamber sees no reason to believe that the document's admission would have a prejudicial effect on the fairness of the trial. Document CAR-OTP-0042-0255 is therefore admitted.

Second Category: MLC Documents

32. The prosecution submits into evidence two documents allegedly emanating from the MLC: documents **CAR-OTP-0064-0265 (Confidential)** and **CAR-OTP-0069-0363 (Public)**.
33. The prosecution submits that document **CAR-OTP-0064-0265**, which it tenders through Witness D04-45, is a newsletter emanating from the MLC, which covers the period from December 2002 to January 2003.⁶⁰ In addition, the prosecution submits that the document is relevant to, *inter alia*, the issue of authority over the MLC soldiers in the CAR, the credibility of Witness D04-45, and the contextual elements of the crimes charged.⁶¹ The prosecution argues that the witness testified that the ALC withdrawal was ordered by the CAR authorities, but the document demonstrates that the decision to withdraw was made by the MLC leadership, including the accused.⁶² In terms of probative value, the prosecution

⁶⁰ ICC-01/05-01/08-2596-Conf, paragraph 15.

⁶¹ ICC-01/05-01/08-2596-Conf, paragraph 15 and ICC-01/05-01/08-2596-Conf-AnxA, page 10.

⁶² *Ibid.*

states that the document was seized from the accused's residence in Belgium and bears the MLC logo.⁶³

34. The defence opposes the prosecution's submission that document CAR-OTP-0064-0265 is inconsistent with Witness D04-45's testimony on the withdrawal of the troops, and as such objects to its admission.⁶⁴
35. The Chamber notes that document CAR-OTP-0064-0265 is a newsletter for the period December 2002 to January 2003, apparently emanating from the *Secrétariat Général* of the MLC, containing information on a number of issues relevant to the MLC's activities during the stated period. One section of the newsletter entitled "*RCA-RCD : Retrait des troupes de l'Armée de Libération du Congo*" includes information on, *inter alia*, the circumstances surrounding the MLC's deployment in the CAR, an internal investigation carried out by the MLC which resulted in the arrest of eight MLC soldiers, and the decision to withdraw the MLC troops, which the document states was made public by Mr Bemba on 20 January 2003. The document then contains a "*Communiqué de Presse*" in which it is stated that after consultation with President Ange-Félix Patassé, the MLC took the decision to withdraw from the CAR, as of 15 February 2003, at the request of the democratically elected authorities. The Chamber notes that this document was shown to Witness D04-45, but that the witness could not read the document due to technical difficulties and did not comment on it.⁶⁵ In light of the above, the Chamber considers that this document is relevant to issues properly to be considered by the Chamber. The Chamber notes the defence's objection with respect to the relationship between the content of the document and Witness D04-45's testimony, but considers that the objection has no impact on the relevance of the document.

⁶³ ICC-01/05-01/08-2596-Conf, paragraph 15.

⁶⁴ ICC-01/05-01/08-2617-Conf, paragraph 38.

⁶⁵ Transcript of hearing of 20 March 2013, ICC-01/05-01/08-T-298-CONF-ENG ET, page 66, lines 7 to 23.

36. The Chamber also notes that the defence makes no objection relating to probative value and that the document bears the MLC logo. With no reason to believe the document is anything other than what it purports to be, the Chamber considers that the document has sufficient probative value to be admitted as evidence. Further, the Chamber sees no reason to believe that its admission would cause undue prejudice. Therefore, document CAR-OTP-0064-0265 is admitted.

37. Turning to document **CAR-OTP-0069-0363**, the prosecution submits that the document is the 30 June 1999 MLC statute, which was the founding document that was “operative” during the period of the charges.⁶⁶ The prosecution submits that it is relevant to the accused’s role as commander-in-chief of the ALC.⁶⁷ In terms of probative value, the prosecution notes that the admission of a previous version of this document was rejected due to it having come from an unofficial open source; the prosecution submits that document CAR-OTP-0069-0363 was downloaded from the official MLC website and as such has sufficient indicia of reliability.⁶⁸

38. The defence objects to this document’s admission on the grounds that it was not used with any defence witnesses listed in the Chamber’s Order.⁶⁹

39. In terms of relevance, the Chamber considers that the founding document of the MLC provides relevant background relating to the structure of the MLC and the role of its President, Mr Bemba. In terms of probative value, the Chamber notes that there is no challenge to the document’s authenticity, and that the prosecution has provided a version containing the URL address at which the

⁶⁶ ICC-01/05-01/08-2596-Conf, paragraph 21; ICC-01/05-01/08-2596-Conf-AnxA, page 12; and ICC-01/05-01/08-2299-Red, paragraph 113.

⁶⁷ ICC-01/05-01/08-2596-Conf, paragraph 21; ICC-01/05-01/08-2596-Conf-AnxA, page 12; and ICC-01/05-01/08-2299-Red, paragraph 113.

⁶⁸ ICC-01/05-01/08-2596-Conf, paragraph 21; ICC-01/05-01/08-2596-Conf-AnxA, page 12; and ICC-01/05-01/08-2299-Red, paragraph 113.

⁶⁹ ICC-01/05-01/08-2617-Conf, paragraph 54.

document can be accessed on the MLC's official website.⁷⁰ As such, the Chamber finds document CAR-OTP-0069-0363 to be sufficiently relevant and probative to be admitted into evidence.

40. With respect to the defence's objection that the document was not shown to any defence witnesses listed in the Chamber's Order, the Chamber recalls its previously stated position on this matter.⁷¹ The Chamber sees no reason to believe that the admission of this document would cause any prejudice to a fair trial. For the above reasons, the Chamber admits document CAR-OTP-0069-0363.

Third Category: Prior recorded interviews of Witness D04-19

41. The prosecution submits 29 video recordings and the corresponding transcripts of Witness D04-19's interviews. The prosecution states that it recorded these interviews on three separate occasions in the course of its investigations.⁷² According to the prosecution, the interviews constitute prior recorded statements of Witness D04-19.⁷³ The interviews – video recordings and related transcripts – (“Prior Recorded Interviews”) are items: (i) video and audio recording **CAR-OTP-0012-0005_R01** and its transcript **CAR-OTP-0020-0085_R02 (both confidential)**;⁷⁴ (ii) video and audio recording **CAR-OTP-0012-0006_R01** and its transcript **CAR-OTP-0020-0114_R02 (both confidential)**;⁷⁵ (iii) video and audio recording **CAR-OTP-0012-0007_R01** and its transcript **CAR-OTP-0020-0122_R02 (both confidential)**;⁷⁶ (iv) video and audio recording **CAR-OTP-0012-0008_R01**

⁷⁰ <http://www.mouvementdeliberationducongo.com/pages/nos-valeurs/les-statuts.html> (last accessed on 30 October 2013).

⁷¹ ICC-01/05-01/08-2012-Conf, paragraph 55.

⁷² ICC-01/05-01/08-2596-Conf, paragraph 7.

⁷³ *Ibid.*

⁷⁴ The items contain the record the interview conducted by the prosecution on 28 April 2008 from 14.30 to 15.25.

⁷⁵ The items contain the record the interview conducted by the prosecution on 28 April 2008 from 15.42 to 15.59.

⁷⁶ The items contain the record the interview conducted by the prosecution on 28 April 2008 from 16.09 to 17.03.

and its transcript **CAR-OTP-0020-0151_R02 (both confidential)**;⁷⁷ (v) video and audio recording **CAR-OTP-0012-0009_R01** and its transcript **CAR-OTP-0020-0171_R02 (both confidential)**;⁷⁸ (vi) video and audio recording **CAR-OTP-0012-0010_R01** and its transcript **CAR-OTP-0020-0191_R02 (both confidential)**;⁷⁹ (vii) video and audio recording **CAR-OTP-0012-0011_R01** and its transcript **CAR-OTP-0020-0215_R02 (both confidential)**;⁸⁰ (viii) video and audio recording **CAR-OTP-0012-0012_R01** and its transcript **CAR-OTP-0020-0239_R02 (both confidential)**;⁸¹ (ix) video and audio recording **CAR-OTP-0012-0013_R01** and its transcript **CAR-OTP-0020-0263_R02 (both confidential)**;⁸² (x) video and audio recording **CAR-OTP-0012-0014_R01** and its transcript **CAR-OTP-0020-0283_R02 (both confidential)**;⁸³ (xi) video and audio recording **CAR-OTP-0012-0015_R01** and its transcript **CAR-OTP-0020-0310_R02 (both confidential)**;⁸⁴ (xii) video and audio recording **CAR-OTP-0012-0016_R01** and its transcript **CAR-OTP-0020-0317_R02 (both confidential)**;⁸⁵ (xiii) video and audio recording **CAR-OTP-0012-0017_R01** and its transcript **CAR-OTP-0020-0335_R02 (both confidential)**;⁸⁶ (xiv) video and audio recording **CAR-OTP-0024-0010_R01** and its transcript **CAR-OTP-0027-0536_R02 (both confidential)**;⁸⁷ (xv) video and audio recording **CAR-OTP-0024-0011_R01** and its transcript **CAR-OTP-0027-0561_R02 (both**

⁷⁷ The items contain the record the interview conducted by the prosecution on 28 April 2008 from 17.43 to 18.29.

⁷⁸ The items contain the record the interview conducted by the prosecution on 28 April 2008 from 18.39 to 19.35.

⁷⁹ The items contain the record the interview conducted by the prosecution on 29 April 2008 from 09.55 to 10.52.

⁸⁰ The items contain the record the interview conducted by the prosecution on 29 April 2008 from 11.00 to 11.57.

⁸¹ The items contain the record the interview conducted by the prosecution on 29 April 2008 from 12.12 to 13.10.

⁸² The items contain the record the interview conducted by the prosecution on 29 April 2008 from 14.18 to 15.00.

⁸³ The items contain the record the interview conducted by the prosecution on 29 April 2008 from 15.17 to 16.11.

⁸⁴ The items contain the record the interview conducted by the prosecution on 29 April 2008 from 16.30 to 16.44.

⁸⁵ The items contain the record the interview conducted by the prosecution on 30 April 2008 from 14.30 to 15.04.

⁸⁶ The items contain the record the interview conducted by the prosecution on 30 April 2008 from 15.15 to 15.33.

⁸⁷ The items contain the record the interview conducted by the prosecution on 01 August 2008 from 09.21 to 10.08.

confidential);⁸⁸ (xvi) video and audio recording **CAR-OTP-0024-0012_R01** and its transcript **CAR-OTP-0027-0585_R02 (both confidential)**;⁸⁹ (xvii) video and audio recording **CAR-OTP-0024-0013_R01** and its transcript **CAR-OTP-0027-0607_R02 (both confidential)**;⁹⁰ (xviii) video and audio recording **CAR-OTP-0024-0014_R01** and its transcript **CAR-OTP-0027-0629_R02 (both confidential)**;⁹¹ (xix) video and audio recording **CAR-OTP-0024-0015_R01** and its transcript **CAR-OTP-0027-0655_R02 (both confidential)**;⁹² (xx) video and audio recording **CAR-OTP-0024-0016_R01** and its transcript **CAR-OTP-0027-0681_R02 (both confidential)**;⁹³ (xxi) video and audio recording **CAR-OTP-0024-0017_R01** and its transcript **CAR-OTP-0027-0703_R02 (both confidential)**;⁹⁴ (xxii) video and audio recording **CAR-OTP-0024-0018_R01** and its transcript **CAR-OTP-0027-0729_R02 (both confidential)**;⁹⁵ (xxiii) video and audio recording **CAR-OTP-0024-0019_R01** and its transcript **CAR-OTP-0027-0748_R02 (both confidential)**;⁹⁶ (xxiv) video and audio recording **CAR-OTP-0056-0426** and its transcript **CAR-OTP-0058-0443 (both confidential)**;⁹⁷ (xxv) video and audio recording **CAR-OTP-0056-0427** and its transcript **CAR-OTP-0058-0472 (both confidential)**;⁹⁸ (xxvi) video and audio recording **CAR-OTP-0056-0428** and its transcript **CAR-OTP-**

⁸⁸ The items contain the record the interview conducted by the prosecution on 01 August 2008 from 10.20 to 11.16.

⁸⁹ The items contain the record the interview conducted by the prosecution on 01 August 2008 from 11.32 to 12.29.

⁹⁰ The items contain the record the interview conducted by the prosecution on 01 August 2008 from 13.38 to 14.35.

⁹¹ The items contain the record the interview conducted by the prosecution on 01 August 2008 from 14.43 to 15.41.

⁹² The items contain the record the interview conducted by the prosecution on 01 August 2008 from 16.00 to 17.00.

⁹³ The items contain the record the interview conducted by the prosecution on 01 August 2008 from 17.14 to 18.02.

⁹⁴ The items contain the record the interview conducted by the prosecution on 02 August 2008 from 11.20 to 12.17.

⁹⁵ The items contain the record the interview conducted by the prosecution on 02 August 2008 from 12.23 to 13.10.

⁹⁶ The items contain the record the interview conducted by the prosecution on 02 August 2008 from 13.26 to 13.32.

⁹⁷ The items contain the record the interview conducted by the prosecution on 10 December 2009 from 10.46 to 11.46.

⁹⁸ The items contain the record the interview conducted by the prosecution on 10 December 2009 from 12.15 to 13.19.

0058-0504 (**both confidential**);⁹⁹ (xxvii) video and audio recording CAR-OTP-0056-0429 and its transcript CAR-OTP-0058-0535 (**both confidential**);¹⁰⁰ (xxviii) video and audio recording CAR-OTP-0056-0430 and its transcript CAR-OTP-0058-0566 (**both confidential**);¹⁰¹ and (xxix) video and audio recording CAR-OTP-0056-0431 and its transcript CAR-OTP-0058-0599 (**both confidential**).¹⁰²

42. The prosecution argues that the Prior Recorded Interviews of Witness D04-19 are relevant, *inter alia*, to the credibility of his testimony before the Chamber and issues in the case.¹⁰³ More specifically, the prosecution alleges that the video recordings are relevant to and probative of the witness's inconsistencies, as they rebut allegations made in his in-court testimony that the transcripts of his interviews did not accurately reflect the words he spoke during the interviews.¹⁰⁴ In relation to the transcripts, the prosecution alleges that they contain material inconsistencies with Witness D04-19's in-court testimony.¹⁰⁵ According to the prosecution, the testimony of Witness D04-19 differs from his Prior Recorded Interviews with the prosecution to such a great extent that his interviews should be admitted into evidence to allow the Chamber to evaluate the entirety of the inconsistencies in his account over the course of the investigation and trial proceedings.¹⁰⁶

43. The prosecution further argues that the prior Recorded interviews of Witness D04-19 are probative because the interviews were conducted between April 2008

⁹⁹ The items contain the record the interview conducted by the prosecution on 10 December 2009 from 13.27 to 14.26.

¹⁰⁰ The items contain the record the interview conducted by the prosecution on 10 December 2009 from 14.34 to 15.31.

¹⁰¹ The items contain the record the interview conducted by the prosecution on 10 December 2009 from 15.50 to 16.54.

¹⁰² The items contain the record the interview conducted by the prosecution on 10 December 2009 from 17.00 to 17.57.

¹⁰³ ICC-01/05-01/08-2596-Conf, paragraph 7.

¹⁰⁴ ICC-01/05-01/08-2596-Conf-AnxA, pages 3 to 5.

¹⁰⁵ ICC-01/05-01/08-2596-Conf-AnxA, pages 5 to 8.

¹⁰⁶ *Ibid.*

and December 2009, prior to the witness's decision to testify for the defence.¹⁰⁷ In addition, the prosecution submits that the Prior Recorded Interviews contain sufficient indicia of reliability because they were created in accordance with Rule 112 of the Rules to sufficiently safeguard the integrity of the recordings and clearly register relevant information such as the persons present, dates, and circumstances of the recordings.¹⁰⁸

44. The prosecution further argues that the admission of Witness D04-19's Prior Recorded Interviews is not only an appropriate use of a "bar table" motion, but it is necessary so as not to prejudice the Chamber's fair evaluation of the witness's testimony in seeking to determine the truth.¹⁰⁹ The prosecution submits that the witness was afforded the opportunity to read the transcripts of his interviews and that they were used by both parties either to confirm or challenge his in-court testimony.¹¹⁰ Lastly, the prosecution submits that, although during questioning it highlighted various contradictions between the witness's testimony and his Prior Recorded Interviews, it would have taken a lengthy questioning to confront him with every specific contradiction.¹¹¹

45. In its response, the defence welcomes "the introduction of material with such relevance to the case,"¹¹² and submits that both the video recordings and their transcripts are exculpatory, and therefore, extremely useful tools in the Chamber's search for the truth of the events in question.¹¹³ Although stressing the limited use of the materials in the context of the prosecution's questioning and recalling the witness's expressed concerns about the accuracy of the Prior Recorded Interviews,¹¹⁴ the defence submits that it has no objection to the

¹⁰⁷ ICC-01/05-01/08-2596-Conf, paragraph 7.

¹⁰⁸ *Ibid.*

¹⁰⁹ ICC-01/05-01/08-2596-Conf, paragraph 8.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² ICC-01/05-01/08-2671-Conf, paragraph 15.

¹¹³ *Ibid.*

¹¹⁴ ICC-01/05-01/08-2617-Conf, paragraphs 17 to 19.

wholesale admission of both the videos and transcripts of the interviews “on the basis that the whole of their contents are accepted to be true, subject to the witness’ comments and explanations during his oral evidence.”¹¹⁵

46. In its reply, the prosecution stresses that it seeks the admission of the Prior Recorded Interviews to allow the Chamber to assess the credibility of the witness’s evidence.¹¹⁶

47. The Chamber reiterates its view that, when the admission into evidence of “prior recorded testimony” within the terms of Rule 68 of the Rules – either video or audio recordings, transcripts of interviews, or written statements¹¹⁷ – of witnesses who testify at trial is sought:

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

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

the introduction of previously recorded audio or video testimony of a witness, or the transcript or other documented evidence of such testimony, provided that:

¹¹⁵ ICC-01/05-01/08-2617-Conf, paragraph 20.

¹¹⁶ ICC-01/05-01/08-2635-Conf, paragraph 13.

¹¹⁷ ICC-01/05-01/08-2012-Red, paragraph 136; Decision on the "Prosecution Application for Leave to Submit in Writing Prior-Recorded Testimonies by CAR-OTP-WWW-0032, CAR-OTP-WWW-0080, and CAR-OTP-WWW-0108", 16 September 2010, ICC-01/05-01/08-886, paragraphs 5 to 6, in relation to *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the prosecution’s application for the admission of the prior recorded statements of two witnesses, 15 January 2009, ICC-01/04-01/06-1603.

(a) If the witness who gave the previously recorded testimony is not present before the Trial Chamber, both the Prosecutor and the defence had the opportunity to examine the witness during the recording; or

(b) If the witness who gave the previously recorded testimony is present before the Trial Chamber, he or she does not object to the submission of the previously recorded testimony and the Prosecutor, the defence and the Chamber have the opportunity to examine the witness during the proceedings. (footnotes omitted).¹¹⁸

48. As to the fulfilment of the requirements of Rule 68 of the Rules, the Chamber is satisfied that the requirements are met. In particular, Witness D04-19 was present before the Trial Chamber and the prosecution, the defence, the legal representatives of victims, and the Chamber had the opportunity to question him during the trial proceedings.¹¹⁹ The Chamber is further satisfied that the witness consented to his Prior Recorded Interviews being submitted into evidence.¹²⁰

49. In terms of relevance, the Majority of the Chamber, Judge Kuniko Ozaki dissenting, reiterates its view that the prior recorded interviews of witnesses who have testified at trial are relevant because they may assist the Chamber in assessing, contextualising, and weighing the witnesses' testimony.¹²¹ In this regard, the Majority reiterates its view that, in order for the Chamber to properly discharge its statutory truth-finding mandate, rather than merely assessing the testimony of a witness against those excerpts of the prior interviews or statements that the parties decide to refer to in court in the limited time available

¹¹⁸ ICC-01/05-01/08-2012-Red, paragraphs 134 to 135.

¹¹⁹ Witness D04-19 provided testimony before the Chamber from 25 February 2013 to 13 March 2013, see transcript of hearing of 25 February 2013, 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 01 March 2013, ICC-01/05-01/08-T-288-CONF-ENG ET, ICC-01/05-01/08-T-289-CONF-ENG ET, transcript of hearing of 06 March 2013, ICC-01/05-01/08-T-290-CONF-ENG ET, transcript of hearing of 11 March 2013, ICC-01/05-01/08-T-291-CONF-ENG ET, transcript of hearing of 12 March 2013, ICC-01/05-01/08-T-292-CONF-ENG ET, transcript of hearing of 13 March 2013, ICC-01/05-01/08-T-293-CONF-ENG ET.

¹²⁰ ICC-01/05-01/08-T-293-CONF-ENG ET, page 19, lines 5 to 19.

¹²¹ ICC-01/05-01/08-2012-Red, paragraph 142; Decision on the admission into evidence of items deferred in the Chamber's "First decision on the prosecution and defence requests for the admission of evidence" (ICC-01/05-01/08-2012), 3 September 2013, ICC-01/05-01/08-2793, paragraph 23.

to them to conduct questioning, it should be able to compare a witness's testimony against the entirety of the prior recorded interviews.¹²² In addition, the Majority notes that during the testimony of Witness D04-19 [REDACTED] the witness was extensively questioned by both parties and the Chamber on the content of the Prior Recorded Interviews he provided to the prosecution in 2008 and 2009.¹²³ The Majority is therefore satisfied that the witness's Prior Recorded Interviews, detailed in paragraph 41 above, are all relevant to matters that are properly to be considered by the Chamber and would assist in the Chamber's assessment of the witness's testimony.

50. In terms of probative value, the items' reliability stems from the fact that they all appear to have been taken in accordance with [REDACTED]. In addition, during Witness D04-19's in-court testimony, although at times the witness raised doubts as to the accuracy of his Prior Recorded Interviews,¹²⁴ he either confirmed his answers,¹²⁵ or explained some possible contradictions with his testimony.¹²⁶ In the

¹²² ICC-01/05-01/08-2012-Red, paragraph 143; ICC-01/05-01/08-2793, paragraph 23.

¹²³ ICC-01/05-01/08-T-284-CONF-ENG ET, page 28, line 19 to page 30, line 3; ICC-01/05-01/08-T-287-CONF-ENG ET, page 6, line 6 to page 8, line 11; ICC-01/05-01/08-T-288-CONF-ENG ET, page 5, line 19 to page 7, line 5, page 10, line 16 to page 12, line 20, page 14, line 12 to page 15, line 19, page 22, line 3 to page 23, line 23, page 43, line 3 to page 44, line 6, page 45, line 8 to page 47, line 5, page 48, line 3 to page 50, line 8; ICC-01/05-01/08-T-289-CONF-ENG ET, page 23, line 10 to page 25, line 1, page 71, line 22 to page 79, line 17; ICC-01/05-01/08-T-290-CONF-ENG ET, page 4, line 22 to page 5, line 18, page 7, line 1 to page 9, line 2, page 10, line 17 to page 19, line 4, page 30, line 19 to page 35, line 11, page 42, line 16 to page 43, line 22, page 44, line 2 to page 45, line 6, page 48, line 9 to page 51, line 11, page 65, line 20 to page 68, line 19; ICC-01/05-01/08-T-291-CONF-ENG ET, page 14, line 13 to page 15, line 10; ICC-01/05-01/08-T-292-CONF-ENG ET, page 36, line 24 to page 38, line 3, page 40, line 16 to page 41, line 17, page 41, line 21 to page 45, line 11, page 50, lines 1 to 10, page 52, line 12 to page 53, line 2, page 58, line 13 to page 60, line 1; ICC-01/05-01/08-T-293-CONF-ENG ET, page 4, line 10 to page 5, line 16, page 5, line 21 to page 6, line 19, page 7, lines 8 to 22, page 8, line 11 to page 9, 25, page 13, line 2 to page 14, line 1, page 16, lines 2 to 22.

¹²⁴ See, *inter alia*, ICC-01/05-01/08-T-287-CONF-ENG ET, page 8, lines 4 to 11; ICC-01/05-01/08-T-288-CONF-ENG ET, page 22, line 18 to page 23, line 23, page 48, lines 22 to 24, page 49, line 17 to page 50, line 2; ICC-01/05-01/08-T-289-CONF-ENG ET, page 72, lines 12 to 14, page 75, line 22, page 76, line 24 to page 77, line 3, page 77, lines 18 to 20; ICC-01/05-01/08-T-290-CONF-ENG ET, page 12, lines 18 to 23, page 13, lines 5 to 7.

¹²⁵ See, *inter alia*, ICC-01/05-01/08-T-288-CONF-ENG ET, page 45, line 5 to page 47, line 5, page 48, lines 8 to 15; ICC-01/05-01/08-T-292-CONF-ENG ET, page 59, line 22 to page 60, line 1; ICC-01/05-01/08-T-293-CONF-ENG ET, page 5, lines 17 to 20, page 6, lines 16 and 25, page 7, line 23, page 9, lines 19 to 24, page 13, line 24 to page 14, line 1.

¹²⁶ See, *inter alia*, ICC-01/05-01/08-T-288-CONF-ENG ET, page 14, line 12 to page 15, line 19; ICC-01/05-01/08-T-290-CONF-ENG ET, page 5, lines 8 to 18, page 14, lines 6 to 19, page 17, lines 5 to 12, page 49, lines 15 to 21; ICC-01/05-01/08-T-291-CONF-ENG ET, page 14, line 14 to page 15, line 10; ICC-01/05-01/08-T-292-CONF-ENG ET, page 37, line 5 to page 38, line 3, page 42, lines 9 to 24, page 44, lines 4 to 14, page 45, lines 5 to 11.

view of the Chamber, these factors provide the documents with sufficient probative value for admission as evidence.

51. In terms of potential prejudice, the Chamber notes that the defence does not object to the admission of the entirety of the Prior Recorded Interviews of Witness D04-19.¹²⁷ In relation to the defence's request that the items should be "accepted to be true, subject to the witness' comments and explanations during his oral evidence,"¹²⁸ the Majority reiterates its principled view that the admission of the prior recorded interviews of witnesses who have testified at trial will enable the Chamber to compare the witnesses' testimony against their prior interviews to determine the extent of inconsistencies, if any, which will contribute to the fair evaluation of the witnesses' testimony.¹²⁹ The Majority also reiterates its approach to the admission of prior recorded interviews, which are to be considered complementary to the witness's in-court testimony and not as a substitute, and will be used to assess the testimony and to determine the weight to be afforded to the testimony as a whole.¹³⁰ In view of the foregoing, the Majority sees no reason to believe that the admission of the Prior Recorded Interviews of Witness D04-19 would have any prejudicial effect on or be inconsistent with the rights of the accused or the fairness of the trial. The Chamber, with Judge Ozaki dissenting on the reasoning, admits Documents CAR-OTP-0012-0005_R01, CAR-OTP-0020-0085_R02, CAR-OTP-0012-0006_R01, CAR-OTP-0020-0114_R02, CAR-OTP-0012-0007_R01, CAR-OTP-0020-0122_R02, CAR-OTP-0012-0008_R01, CAR-OTP-0020-0151_R02, CAR-OTP-0012-0009_R01, CAR-OTP-0020-0171_R02, CAR-OTP-0012-0010_R01, CAR-OTP-0020-0191_R02, CAR-OTP-0012-0011_R01, CAR-OTP-0020-0215_R02, CAR-OTP-0012-0012_R01, CAR-OTP-0020-0239_R02, CAR-OTP-0012-0013_R01, CAR-OTP-0020-0263_R02, CAR-OTP-0012-0014_R01, CAR-OTP-0020-0283_R02, CAR-OTP-0012-0015_R01,

¹²⁷ ICC-01/05-01/08-2617-Conf, paragraphs 15 to 20.

¹²⁸ ICC-01/05-01/08-2617-Conf, paragraph 20.

¹²⁹ ICC-01/05-01/08-2012-Red, paragraph 146.

¹³⁰ ICC-01/05-01/08-2012-Red, paragraphs 149 and 150.

CAR-OTP-0020-0310_R02, CAR-OTP-0012-0016_R01, CAR-OTP-0020-0317_R02, CAR-OTP-0012-0017_R01, CAR-OTP-0020-0335_R02, CAR-OTP-0024-0010_R01, CAR-OTP-0027-0536_R02, CAR-OTP-0024-0011_R01, CAR-OTP-0027-0561_R02, CAR-OTP-0024-0012_R01, CAR-OTP-0027-0585_R02, CAR-OTP-0024-0013_R01, CAR-OTP-0027-0607_R02, CAR-OTP-0024-0014_R01, CAR-OTP-0027-0629_R02, CAR-OTP-0024-0015_R01, CAR-OTP-0027-0655_R02, CAR-OTP-0024-0016_R01, CAR-OTP-0027-0681_R02, CAR-OTP-0024-0017_R01, CAR-OTP-0027-0703_R02, CAR-OTP-0024-0018_R01, CAR-OTP-0027-0729_R02, CAR-OTP-0024-0019_R01, CAR-OTP-0027-0748_R02, CAR-OTP-0056-0426, CAR-OTP-0058-0443, CAR-OTP-0056-0427, CAR-OTP-0058-0472, CAR-OTP-0056-0428, CAR-OTP-0058-0504, CAR-OTP-0056-0429, CAR-OTP-0058-0535, CAR-OTP-0056-0430, CAR-OTP-0058-0566, CAR-OTP-0056-0431, and CAR-OTP-0058-0599.

Fourth Category: Documents related to [REDACTED]

52. The prosecution requests the admission into evidence of ten documents bearing [REDACTED]: (i) document **CAR-OTP-0011-0381 (Confidential)**, a handwritten organisational diagram of the MLC, [REDACTED]; (ii) document **CAR-OTP-0011-0382 (Confidential)**, a handwritten organisational diagram, [REDACTED]; (iii) document **CAR-OTP-0011-0383 (Confidential)**, an annotated map of the CAR, [REDACTED]; (iv) document **CAR-OTP-0011-0384 (Confidential)**, an annotated map of Bangui, [REDACTED]; (v) document **CAR-OTP-0011-0385 (Confidential)**, a handwritten summary of the MLC deployment in the CAR, [REDACTED]; (vi) documents **CAR-OTP-0011-0375_R01 (Confidential)**, **CAR-OTP-0056-0439 (Confidential)** and **CAR-OTP-0024-0004_R01 (Confidential)**, [REDACTED]; (vii) document **CAR-ICC-0001-0085 (Confidential)**, a handwritten [REDACTED]; (viii) document **CAR-ICC-0001-0086 (Confidential)**, handwritten notes, [REDACTED] date.

53. The prosecution submits that the documents are highly pertinent to [REDACTED].¹³¹ The prosecution notes that [REDACTED].¹³² The prosecution alleges that eight of the documents, [REDACTED].¹³³ These eight documents show, the prosecution submits, that at a time [REDACTED].¹³⁴ The prosecution argues that the remaining two documents, [REDACTED] are probative that [REDACTED].¹³⁵ The 10 documents, the prosecution alleges, [REDACTED].¹³⁶

54. In addition, the prosecution submits that documents CAR-OTP-0011-0381, CAR-OTP-0011-0382, CAR-OTP-0011-0383, CAR-OTP-0011-0384, CAR-OTP-0011-0385, CAR-OTP-0011-0375_R01, CAR-OTP-0056-0439, and CAR-OTP-0024-0004_R01, are all relevant to and probative of [REDACTED].¹³⁷ As to documents CAR-ICC-0001-0085 and CAR-ICC-0001-0086, the prosecution submits that they are relevant to and probative of [REDACTED] and the lack of authenticity of the [REDACTED].¹³⁸ The prosecution alleges that the documents show that [REDACTED].¹³⁹ Further, the prosecution alleges that document CAR-ICC-0001-0085 also provides a [REDACTED] which is contradicted by the previous documents.¹⁴⁰ In addition, the prosecution argues that document CAR-ICC-0001-0086, together with [REDACTED] demonstrates that [REDACTED]. The prosecution suggests [REDACTED].¹⁴¹

55. The defence contests the admission of the documents as evidence, submitting that the criteria for admission have not been met.¹⁴² The defence notes that

¹³¹ ICC-01/05-01/08-2596-Conf, paragraph 9.

¹³² *Ibid.*

¹³³ ICC-01/05-01/08-2596-Conf, paragraph 10.

¹³⁴ *Ibid.*

¹³⁵ ICC-01/05-01/08-2596-Conf, paragraph 11.

¹³⁶ *Ibid.*

¹³⁷ ICC-01/05-01/08-2596-Conf-AnxA, page 2.

¹³⁸ ICC-01/05-01/08-2596-Conf-AnxA, pages 2 to 3.

¹³⁹ *Ibid.*

¹⁴⁰ ICC-01/05-01/08-2596-Conf-AnxA, page 2.

¹⁴¹ ICC-01/05-01/08-2596-Conf-AnxA, page 3.

¹⁴² ICC-01/05-01/08-2617-Conf, paragraph 22.

documents CAR-OTP-0056-0439 and CAR-OTP-0024-0004_R01 [REDACTED] and that their admission solely for the purpose of allegedly [REDACTED] is improper and unfair.¹⁴³ Concerning the remaining documents, the defence contests an alleged attempt by the prosecution to have the Chamber “engage in amateur [REDACTED] in order to [REDACTED].¹⁴⁴ The defence further submits that, for the purpose of [REDACTED], the prosecution would have to seek to reopen its case in order to call a [REDACTED] expert.¹⁴⁵ In addition, the defence contests the prosecution’s own attempts to analyse [REDACTED], arguing that the documents do not show a different [REDACTED], but rather that the prosecution mistakes [REDACTED] a confusion which the defence alleges plagued the prosecution’s [REDACTED].¹⁴⁶

56. In its reply, the prosecution submits that the documents are relevant to the Chamber’s assessment of [REDACTED].¹⁴⁷
57. In terms of relevance, the Chamber notes that all the documents submitted contain [REDACTED]. The Chamber notes that [REDACTED].¹⁴⁸ The Chamber therefore considers that the documents are relevant since they will assist the Chamber in its assessment and understanding of [REDACTED] and other pieces of evidence admitted in the case.
58. The documents’ probative value derives from their [REDACTED] and use. Documents CAR-ICC-0001-0085 and CAR-ICC-0001-0086 [REDACTED] were used by the parties and the Chamber [REDACTED].¹⁴⁹ The remaining documents appear to have been [REDACTED] in documents CAR-OTP-0011-0381, CAR-

¹⁴³ ICC-01/05-01/08-2617-Conf, paragraph 21.

¹⁴⁴ ICC-01/05-01/08-2617-Conf, paragraph 22.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ ICC-01/05-01/08-2635-Conf, paragraph 14.

¹⁴⁸ *See, inter alia*, [REDACTED].

¹⁴⁹ [REDACTED].

OTP-0011-0382, CAR-OTP-0011-0384, CAR-OTP-0011-0383, CAR-OTP-0011-0385, CAR-OTP-0011-0375, and CAR-OTP-0024-0004-R01.¹⁵⁰ The Chamber notes that, contrary to the assertion of the defence, the only document which was [REDACTED] is document CAR-OTP-0056-0439. This notwithstanding, the Chamber is satisfied that this document [REDACTED].¹⁵¹ In the view of the Chamber, these factors provide the documents with sufficient probative value for admission as evidence.

59. In terms of potential prejudice, the Chamber notes that the prosecution submits the documents into evidence to [REDACTED].¹⁵² The Chamber further notes that after [REDACTED],¹⁵³ [REDACTED].¹⁵⁴ Taking into account that all the documents were [REDACTED] the Chamber will be in a position to assess the differences and similarities of [REDACTED] the documents and draw any appropriate conclusion as to the weight to be accorded to the documents themselves [REDACTED].

60. In view of the foregoing, the Chamber is satisfied that any potential prejudice that the admission of the items may cause does not outweigh their relevance and probative value. Documents CAR-OTP-0011-0381, CAR-OTP-0011-0382, CAR-OTP-0011-0383, CAR-OTP-0011-0384, CAR-OTP-0011-0385, CAR-OTP-0011-0375_R01, CAR-OTP-0056-0439, CAR-OTP-0024-0004_R01, CAR-ICC-0001-0085, and CAR-ICC-0001-0086 are therefore admitted.

¹⁵⁰ **Document CAR-OTP-0011-0381:** [REDACTED]; **document CAR-OTP-0011-0382:** [REDACTED]; **document CAR-OTP-0011-0384:** [REDACTED]; **document CAR-OTP-0011-0383:** [REDACTED]; **document CAR-OTP-0011-0385:** [REDACTED]; **document CAR-OTP-0011-0375:** [REDACTED]; **document CAR-OTP-0024-0004_R01:** [REDACTED].

¹⁵¹ [REDACTED].

¹⁵² ICC-01/05-01/08-2596-Conf-AnxA, pages 2 and 3.

¹⁵³ [REDACTED].

¹⁵⁴ [REDACTED].

Fifth Category: Media reports

61. The prosecution seeks the admission of eight media reports — **CAR-OTP-0013-0118 (Confidential)**, **CAR-OTP-0013-0114 (Confidential)**, **CAR-OTP-0030-0274 (Public)**, **CAR-OTP-0005-0129 (Public)**, **CAR-OTP-0005-0131 (Public)**, **CAR-OTP-0031-0011 (Public)**, **CAR-OTP-0010-0471 (Public)**, and **CAR-V20-0001-0165 (Public)** — submitting that they are relevant to, *inter alia*, (i) the credibility of defence witnesses;¹⁵⁵ (ii) the relationship between the CAR authorities and the MLC troops;¹⁵⁶ (iii) the date of arrival and the locations on certain dates of MLC troops;¹⁵⁷ (iv) the presence of the MLC in Mongoumba;¹⁵⁸ (v) the level of the accused's knowledge of the location of MLC troops;¹⁵⁹ (vi) the fact that it was public knowledge that Colonel Moustapha resided in PK12;¹⁶⁰ (vii) the war crime of pillaging;¹⁶¹ (viii) the accused's effective control and knowledge of crimes for the purposes of Article 28(a) of the Statute;¹⁶² and (ix) contextual elements of the charges.¹⁶³
62. The defence "recalls its position generally that the admission of media articles cannot be reconciled with the consistent jurisprudence of Trial Chambers I and II,"¹⁶⁴ and that "media reports are generally not considered a source of reliable evidence and their admission is generally rejected for lack of probative value".¹⁶⁵

¹⁵⁵ ICC-01/05-01/08-2596-Conf-AnxA, pages 8 to 10 and 12.

¹⁵⁶ ICC-01/05-01/08-2596-Conf, paragraphs 7 and 19; ICC-01/05-01/08-2596-Conf-AnxA, page 10.

¹⁵⁷ ICC-01/05-01/08-2596-Conf-AnxA, page 9.

¹⁵⁸ ICC-01/05-01/08-2596-Conf, paragraph 12; ICC-01/05-01/08-2596-Conf-AnxA, page 8.

¹⁵⁹ ICC-01/05-01/08-2596-Conf, paragraph 12; ICC-01/05-01/08-2596-Conf-AnxA, page 9.

¹⁶⁰ ICC-01/05-01/08-2596-Conf, paragraph 19; ICC-01/05-01/08-2596-Conf-AnxA, page 12.

¹⁶¹ ICC-01/05-01/08-2596-Conf-AnxA, page 8.

¹⁶² ICC-01/05-01/08-2596-Conf-AnxA, pages 9 and 10.

¹⁶³ *Ibid.*

¹⁶⁴ ICC-01/05-01/08-2617-Conf, paragraph 24 referring to Partly Dissenting Opinion of Judge Ozaki on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 69(4) of the Rome Statute, 6 September 2012, ICC-01/05-01/08-2300.

¹⁶⁵ ICC-01/05-01/08-2617-Conf, paragraph 24. The defence has previously raised similar arguments, see Defence Response to the Prosecution's Application for Admission of Evidence from the Bar Table, 19 March 2012, ICC-01/05-01/08-2168, paragraphs 35 to 37.

On this basis, the defence generally opposes the admission of all media reports submitted by the prosecution.¹⁶⁶

63. The Chamber notes that the Majority of the Chamber, Judge Ozaki dissenting,¹⁶⁷ set out its position on the admission of media reports in its Decision 2299.¹⁶⁸ In this regard, the Majority stated that it would approach the admissibility of such materials with caution and held that such reports may be admitted for limited purposes to be determined on a case-by-case basis. In line with the Majority's approach, each tendered media report/article will be cautiously assessed to determine its relevance, its probative value, and whether any prejudice to a fair trial may be caused by its admission.

Media article relating to the testimony of Witness D04-07

64. The prosecution seeks the admission of document **CAR-OTP-0013-0118**, which it submits is a press article from "*L'Agence Centrafrique Presse*", dated 21 November 2002. In terms of relevance, the prosecution submits that this article relates to Witness D04-07's credibility in relation to the co-ordination between *Forces Armées Centrafricaines* ("FACA") and MLC troops, and because it shows that the location of the residence of Colonel Mustapha, the MLC brigade commander, was public knowledge, while the witness, [REDACTED] was allegedly not aware of this information.¹⁶⁹ In addition, the prosecution submits that the article is relevant to the knowledge of the accused for the purposes of Article 28(a) of the Statute.¹⁷⁰ In terms of probative value, the prosecution submits that the article was created contemporaneously with the events in question, was created in the

¹⁶⁶ ICC-01/05-01/08-2617-Conf, paragraphs 24, 34 and 52.

¹⁶⁷ ICC-01/05-01/08-2300, paragraph 4.

¹⁶⁸ ICC-01/05-01/08-2299-Red, paragraph 95.

¹⁶⁹ ICC-01/05-01/08-2596-Conf, paragraph 19; ICC-01/05-01/08-2596-Conf-AnxA, page 12.

¹⁷⁰ ICC-01/05-01/08-2596-Conf-AnxA, page 12.

ordinary course of the organisation's activities, contains the bulletin reference number at the bottom of the page, and cites the complete article.¹⁷¹

65. The defence submits that this document, a "one-page printout, allegedly from some kind of press "bulletin", cites no author or sources, and has no indicia of reliability such as a front-page or masthead."¹⁷² In addition, the defence submits that "[w]hile the Prosecution says it was prepared 'in the ordinary course of the organisation's activities',¹⁷³ it provides no basis for this assertion, nor is it clear how this relates to this report's provenance or reliability, which the defence submits have not been established."¹⁷⁴ Finally, the defence submits that, as the document was not put to Witness D04-07 during his testimony, "its admission to allegedly impugn his credibility is manifestly unfair."¹⁷⁵

66. In terms of relevance, the Chamber notes that document CAR-OTP-0013-0118 appears to be a single page taken from a news bulletin of "*L'Agence Centrafrique Presse*," marked "N° 153", dated from 21 to 27 November 2002. This single page contains two complete reports, with the prosecution seeking the admission of the larger of these, entitled "*Les autorités Municipales de Bégoua à la recherche d'un terrain d'entente entre la population et les forces du MLC de Jean-Pierre Bemba*". The article contains information to the effect that the co-ordinator of the MLC troops based in Bégoua, Colonel Mustapha, was based in Bégoua, PK12, himself. The article also provides information regarding a meeting between Central African authorities in Bégoua and Colonel Mustapha on the topic of abuses, pillaging and rape committed by MLC troops against the population of Bégoua. The article provides details of what was discussed in this meeting and states that both sides promised to collaborate to curb the harmful acts of both the MLC troops and the

¹⁷¹ ICC-01/05-01/08-2596-Conf, paragraph 19.

¹⁷² ICC-01/05-01/08-2617-Conf, paragraph 52.

¹⁷³ ICC-01/05-01/08-2617-Conf, paragraph 52; ICC-01/05-01/08-2596-Conf, paragraph 19.

¹⁷⁴ ICC-01/05-01/08-2617-Conf, paragraph 52.

¹⁷⁵ *Ibid.*

population. The Chamber notes that while this document was mentioned by the prosecution in court,¹⁷⁶ it was not put to Witness D04-07 or any other witness. The Chamber considers that in light of the information it contains, document CAR-OTP-0013-0118 is relevant to issues properly to be considered by the Chamber.

67. Turning to its probative value, the Majority sees no reason to doubt that the document is what it purports to be, that is, a news bulletin from a Central African media outlet, containing a full article. The Chamber notes that it has previously denied the admission of media articles citing other news agencies when the documents tendered emanated from “unofficial open sources”.¹⁷⁷ However, in the case at hand the Chamber notes that this article appears to have been published by the media outlet “*L’Agence Centrafrique Presse*”. In addition, the article contains a footer detailing the date of publication of the bulletin, its source and number. The Chamber further notes that the bulletin was published within the temporal scope of the charges. As such, the Majority finds document CAR-OTP-0013-0118 to possess probative value.

68. In terms of potential prejudice, in line with its approach to the admission of media reports, the Chamber, Judge Kuniko Ozaki dissenting on reasoning, is of the view that document CAR-OTP-0013-0118 may be admitted for limited purposes only. In particular, the information contained therein may serve to corroborate other pieces of evidence and may be used to determine whether information regarding the alleged commission of crimes by MLC troops in the CAR was widely broadcast by the media during the period of the charges. In addition, although the document was not put to Witness D04-07 during his testimony, the witness was given the chance to respond to the assertion that the

¹⁷⁶ Transcript of hearing of 21 September 2012, ICC-01/05-01/08-T-250-CONF-ENG CT, page 13, line 2.

¹⁷⁷ ICC-01/05-01/08-2299-Red, paragraph 113.

location of Colonel Mustapha's residence was "more or less public information",¹⁷⁸ the fact which the present document is tendered to prove. Consequently, the Majority is of the view that the document may be also used in the Chamber's assessment of the testimony of Witness D04-07. In light of the envisioned limited use of the document, the Majority considers that its relevance and probative value outweighs any potential prejudicial effect its admission might have.

69. The Majority recalls its general preference for the submission of full documents, rather than excerpts, but notes that single articles which form part of a larger document, such as that under consideration, can comprise complete documents in themselves which can be properly assessed in their context.¹⁷⁹ For the above reasons, the Chamber, Judge Ozaki dissenting on reasoning, admits document CAR-OTP-0013-0118.

Media articles relating to the testimony of Witness D04-19

70. The prosecution seeks the admission into evidence of two media articles related to the testimony of Witness D04-19: document **CAR-OTP-0013-0114**, an article from the newspaper *Le Citoyen*, dated 6 March 2003, entitled "*Ville de Mongoumba sous les tirs des hommes de Jean-Pierre Bemba*"; and document **CAR-OTP-0030-0274**, an article from the British Broadcasting Corporation ("BBC")'s website, dated 1 November 2002, entitled "*Chadians attacked in Bangui*".¹⁸⁰ In terms of relevance, the prosecution submits that these articles relate to the credibility of Witness D04-19's testimony regarding the presence of MLC soldiers in Mongoumba and also to the accused's knowledge of MLC activities in the CAR.¹⁸¹

¹⁷⁸ Transcript of hearing of 20 September 2012, ICC-01/05-01/08-T-249-CONF-ENG ET, page 51, lines 23 to 25.

¹⁷⁹ See ICC-01/05-01/08-2299-Red, paragraph 96.

¹⁸⁰ ICC-01/05-01/08-2596-Conf-AnxA, pages 8 and 9.

¹⁸¹ ICC-01/05-01/08-2596-Conf, paragraph 12.

71. Specifically, the prosecution submits that document CAR-OTP-0013-0114 is relevant to demonstrating Witness D04-19's credibility in relation to the presence of MLC soldiers in Mongoumba, in that it contradicts his testimony that the MLC were not present in that place.¹⁸² In addition, the prosecution submits that the document is probative of the lack of effective control of the CAR authorities over the ALC and the war crime of pillaging.¹⁸³ In terms of probative value, the prosecution merely states that document CAR-OTP-0013-0114 was prepared contemporaneously with the events.¹⁸⁴

72. The defence submits that the article does not meet the standard for admission set by the Majority of the Chamber.¹⁸⁵ The defence submits that the document is a single-page extract from an apparently larger newspaper *Le Citoyen* and that there is no attached front page or other sections of the newspaper to provide sufficient indicia of reliability.¹⁸⁶ The defence further notes that the prosecution has failed to make any particularised submissions on the indicia of reliability or probative value of the document, and that in addition to the prosecution not identifying the author, the author does not identify his or her sources. The defence further notes that the Majority of the Chamber has previously admitted an extract of "*Le Citoyen*" over defence objection, after the Majority took into account that a witness had been questioned on the content of the article and was aware of the events discussed.¹⁸⁷ The defence notes, however, that in relation to document CAR-OTP-0013-0114, while Witness D04-19 was read the contents of the article, he testified that he had never heard of the events in question and

¹⁸² ICC-01/05-01/08-2596-Conf-AnxA, page 8.

¹⁸³ ICC-01/05-01/08-2596-Conf-AnxA, page 8.

¹⁸⁴ ICC-01/05-01/08-2596-Conf, paragraph 12.

¹⁸⁵ ICC-01/05-01/08-2617-Conf, paragraph 25. The Chamber notes that the defence refers to ICC-01/05-01/08-2012-Conf, paragraphs 99 to 100. However, the cited paragraphs do not speak to the issue at hand in any way.

¹⁸⁶ ICC-01/05-01/08-2617-Conf, paragraph 25. The Chamber notes that the defence refers to ICC-01/05-01/08-2012-Conf, paragraph 97. However, the cited paragraphs do not speak to the issue at hand in any way.

¹⁸⁷ ICC-01/05-01/08-2617-Conf, paragraph 25. The Chamber notes that the defence refers to ICC-01/05-01/08-2012-Conf, paragraph 94. However, the cited paragraphs do not speak to the issue at hand in any way.

testified as to why the events could not in fact have taken place.¹⁸⁸ For these reasons, the defence submits that document CAR-OTP-0013-0114 is not admissible under the criteria previously set by the Chamber.¹⁸⁹

73. In terms of relevance, the Chamber notes that this document appears to be a single-page extract from the newspaper *"Le Citoyen"*, dated 6 March 2003. The page contains one complete article, entitled *"Ville de Mongoumba sous les tirs des hommes de Jean-Pierre Bemba"*, and part of another article. The complete article details a skirmish which took place in Mongoumba between FACA troops and *"les hommes de Jean-Pierre Bemba"*. The article states that the security and defence forces of the CAR boarded two *"baleinières"*, *"mardi dernier"* — apparently the Tuesday before the article was published, i.e. Tuesday 4 March 2003 — containing looted goods taken from the population in the towns of Damara, Sibut, Bossembélé, Bossangoa and Bozoum.¹⁹⁰ It also provides detailed information on the looted goods. The article states that *"les hommes de Jean-Pierre Bemba"* surrendered and the loot was recovered. The press article then states that Mr Bemba informed former President Patassé of the behaviour of the FACA troops in Mongoumba, after which President Patassé seised the Minister of Defence who gave the order to the *"chef d'Etat major"* of the FACA to release the *"sauveurs de Patassé"* and *"maybe"* to return their loot. The article states that following this the *"Nyamamulengués"* were released, but their loot was not returned to them. The article then gives information about *"éléments de Jean-Pierre Bemba"* who came back to the CAR the day after, on Wednesday, 5 March 2003, and opened fire on the town in order to avenge the insult of the previous day and to find the two *"baleinières"* that were taken from them. Finally, the article states that the

¹⁸⁸ ICC-01/05-01/08-2617-Conf, paragraph 25 referring to ICC-01/05-01/08-T-289-CONF-ENG ET, pages 14 to 18.

¹⁸⁹ ICC-01/05-01/08-2617-Conf, paragraph 25.

¹⁹⁰ There is a question mark following this list of towns in the article.

population, seized by fear, began to leave the town in the early hours of the morning.

74. Consequently, document CAR-OTP-0013-0114 provides information on a number of issues relevant to the charges in the present case. The article provides information on the presence of the MLC troops in Mongoumba and the pillaging in this town, allegedly attributed to MLC troops. The article also provides information on events which appear to shed light on the relationship between the CAR authorities and the MLC troops. As such, the Majority finds that this item may be of relevance to the Chamber's assessment of Witness D04-19's testimony and that of the evidence as a whole in this regard. Moreover, this document was used during the questioning of Witness D04-19, and the Majority holds that its admission will consequently assist the Chamber in its understanding of this witness's testimony.¹⁹¹

75. Turning to probative value, the Chamber notes that this document is only a single-page extract from an apparently larger newspaper, and that the prosecution has provided no front page to aid in the Chamber's assessment of the document's authenticity. That said, the Chamber notes that it has admitted pages of the newspaper "*Le Citoyen*" previously, and notes further that the formatting and layout of document CAR-OTP-0013-0114 corresponds to that of, for example, the articles contained in document CAR-OTP-0004-0336, admitted in Decision 2299.¹⁹² Moreover, the page submitted contains a footer detailing the name of the newspaper, the date, and the issue number, thereby providing many of the details for which the submission of a front page is often beneficial. The Majority recalls its general preference for the submission of full documents, rather than excerpts, but notes that single articles which form part of a larger

¹⁹¹ ICC-01/05-01/08-T-289-CONF-ENG ET, page 14, line 9 to page 19, line 6.

¹⁹² ICC-01/05-01/08-2299-Red, paragraph 97.

document, such as that under consideration, can comprise complete documents in themselves which can be properly assessed in their context.¹⁹³ Given the above, the Chamber is of the view that document CAR-OTP-0013-0114 bears sufficient indicia of authenticity for the Chamber to determine that it is an authentic copy of a single page of a well-known newspaper.

76. In terms of potential prejudice, as previously indicated, the Majority of the Chamber is of the view that this type of material can be considered for a limited purpose, namely to contextualise and facilitate the Chamber's assessment of the testimony of Witness D04-19 and to corroborate other pieces of evidence. Given the above limitations on its use, the Majority is satisfied that the admission of the document would not cause unfair prejudice to a fair trial. The Chamber, Judge Ozaki dissenting on reasoning, admits Document CAR-OTP-0013-0114.

77. Turning to document CAR-OTP-0030-0274, the prosecution submits that this document is relevant to Witness D04-19's credibility. The prosecution further submits that the document: (i) shows that the accused knew details of the locations of ALC troops at the time, (including, *inter alia*, PK22), (ii) shows that the accused denied crimes despite having launched an inquiry one day prior to the publication of the article, (iii) contains contemporaneous information on the events, and (iv) includes statements attributed to the accused on several key aspects of the case.¹⁹⁴ In terms of probative value, the prosecution submits that this article is taken from the website of the BBC where it is still available in unaltered form, and that it was prepared contemporaneously with the events.¹⁹⁵

78. The defence submits that document CAR-OTP-0030-0274 consists of a two-page printout from a webpage with no author identified.¹⁹⁶ The defence also notes that

¹⁹³ See ICC-01/05-01/08-2299-Red, paragraph 96.

¹⁹⁴ ICC-01/05-01/08-2596-Conf-AnxA, page 9.

¹⁹⁵ ICC-01/05-01/08-2596-Conf, paragraph 12; ICC-01/05-01/08-2596-Conf-AnxA, page 9.

¹⁹⁶ ICC-01/05-01/08-2617-Conf, paragraph 26.

the document was put to Witness D04-19, who testified that he had never heard of its contents and provided testimony as to why the article was inaccurate.¹⁹⁷ The defence further submits that the prosecution has failed to provide any particularised submissions on the indicia of reliability of this document.¹⁹⁸ For these reasons, the defence objects to this document's admission.¹⁹⁹

79. The Chamber notes that document CAR-OTP-0030-0274 is a printout of an online news article from the BBC website, dated 1 November 2002, entitled "Chadians attacked in Bangui". The article states that there had been reports of serious violence and looting in the northern suburbs of Bangui by MLC fighters supporting President Ange-Felix Patassé, but that Mr Bemba had denied the allegations in an interview with the BBC's "Network Africa" programme, stating that his troops were more than 20 kilometres outside Bangui. The article also provides information on the various troops involved in the fighting and the chronology of events. The Chamber notes that this document was shown to witness D04-19, who provided a different account of the timeline of the MLC's arrival and advance into the CAR.²⁰⁰ Therefore, the Chamber considers that the article provides information that is relevant to issues that are properly to be considered by the Chamber, including the locations of MLC troops during the events and the state of knowledge of the accused during the events.

80. Turning to the article's probative value, the Chamber notes that the article is a printout of an online media article, available on the official website of the BBC. In terms of reliability, the Chamber notes that this article emanates from a well-known international news outlet, was created contemporaneously with the events under examination, and appears to have been created in the course of the

¹⁹⁷ ICC-01/05-01/08-2617-Conf, paragraph 26 referring to ICC-01/05-01/08-T-291-CONF-ENG ET, pages 17 to 18.

¹⁹⁸ ICC-01/05-01/08-2617-Conf, paragraph 26.

¹⁹⁹ *Ibid.*

²⁰⁰ ICC-01/05-01/08-T-291-CONF-ENG, page 17, line 5 to page 19, line 12.

normal activities of the BBC. The Chamber notes that the article provides one of its sources, namely a BBC reporter present in Bangui during the events reported, but does not contain detailed information as to the further sources upon which the report is based.

81. As to the potential prejudice, as previously indicated, the Majority of the Chamber is of the view that this type of material can be considered for a limited purpose; in particular, the information contained therein may serve to corroborate other pieces of evidence and may be examined when assessing whether the conduct described in the charges was widely broadcast. In addition, taking into account that the witness was questioned in court in relation to the item, the Majority is of the view that it may also serve to facilitate the Chamber's assessment of and contextualise the testimony of Witness D04-19. In light of the limited purpose for which this document is admitted, the risk of prejudice to the accused to which its admission might give rise is minimal. Accordingly, the Chamber, Judge Ozaki dissenting on reasoning, admits document CAR-OTP-0030-0274.

Media articles relating to the testimony of Witness D04-45

82. The prosecution seeks the admission of five press articles related to the testimony of Witness D04-45: (i) document **CAR-OTP-0005-0129**, a press article entitled "*Les combats ont repris à Bangui*", dated 30 October 2002, from "*Radio France Internationale*" ("RFI"); (ii) document **CAR-OTP-0005-0131**, a RFI article entitled "*Patassé sauvé par Kadhafi et Bemba*", dated 31 October 2002; (iii) document **CAR-OTP-0031-0011**, a RFI list entitled "BROADCASTS" of interviews, documentaries, and summaries with their dates of publication; (iv) document **CAR-OTP-0010-0471**, an interview of Mr Bemba, dated 4 May 2003, from the magazine "*Jeune Afrique*"; and (v) document **CAR-V20-0001-0165**, a press article entitled "*Pillage à*

Mongoumba (Centrafrique): Le MLC affirme être la victime", dated 14 March 2003, from "*Le Citoyen*".²⁰¹

83. In relation to documents **CAR-OTP-0005-0129** and **CAR-OTP-0005-0131**, the prosecution submits that these documents are relevant to and probative in undermining the credibility of Witness D04-45.²⁰² In particular, the prosecution submits that document CAR-OTP-0005-0129 contradicts the witness's testimony regarding the details of the MLC troops' arrival in the CAR at the start of the intervention, and that CAR-OTP-0005-0131 contradicts the witness's testimony regarding the ALC being at PK4 on 30 October 2002.²⁰³ In terms of probative value, the prosecution submits that the two documents were prepared contemporaneously to the events in question by a "reputable" international media organisation in the ordinary course of the organisation's activities and that they are reliable because they are complete and contain the RFI logo.²⁰⁴ Finally, the prosecution contends that the documents, rather than being prejudicial, would allow the Chamber to fairly evaluate the evidence of Witness D04-45 against the information that was reported during the events.²⁰⁵

84. In relation to both CAR-OTP-0005-0129 and CAR-OTP-0005-0131, the defence submits that "the Chamber has now heard significant, corroborated and consistent Prosecution and Defence evidence that RFI made baseless allegations against the MLC, and at the time there was doubt as to the truth of their reporting".²⁰⁶ The defence submits that, "against the backdrop of consistent

²⁰¹ ICC-01/05-01/08-2596-Conf-AnxA, pages 9 and 10.

²⁰² ICC-01/05-01/08-2596-Conf-AnxA, page 9.

²⁰³ ICC-01/05-01/08-2596-Conf-AnxA, page 9.

²⁰⁴ ICC-01/05-01/08-2596-Conf, paragraph 13.

²⁰⁵ ICC-01/05-01/08-2596-Conf-AnxA, page 9.

²⁰⁶ ICC-01/05-01/08-2617-Conf, paragraph 35. The defence cites the following portions of testimony in support of its contention: transcript of hearing of 8 February 2013, ICC-01/05-01/08-T-208-CONF-ENG ET, page 53 [the Chamber notes in this regard that page 53 appears to be an incorrect reference, and notes that the correct reference would appear to be page 31]; transcript of hearing of 9 February 2013, ICC-01/05-01/08-T-209-CONF-ENG ET, page 36; ICC-01/05-01/08-T-298-CONF-ENG ET, page 65; and transcript of hearing of 11 April 2013, ICC-01/05-01/08-T-305-CONF-ENG ET, page 59.

jurisprudence from Trial Chambers I and II of the ICC declining to admit media reports on the basis that they cannot be relied upon to report with sufficient reliability the events they purport to address [...] these RFI radio reports do not contain sufficient indicia of reliability to be admissible given the evidence heard in this case concerning this media outlet's approach to the MLC at the time of these reports".²⁰⁷ The defence states that this is particularly so in light of the failure of the prosecution to provide particularised submissions as to the reports' accuracy or reliability, and when the prosecution seeks to have the documents admitted for the truth of their content.²⁰⁸

85. The Chamber notes that document CAR-OTP-0005-0129 is a printout of an online RFI article, dated, with a handwritten date, 30 October 2002. The article states that about five hundred Congolese combatants belonging to MLC had gradually arrived in Bangui since Saturday to support the government forces. The Chamber notes that the document was shown to Witness D04-45 who answered questions relating to it.²⁰⁹ During this questioning, the prosecution put it to the witness that this document served to corroborate the chronology of events given in document CAR-DEF-0002-0001, a transmission to the ALC Commander in Chief of a dossier concerning pillaging admitted in Decision 2299.²¹⁰ The witness stated that he did not know where RFI got its information from, that he did not recognise what was written in the report, and that the author of the dossier lied.²¹¹ Therefore, the Chamber is satisfied that the document is relevant to issues that are properly to be considered by the Chamber, as it provides information on the date of the arrival of the MLC troops in the CAR, and on their deployment and advance and may serve to understand and contextualise the testimony of Witness D04-45.

²⁰⁷ ICC-01/05-01/08-2617-Conf, paragraph 35.

²⁰⁸ ICC-01/05-01/08-2617-Conf, paragraph 35.

²⁰⁹ ICC-01/05-01/08-T-298-Red-ENG, page 62, line 22 to page 65, line 19.

²¹⁰ ICC-01/05-01/08-T-298-Red-ENG, page 65, lines 16 to 17; ICC-01/05-01/08-2299-Red, paragraph 62.

²¹¹ ICC-01/05-01/08-T-298-Red-ENG, page 64, line 15 to page 65, line 19.

86. Turning to the probative value, the Chamber notes that document CAR-OTP-0005-0129 was prepared close in time to the events under examination, is complete, and is publically available on the internet. The Majority thus considers that there is no reason to doubt that this document is anything other than what it purports to be and is satisfied as to its authenticity. The Majority also notes that the report appears to have been created in the ordinary course of RFI's activities and that RFI is a well-known international media organisation.

87. The Chamber notes the defence's assertions regarding the reliability of articles and reports emanating from RFI. Indeed, the Chamber notes that Witness 15 testified that allegations made by RFI in relation to the Sibut locality were baseless,²¹² and that [REDACTED] had doubts as to the impartiality of RFI, mentioning that this was related to the fact that the MLC operating outside of the Democratic Republic of the Congo ("DRC") would not please everybody.²¹³ In addition, Witness D04-21, commenting on a report of RFI, stated that facts may be distorted when one does not go into the field and relies upon phone calls to gather information.²¹⁴ Nonetheless, although some witnesses have expressed doubts regarding the impartiality of RFI, the Chamber does not consider the testimony relied upon by the defence to bar the admission of media articles emanating from RFI, particularly due to the preliminary nature of the Chamber's admissibility assessment. The relevant witnesses have only expressed doubts as to RFI's impartiality, and without more substantiated submissions, the expression of mere doubts as to impartiality of a media does not, in the view of the Chamber, bar the admission of articles emanating from this media. Such testimony, as well as conflicting evidence as to the facts under examination will,

²¹² ICC-01/05-01/08-T-208-CONF-ENG ET, page 31, lines 8 to 14.

²¹³ ICC-01/05-01/08-T-209-CONF-ENG ET, page 36, lines 6 to 12.

²¹⁴ ICC-01/05-01/08-T-305-CONF-ENG ET, page 59, lines 8 to 14.

of course, be relevant to the Chamber's ultimate determination of the weight to be afforded to the evidence as a whole.

88. As previously indicated, the Majority of the Chamber is of the view that this type of material can be considered for a limited purpose; in particular, the information contained therein may serve to corroborate other pieces of evidence. In addition, taking into account that the witness was questioned in court in relation to the item, the Majority is of the view that it may also serve to contextualise and assess the testimony of Witness D04-45. In light of the limited purpose for which this document is admitted, the Majority considers the risk of prejudice to a fair trial to which its admission might give rise to be minimal. The Chamber, Judge Ozaki dissenting on reasoning, therefore admits Document CAR-OTP-0005-0129.

89. Turning to item CAR-OTP-0005-0131, the Chamber notes that the document, dated 31 October 2002, states that the commandos of Jean-Pierre Bemba had "already raked" the northern quarters of Bangui and contains information regarding fears held by inhabitants of the northern sectors of Bangui of the "abuses of the commandos of Jean-Pierre Bemba". The Chamber notes the defence's objection to the admission of the document on the basis that "it was not put to Witness D04-45 during his examination, and its admission solely for the purpose of allegedly impugning the credibility of the witness' testimony is improper and unfair".²¹⁵ Nonetheless, the Chamber observes that the witness extensively referred, during his in-court testimony, to the date of arrival of the MLC troops in the CAR and the exact date on which they engaged in the fighting, and was given the opportunity to respond to the prosecution's assertion that he

²¹⁵ ICC-01/05-01/08-2617-Conf, paragraph 34.

may have been mistaken as to the relevant dates.²¹⁶ As such, the Chamber considers that the document is relevant to issues that are properly to be considered by the Chamber.

90. As to the probative value of this document, the Majority notes that document CAR-OTP-0005-0131 was prepared close in time to the events under examination, is complete, and is publically available on the internet. The Majority thus considers that there is no reason to doubt that it is anything other than what it purports to be and is satisfied as to its authenticity. In terms of reliability, the Chamber recalls its discussion relating to media articles emanating from RFI, set out in paragraph 87 above.

91. As to the potential prejudice, as previously indicated, the Majority of the Chamber is of the view that this type of material can be considered for a limited purpose; in particular, the information contained therein may serve to corroborate other pieces of evidence and may be examined when assessing whether the conduct described in the charges was widely broadcast. The Majority considers that in light of the limited purposes for which this document is admitted, the risk of prejudice to a fair trial that its admission may cause is minimal. The Chamber, Judge Ozaki dissenting on reasoning, admits Document CAR-OTP-0005-0131.

92. In relation to document **CAR-OTP-0031-0011**, the prosecution submits that this “stamped and signed” document authenticates the handwritten dates on documents CAR-OTP-0005-0129 and CAR-OTP-0005-0131 and goes to the weight of these documents.²¹⁷

²¹⁶ Transcript of hearing of 14 March 2013, ICC-01/05-01/08-T-294-CONF-ENG ET, page 5, lines 15 to 16, page 6, line 18 to page 7, line 19, page 10, lines 9 to 13 and lines 19 to 24, page 16, lines 7 to 11 and lines 13 to 14, page 19, line 22 to page 20, line 2; transcript of hearing of 15 March 2013, ICC-01/05-01/08-T-295-CONF-ENG ET, page 5, lines 3 to 8; ICC-01/05-01/08-T-298-CONF-ENG ET, page 8, line 13 to page 40, line 5.

²¹⁷ ICC-01/05-01/08-2596-Conf, paragraph 13; and ICC-01/05-01/08-2596-Conf-AnxA, page 9.

93. The defence objects to the admission of this document on the basis that it has no evidential value and cannot “authenticate” handwritten dates on other documents without its author having been called to give evidence, to authenticate the relevant transcripts or recordings, and to face questioning by the parties and the Chamber.²¹⁸
94. In terms of its relevance, the Chamber notes that this document appears to confirm the veracity of the dates handwritten on documents CAR-OTP-0005-0129 and CAR-OTP-0005-0131. As such, the Chamber considers the document to be relevant. As to its probative value, the Chamber notes that the document is stamped by “*La Police Judiciaire*” and signed on each page, presumably by one of its officers. However, the Chamber has no information as to who signed this document. The Chamber considers that document CAR-OTP-0031-011 would not significantly increase the probative value of documents CAR-OTP-0005-0129 and CAR-OTP-0005-0131. From the content of both documents, it is clear that the reports were broadcast close in time to the events they describe. In view of its lack of significance, and the doubts held by the Chamber regarding this document’s probative value, the Chamber rejects the admission of document CAR-OTP-0031-0011.
95. In relation to document **CAR-OTP-0010-0471**, the prosecution submits that this article, while dated 4 May 2003, is directly related to the temporal framework of the charges as the accused is interviewed and questioned about the events in 2002-2003 in the CAR.²¹⁹ The prosecution submits that this article contradicts Witness D04-45’s testimony that CAR authorities ordered the withdrawal of

²¹⁸ ICC-01/05-01/08-2617-Conf, paragraph 35.

²¹⁹ ICC-01/05-01/08-2596-Conf, paragraph 13.

MLC soldiers.²²⁰ The prosecution also submits that the document is relevant to the accused's effective control for the purposes of Article 28(a) of the Statute and to "contextual elements".²²¹ In terms of probative value, the prosecution submits that the document is reliable because it emanates from a "reputable" international news organisation's website and was prepared in the ordinary course of its activities.²²²

96. The defence submits that the prosecution is seeking the admission of document CAR-OTP-0010-0471 for the truth of its content as a prior statement of Mr Bemba made to a journalist.²²³ The defence submits that the fact that it purports to be a transcript of an interview of Mr Bemba, yet is not acknowledged, signed or initialled by him, renders it inadmissible, particularly for the truth of its content.²²⁴ The defence states further that the Chamber has previously granted a prosecution objection and prevented the defence from even questioning a witness on a *procès-verbal* on which she had rejected her signature, despite it being written in her name.²²⁵ The defence submits that to allow the prosecution to tender what the defence terms a "*procès-verbal*" of an interview with the accused would be inconsistent with this practice. The defence further submits that the document is an internet printout which exhibits insufficient indicia of reliability or its source of provenance.²²⁶ The defence further submits that this document's admission would violate the principle of the primacy of orality, given that Mr Bemba appears on the defence's witness list but has not yet testified.²²⁷ Lastly, the

²²⁰ ICC-01/05-01/08-2596-Conf, paragraph 14 referring to ICC-01/05-01/08-T-295-CONF-ENG ET, page 38, lines 4 to 19; ICC-01/05-01/08-2596-Conf-AnxA, page 10.

²²¹ ICC-01/05-01/08-2596-Conf-AnxA, page 10.

²²² ICC-01/05-01/08-2596-Conf, paragraph 13.

²²³ ICC-01/05-01/08-2617-Conf, paragraph 36.

²²⁴ *Ibid.*

²²⁵ ICC-01/05-01/08-2617-Conf, paragraph 36 referring to transcript of hearing of 3 March 2011, ICC-01/05-01/08-T-79-CONF-ENG ET, page 18.

²²⁶ ICC-01/05-01/08-2617-Conf, paragraph 36.

²²⁷ *Ibid.*

defence objects to the document on the basis that it falls outside the temporal scope of the charges.²²⁸

97. The Chamber notes that document CAR-OTP-0010-0471 is an article printed from the official website of the media outlet *Jeune Afrique*, entitled “*Jean-Pierre Bemba : « La page de la lutte armée est tournée »*». The article contains what appears to be a transcript of an interview with Mr Bemba, in which Mr Bemba comments, from Gbadolité, on allegations of crimes committed by the MLC in Ituri (DRC), a trial that was arranged by the MLC to try officers and soldiers who had misbehaved in Ituri, the withdrawal of MLC troops from the CAR, his relationship with the late President Patassé, his relationship with former President François Bozizé, and how the MLC obtained fuel once it lost Bangui as a rear-base. The Chamber notes that this document was shown to Witness D04-45, who disputed the assertion that the accused withdrew the MLC troops from the CAR himself, and stated that the accused issued no orders throughout the period of the MLC intervention in the CAR.²²⁹ Document CAR-OTP-0010-0471 was also put to Witness D04-21, who disputed the assertion that Mr Bemba withdrew the MLC troops single-handedly, without co-operation from the CAR authorities.²³⁰ As such, the Chamber is of the view that the document is relevant to matters that are properly to be considered by the Chamber. As to the defence’s argument that the document is inadmissible as it falls outside the temporal scope of the charges, the Chamber considers this objection to be without merit; the information contained in the article speaks directly to relevant issues that fall within the temporal scope of the charges, and was conducted at least no later than 5 May 2003, i.e., close in time to the events to which it speaks.

²²⁸ *Ibid.*

²²⁹ ICC-01/05-01/08-T-298-Red-ENG WT, page 67, line 1 to page 70, line 14.

²³⁰ Transcript of hearing of 9 April 2013, ICC-01/05-01/08-T-302-Red-ENG WT, page 12, line 10 to page 13, line 23.

98. In terms of probative value, the Majority notes that the article is available online and sees no reason to doubt that the article is what it purports to be. Moreover, the article appears to have been produced in the ordinary course of the activities of a well-known international media organisation, further supporting its reliability. In light of this, the Majority of the Chamber considers document CAR-OTP-0010-0471 to possess sufficient probative value for the purposes of its admissibility assessment.

99. With respect to the defence's objections to the admission of this document, the Chamber considers it to be a mischaracterisation to describe an interview given to a journalist as a *procès-verbal*. Such an interview is not a formal legal or authenticated document and the prosecution does not seek its admission as such. This distinction is clear and the Chamber is of the view that, as document CAR-OTP-0010-0471 will be afforded evidentiary weight appropriate to its nature, its admission will not prejudice the fairness of the trial. The Chamber also notes that while Mr Bemba was initially listed as a witness of the defence, the defence has recently informed the Chamber that he will only provide unsworn statement, as opposed to testimony.²³¹

100. As has been its approach with other media articles of a similar nature,²³² the Majority of the Chamber is of the view that this type of material can be considered for a limited purpose. In particular, the information contained therein may serve to corroborate other pieces of evidence and, taking into account that Witness D04-45 and Witness D04-21 were questioned in court in relation to the item, may also serve to facilitate the Chamber's assessment of and to contextualise their testimony. In light of the limited purposes for which this document may be used, the Majority is of the view that the risk of prejudice to a

²³¹ Defence Submission on the proposed unsworn statement of the accused, 18 October 2013, ICC-01/05-01/08-2838, paragraph 4.

²³² ICC-01/05-01/08-2299-Red, paragraphs 91 to 97.

fair trial that its admission may cause is minimal. The Chamber, Judge Ozaki dissenting on reasoning, admits Document CAR-OTP-0010-0471.

101. In relation to document **CAR-V20-0001-0165**, the prosecution submits that this document is relevant to, *inter alia*, the CAR authorities lack of control over the MLC troops operating in the CAR and to undermining the credibility of Witness D04-45's testimony in this regard, as well as to undermining his testimony that the MLC troops were not present in Mongoumba.²³³
102. The defence submits that the prosecution is seeking the admission of only one article, entitled "*Pillage à Mongoumba*", rather than the newspaper as a whole, which it submits is in contravention of the Chamber's stated preference for admitting whole documents rather than excerpts.²³⁴ The defence further submits that, while the source is identified as "AFP", which the defence assumes means *Agence France Presse*, no author, AFP reference, date, or article name is given.²³⁵ In addition to this, the defence submits that the Chamber has rejected the admission of media articles citing other news agencies, where "the Chamber has not been able to verify that the information they contain emanates from the media source or institution they purport to emanate from."²³⁶ The defence submits that this approach is particularly applicable to the present document as it was put to Witness D04-45 and he knew nothing about the events in question.²³⁷ Further, the defence submits that it is plain that the article was allegedly filed from "Kigali", "some 3000 kilometres away from the events about which it purported to report," and that the article represented Mongoumba as being 200 kilometres east of Bangui, whereas the witness drew the Chamber's attention to the fact that the map used during his testimony placed Mongoumba due south.²³⁸ The defence,

²³³ ICC-01/05-01/08-2596-Conf, paragraph 13; ICC-01/05-01/08-2596-Conf-AnxA, page 10.

²³⁴ ICC-01/05-01/08-2617-Conf, paragraph 37.

²³⁵ *Ibid.*

²³⁶ ICC-01/05-01/08-2617-Conf, paragraph 37 referring to ICC-01/05-01/08-2299-Conf, paragraph 113.

²³⁷ ICC-01/05-01/08-2617-Conf, paragraph 37.

²³⁸ *Ibid.*

in conclusion, objects to the admission of this document, whether for the truth of its contents or otherwise, in light of the above factors.²³⁹

103. In terms of relevance, the Chamber notes that the prosecution seeks the admission of one article, entitled “*Pillages à Mongoumba (Centrafrique): Le MLC affirme être la victime*”, which is a single article appearing on page 3 of document CAR-V20-0001-0165, which in fact comprises 12 pages of an edition of the newspaper “*Le Citoyen*”, dated 14 March 2003. The article states that the MLC, which had been accused of pillaging in Mongoumba, affirmed that it had been the victim of pillaging, not the author. The article apparently quotes a statement given by Mr Bemba to the AFP, in which he stated that MLC troops in a boat on the river Oubangui had been stopped, and food, uniforms, boots, and medicine had been pillaged from them. Mr Bemba is quoted as stating that the MLC troops then reacted in order to recover their effects. The article goes on to state that the MLC had been accused of pillaging Mongoumba. It then states that Mr Bemba had affirmed that an inquiry carried out by the late President Patassé had sanctioned certain Central African officers. The article concludes by giving information relating to the withdrawal of MLC troops from the CAR. The Chamber also notes that the document was put to Witness D04-45, who read its content in court. When asked whether he knew anything of Mr Bemba being informed of the events in Mongoumba, Witness D04-45 testified that “the commander of the 28th battalion learned nothing whatsoever about all those events.”²⁴⁰ The Chamber notes that the witness’s answer did not challenge the authenticity of document CAR-V20-0001-0165 or whether Mr Bemba was informed of the events it relates.

²³⁹ *Ibid.*

²⁴⁰ Transcript of hearing of 22 March 2013, ICC-01/05-01/08-T-300-CONF-ENG ET, page 15, line 17 to page 18, line 5.

104. As such, the Chamber is of the view that document CAR-V20-0001-0165 contains information which relates to issues which are properly to be considered by the Chamber, such as, *inter alia*, information regarding events in Mongoumba, Mr Bemba's alleged reaction to them, as well as the alleged relationship between the MLC and the FACA troops.

105. In terms of probative value, the Majority sees no reason to doubt that document CAR-V20-0001-0165 is what it purports to be, that is, a copy of a Central African newspaper. In relation to the defence's argument that the Chamber has previously denied the admission of media articles citing other news agencies, the Majority notes, once again, that in that instance the fact that the reports allegedly emanating from third parties were copies from "unofficial open sources" was key to the Chamber's decision not to admit them.²⁴¹ This is not the case with respect to the present article, as it emanates from a well-known Central African newspaper. Nonetheless, as noted by the defence, the article appears to originate from Kigali, Rwanda, a considerable distance from the events about which it reports, although the Chamber notes that this issue is less relevant with respect to the quotations attributed to Mr Bemba.

106. As to the potential prejudice, as previously indicated, the Majority of the Chamber is of the view that this type of material can be considered for a limited purpose; in particular, the information contained therein may serve to corroborate other pieces of evidence and may be examined when assessing whether the conduct described in the charges was widely broadcast. In addition, taking into account that the witness was questioned in court in relation to the item, the Majority is of the view that it may also serve to facilitate the Chamber's assessment of and contextualise the testimony of Witness D04-45. In light of the envisioned limited usage of the information contained in the document, the

²⁴¹ ICC-01/05-01/08-2299-Red, paragraph 113.

Majority is of the view that there is no reason to believe that its admission will have a prejudicial effect on a fair trial. The Chamber, Judge Ozaki dissenting on reasoning, admits Document CAR-V20-0001-0165.

Sixth Category: Official documents

107. The defence requests the admission the following official documents relating to the testimony of Witness D04-59: (i) document **CAR-D04-0003-0527 (Public)**, the Lusaka Accord, signed on 10 July 1999, to which are attached three annexes; (ii) document **CAR-DEF-0001-0102 (Public)**, the *“Protocole d’Accord de la CEN-SAD”*, signed in Bangui on 19 December 2002; (iii) document **CAR-DEF-0001-0096 (Public)**, the *“Pacte d’assistance mutuelle entre les Etats Membres de la CEEAC”*; (iv) documents **CAR-DEF-0001-0324 (Public)** and **CAR-DEF-0001-0326 (Public)**, which are both United Nations press releases, dated 20 March 2003 and 17 March 2003 respectively; and (v) document **CAR-DEF-0001-0128 (Public)**, the Constitution of the CAR, dated 14 January 1995.²⁴²

108. The defence submits that the Lusaka Accord, document CAR-D04-0003-0527 is relevant to the context of the proceedings and served as the basis of questioning of Witness D04-59 both on the part of the defence and the Chamber.²⁴³ The defence further submits that documents CAR-DEF-0001-0102; CAR-DEF-0001-0096; CAR-DEF-0001-0324 and CAR-DEF-0001-0326 are relevant to the prosecution’s allegations regarding the decision to send MLC troops to the CAR and that they were discussed by Witness D04-59, and as such give necessary context to his testimony and will assist the Chamber in its assessment of his evidence.²⁴⁴ The defence further submits that the probative value of all five of the above documents is evident on their face, and through other evidence heard in

²⁴² ICC-01/05-01/08-2590-Conf-AnxA, pages 10 and 11.

²⁴³ ICC-01/05-01/08-2590-Conf-AnxA, page 10.

²⁴⁴ ICC-01/05-01/08-2590-Conf-AnxA, pages 10 and 11.

the case, without specifying the relevant evidence.²⁴⁵ Finally, the defence submits that the admission of these documents will cause no prejudice as they were disclosed to the prosecution in advance, and the prosecution was able to question Witness D04-59 on their content.²⁴⁶

109. The prosecution submits that documents CAR-D04-0003-0527, CAR-DEF-0001-0102, CAR-DEF-0001-0096, CAR-DEF-0001-0324 and CAR-DEF-0001-0326 are irrelevant to the case.²⁴⁷ In support of this contention, the prosecution asserts that the defence wishes to establish the “legitimacy” of the MLC’s intervention in the CAR, which, in the prosecution’s submission, “has no bearing on questions related to the Accused’s criminal responsibility for crimes against humanity and war crimes committed by his forces.”²⁴⁸

110. The defence, in its reply, submits that the prosecution’s above position is irreconcilable with the case as charged by the prosecution in the Revised Second Amended Document Containing the Charges, where the prosecution alleges, *inter alia*, that “in exchange for the provision of MLC troops, BEMBA received the benefit of securing the CAR as MLC’s strategic rear base, and deterring potential threats of attacks on the MLC from the DRC Government, in particular through the CAR route.”²⁴⁹

111. The defence submits that the tendered “international conventions, covenants and agreements which not only legitimised but required the MLC to act to protect a neighbouring democratic regime from violent overthrow” are relevant

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

²⁴⁷ ICC-01/05-01/08-2616-Conf-AnxA, pages 7 to 9.

²⁴⁸ *Ibid.*

²⁴⁹ ICC-01/05-01/08-2636-Conf, paragraph 7; Annex A to the Prosecution’s Submission of the Revised Second Amended Document Containing the Charges, 18 August 2010, ICC-01/05-01/08-856-Conf-AnxA, paragraph 14.

to rebut allegations in the indictment against the accused.²⁵⁰ The defence adds that the prosecution has elicited evidence concerning the motivation behind sending troops to the CAR, and submits that the Presiding Judge has asked questions regarding “benefits” that Mr Bemba may have received in exchange for sending troops to the CAR. The defence recalls that the Presiding Judge has also read an extract of testimony wherein a prosecution witness alleged that Mr Bemba had been motivated by “ego” to send troops to assist former President Patassé.²⁵¹ The defence further submits that the documents are relevant, not only to the legitimacy of the MLC intervention in the CAR, but also to the legitimacy of the MLC as an organisation and the status it was afforded during the events in question.²⁵² Finally, the defence states that the events that form the basis of the charges did not happen in a vacuum, and asserts that the documents are relevant to providing important background and context, and are evidence of the system of pan-African defence in place at the time.²⁵³

112. As to document CAR-D04-0003-0527, the Chamber notes that it appears to be a copy of the Lusaka Accord, signed by a number of States, dated 10 July 1999, with an attached annex “A” which appears to be a cease-fire agreement. This accord sets out details and principles of a cease-fire between the parties to the accord and contains three annexes providing the modalities of the implementation of the cease-fire, the schedule for the implementation of the cease-fire, and definitions for the purposes of the accord. The Chamber notes that Witness D04-59 was questioned in relation to the Lusaka Agreement extensively throughout his testimony,²⁵⁴ and that, when document CAR-D04-0003-0527 was

²⁵⁰ ICC-01/05-01/08-2636-Conf, paragraph 8.

²⁵¹ ICC-01/05-01/08-2636-Conf, paragraph 8, citing transcript of hearing of 12 April 2013, ICC-01/05-01/08-T-306-CONF-ENG ET, pages 75 to 77. The Presiding Judge was here questioning witness D04-21.

²⁵² ICC-01/05-01/08-2636-Conf, paragraph 8.

²⁵³ *Ibid.*

²⁵⁴ *See for example*, transcript of hearing of 3 September 2012, ICC-01/05-01/08-T-236-CONF-ENG ET, page 20, line 25 to page 50, line 14.

put to him, he confirmed that this was the signed copy of the Lusaka Agreement to which he had had access and referred in his work.²⁵⁵

113. Document CAR-DEF-0001-0102, entitled “*Protocole d’Accord*”, is dated 19 December 2002 and lists a number of persons whom it is for the signature of, although it is in fact unsigned. The document details a “mini-summit” organised by former President Ange-Félix Patassé with a small number of representatives of African States, on 4 December 2001, with a view to resolving the Central African crisis. The document states that the summit decided to send a CEN-SAD force in order to preserve security and stability in the CAR under the aegis of Colonel Moammar al-Kadhafi and President Hassan El-Beshir of Sudan, with the co-ordination of the President of the CAR and the representative of the Secretary-General of the United Nations (“UN”). The Chamber notes that this document was put to Witness D04-59, who commented and was questioned extensively on its content.²⁵⁶ Moreover, the Chamber notes that the witness commented extensively on the agreement in question throughout much of his testimony.²⁵⁷

114. Document CAR-DEF-0001-0096 is entitled “*Pacte d’assistance mutuelle entre les Etats Membres de la CEEAC*” and is signed by a number of African States. The Chamber notes that the space provided for the date of the document is incomplete, but that the year, 2000, is provided. The Chamber notes that Witness D04-59 commented on this document during his testimony.²⁵⁸

115. As such, the Chamber considers that these documents, including those which predate the temporal scope of the charges, provide context and background

²⁵⁵ Transcript of hearing of 4 September 2012, ICC-01/05-01/08-T-237-CONF-ENG ET, page 5, lines 10 to 11.

²⁵⁶ ICC-01/05-01/08-T-237-CONF-ENG ET, page 33, line 22 to page 43, line 19.

²⁵⁷ See, for example, references to the “Khartoum Agreement” in transcript of hearing of 10 September 2012, ICC-01/05-01/08-T-240-CONF-ENG ET, pages 9 to 45.

²⁵⁸ ICC-01/05-01/08-T-237-CONF-ENG ET, page 19, line 21 to page 25, line 8, and page 32, line 12 to page 33, line 10.

relating both to the situation in the region, and also relating to the nature of the MLC as an organisation. Furthermore, given the extensive reference to these documents and their extensive use during Witness D04-59's testimony, the Chamber is of the view that their admission is necessary for the Chamber to properly understand this witness's testimony.

116. In terms of probative value, the Chamber notes that documents CAR-D04-0003-0527, CAR-DEF-0001-0102 and CAR-DEF-0001-0096 were all recognised by the witness in court and that the prosecution has not questioned their authenticity. Moreover, the Chamber considers that all three documents bear various indicia of authenticity on their face, such as dates, signatures, names and locations, and the Chamber has no reason to doubt that they are what they purport to be.

117. For the above reasons, the Chamber finds that the abovementioned documents are relevant to the charges and possess sufficient probative value for admission as evidence. The Chamber further considers that their admission would cause no prejudice to a fair trial. Documents CAR-D04-0003-0527, CAR-DEF-0001-0102, and CAR-DEF-0001-0096 are therefore admitted.

118. Turning to the press releases, the Chamber notes that document CAR-DEF-0001-0324 is a "*Communiqué de presse*" of the UN, entitled "*Déclaration à la presse du président du Conseil de Sécurité sur la République Centrafricaine*". From the online version of this document, accessible at the URL contained at the bottom of page CAR-DEF-0001-0325, it appears to have been released on 20 March 2003.²⁵⁹ The document provides a statement of the then President of the UN Security Council ("UNSC"), Mamady Traoré, concerning the situation in the CAR. Mr Traoré states that the members of the UNSC heard a presentation from the Under-Secretary General for Political Affairs on the situation in the CAR and goes on to

²⁵⁹ See <http://www.un.org/News/fr-press/docs/2003/SC7700.doc.htm> (last accessed on 30 October 2013).

detail the members of the UNSC's reaction to the coup d'état of 15 March 2003 and the violence and pillaging that accompanied it. The statement also provides that the members of the UNSC reiterated their support for the efforts of the Economic and Monetary Community of Central Africa ("CEMAC"), deploring the loss suffered by regional forces, as well as those of the African Union.

119. Document CAR-DEF-0001-0326 is also a "*Communiqué de presse*" of the UN, entitled "*Le Secrétaire General de l'ONU condamne le coup d'état en République Centrafricaine*" and dated 17 March 2003. The document contains a statement of the then Secretary General of the UN, Mr. Kofi Annan, condemning the military coup in the CAR and the violence and pillaging that accompanied it. The Secretary General also calls for the restoration of constitutional order and respect for human rights and fundamental liberties of the civilian population.

120. In terms of relevance, the Chamber notes that both document CAR-DEF-0001-0324 and document CAR-DEF-0001-0326 were shown to Witness D04-59 in court.²⁶⁰ The witness read the content of both documents and commented briefly on them.²⁶¹ Nonetheless, the Chamber is of the view that these documents are only minimally relevant to the charges, if at all. Indeed, the Chamber considers that the two documents would not be likely to make any fact at issue in the present case more or less probable.²⁶² The Chamber is not persuaded by the defence's submission that these documents are necessary to rebut allegations in the charges against the accused relating to the alleged benefits Mr Bemba derived from the MLC's intervention in the CAR. These two documents, even when assessed in conjunction with Witness D04-59's testimony, establish nothing more than that the UNSC and the Secretary General of the UN condemned the coup of 15 March 2003, carried out by former President François Bozizé. In relation to the

²⁶⁰ ICC-01/05-01/08-T-237-Red-ENG, page 17, line 10 to page 19, line 20.

²⁶¹ *Ibid.*

²⁶² ICC-01/05-01/08-2012-Red, paragraph 14.

defence's argument that these documents give necessary context to Witness D04-59's testimony, the Chamber notes that the witness read the entire content of both documents into the record and then gave limited comments thereon. As such, the Chamber considers that their admission as evidence is not necessary to understanding the witness's testimony. For these reasons, irrespective of their probative value, the Chamber rejects the admission into evidence of documents CAR-DEF-0001-0324 and CAR-DEF-0001-0326.

121. The defence submits that document CAR-DEF-0001-0128, the Constitution of the CAR during the events, provides important background context and is relevant to the prosecution's allegations concerning the legality of the MLC intervention in the CAR.²⁶³ The defence further submits that the document was discussed with the witness in court and that he was questioning in relation to it by the Presiding Judge, and that as such the document provides necessary context to his evidence and will assist the Chamber in its understanding and assessment of his evidence.²⁶⁴ Finally, the defence submits that the admission of this document would cause no prejudice as it was disclosed to the prosecution in advance who was able to question the witness on its content.²⁶⁵ The prosecution submits that, as the Chamber has previously ruled, 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 legislation.²⁶⁶ In its reply, the defence notes that the Chamber has not yet taken judicial notice of the content of the CAR constitution during the events, and on this basis reiterates its request for the document's admission.²⁶⁷

²⁶³ ICC-01/05-01/08-2590-Conf-AnxA, page 10.

²⁶⁴ ICC-01/05-01/08-2590-Conf-AnxA, pages 10 and 11 citing ICC-01/05-01/08-T-237-CONF-ENG ET, page 9.

²⁶⁵ ICC-01/05-01/08-2590-Conf-AnxA, pages 10 and 11.

²⁶⁶ ICC-01/05-01/08-2616-Conf-AnxA, page 8.

²⁶⁷ ICC-01/05-01/08-2636-Conf, paragraph 9.

122. The Chamber notes that document CAR-DEF-0001-0128 appears to be a copy of the former constitution of the CAR, promulgated by decree on 14 January 1995. The Chamber recalls that, in its Decision 2012, it held that the admission of the former CAR code of penal procedure was “unnecessary because, 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 legislation”.²⁶⁸ For the same reason, the Chamber considers that admission of the former constitution of the CAR would be unnecessary. The Chamber therefore rejects the defence request for the admission of document CAR-DEF-0001-0128.

Seventh Category: Expert-related materials

123. The defence requests the admission of items (i) **CAR-D04-0003-0503 (Public)**, the curriculum vitae of Witness D04-53, a military expert;²⁶⁹ (ii) **CAR-D04-0003-0440 (Public)** and **CAR-D04-0003-0509 (Public)**, the expert report and its corresponding references provided by Witness D04-60, a linguistic expert;²⁷⁰ and (iii) **CAR-D04-0003-0470 (Public)**,²⁷¹ the curriculum vitae of Witness D04-60.²⁷²

124. In terms of relevance, the defence submits that the expert report of Witness D04-60, document **CAR-D04-0003-0440** – and its corresponding references, document **CAR-D04-0003-0509** – is relevant given its “direct link to the subject matter of the present proceedings, and because it formed the basis of the expert witness testimony”.²⁷³ The defence submits that the Chamber has previously admitted expert reports on this basis.²⁷⁴ The defence further submits that the report has

²⁶⁸ ICC-01/05-01/08-2012-Conf, paragraph 81.

²⁶⁹ ICC-01/05-01/08-2590-Conf-AnxA, page 2.

²⁷⁰ ICC-01/05-01/08-2590-Conf-AnxA, pages 8 and 9.

²⁷¹ This document was incorrectly referenced as CAR-D04-0003-0479 in the Defence Request, ICC-01/05-01/08-2590-Conf-AnxA, page 9.

²⁷² ICC-01/05-01/08-2590-Conf-AnxA, page 9.

²⁷³ ICC-01/05-01/08-2590-Conf-AnxA, pages 8, and 9.

²⁷⁴ ICC-01/05-01/08-2590-Conf-AnxA, pages 8, and 9. Citing ICC-01/05-01/08-2012, paragraph 36.

sufficient probative value as it was recognised by the expert witnesses during his testimony.²⁷⁵ The defence further submits that the admission of the report will cause no prejudice as it was disclosed to the prosecution in advance of the expert witness's testimony, and was used by the prosecution in its questioning of the witness.²⁷⁶

125. In relation to the expert report and corresponding references of Witness D04-60, documents CAR-D04-0003-0440 and CAR-D04-0003-0509, the prosecution raises no objection to its admission.²⁷⁷ As the witness's expert report formed the basis of his testimony, the Chamber considers it to be relevant as it may assist the Chamber's assessment of the witness's testimony. In terms of probative value, the Chamber is satisfied that the documents were authored by the witness, who was questioned by the parties and participants in relation its content.²⁷⁸ There is no suggestion that the admission of the documents would have a prejudicial effect on a fair trial. For these reasons, the Chamber admits into evidence documents CAR-D04-0003-0440 and CAR-D04-0003-0509.

126. In addition, the defence seeks admission of document CAR-D04-0003-0470,²⁷⁹ Witness D04-60's curriculum vitae.²⁸⁰ The defence submits that the document is relevant and probative of the experience, qualifications, and expertise of the expert in his field.²⁸¹ The prosecution does not object to the admission of the document.²⁸² The Chamber considers that the document is relevant for the reasons advanced by the defence. In terms of probative value, the Chamber is satisfied that the document was authored by the witness, who was questioned by

²⁷⁵ ICC-01/05-01/08-2590-Conf-AnxA, pages 8, and 9.

²⁷⁶ *Ibid.*

²⁷⁷ ICC-01/05-01/08-2616-Conf-AnxA, page 6.

²⁷⁸ This document was referred to extensively throughout the witness's testimony. See, for example, transcript of hearing of 12 September 2012, ICC-01/05-01/08-T-243-CONF-ENG ET, page 15, line 8 to page 28, line 18.

²⁷⁹ This document was incorrectly referenced as CAR-D04-0003-0479 in the Defence Request, ICC-01/05-01/08-2590-Conf-AnxA, page 9.

²⁸⁰ ICC-01/05-01/08-2590-Conf-AnxA, page 9.

²⁸¹ ICC-01/05-01/08-2590-Conf-AnxA, page 9.

²⁸² ICC-01/05-01/08-2616-Conf-AnxA, page 7.

the parties and participants in relation its content.²⁸³ There is no suggestion that the admission of the document would have a prejudicial effect on a fair trial. In light of the above, the Chamber admits into evidence document CAR-D04-0003-0470.

127. In relation to document **CAR-D04-0003-0503**, the curriculum vitae of Witness D04-53,²⁸⁴ the defence submits that it is relevant to and probative of the experience, qualifications, and expertise of the military expert.²⁸⁵ The defence notes that the Chamber has previously admitted expert curricula vitae on this basis.²⁸⁶ The defence submits that the admission of the curriculum vitae will cause no prejudice as it was disclosed to the prosecution in advance who was able to question the witness on its contents.²⁸⁷ The prosecution does not object to the admission of this document. The Chamber considers that document CAR-D04-0003-0503 is relevant to the issues identified by the defence, that it has probative value and, noting that the prosecution do not object to its admission, considers that there is no reason to believe that the admission of this document would be prejudicial to a fair trial. Therefore, document CAR-D04-0003-0503 is admitted.

Eighth Category: Maps

128. The prosecution requests the admission of **CAR-ICC-0001-0087 (Confidential)**, a map showing the distances between Zongo, Bwamanda, and Gbadolite, which it submits is relevant to Witness D04-19's credibility, specifically, his testimony regarding the drafting, production, and delivery of the [REDACTED] to the

²⁸³ See transcript of hearing of 11 September 2012, ICC-01/05-01/08-T-242-CONF-ENG ET, page 14, line 8 to page 15, line 7.

²⁸⁴ ICC-01/05-01/08-2590-Conf-AnxA, page 2.

²⁸⁵ *Ibid.*.

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.*

accused.²⁸⁸ The prosecution further submits that the map is probative of the “extreme implausibility [REDACTED] would choose the route requiring an additional 400 kilometres only [REDACTED] when this facility was available at the [REDACTED] in Gbadolite”.²⁸⁹ The prosecution notes that the map was put to Witness D04-19 in court and that he was given the opportunity to respond.²⁹⁰ The prosecution finally submits that this evidence has increased significance in view of the fact that [REDACTED].²⁹¹

129. The defence contests the prosecution’s basis for admission, which it argues is a “self-serving” interpretation of the document’s relevance.²⁹² The defence notes that Witness D04-19 did not annotate the map during his testimony, unlike the other maps admitted into evidence in this case, and testified that he found it difficult to see on the screen as presented.²⁹³ Finally, the defence submits that the prosecution has made no submissions as to the provenance or accuracy of the map in question.²⁹⁴ For these reasons, the defence objects to this document’s admission.²⁹⁵

130. In terms of relevance, the Chamber considers that this document provides information which is relevant to the credibility of Witness D04-19, and it could help the Chamber in its understanding of the events relating to the production and transmission of [REDACTED]. In addition, the Chamber notes that the witness confirmed the distances given by the prosecution between the various locations and the extent of the extra distance that travelling by road from Zongo

²⁸⁸ ICC-01/05-01/08-2596-Conf, paragraph 12 citing, ICC-01/05-01/08-T-286-CONF-ENG ET, page 5, lines 8-16; ICC-01/05-01/08-T-287-CONF-ENG ET, page 33, line 23 to page 40, line 18; ICC-01/05-01/08-2596-Conf-AnxA, page 3.

²⁸⁹ ICC-01/05-01/08-2596-Conf, paragraph 12; ICC-01/05-01/08-2596-Conf-AnxA, page 2.

²⁹⁰ ICC-01/05-01/08-2596-Conf, paragraph 12 citing, ICC-01/05-01/08-T-287-CONF-ENG ET, page 41, line 6 to page 44, line 7.

²⁹¹ ICC-01/05-01/08-2596-Conf-AnxA, page 2.

²⁹² ICC-01/05-01/08-2617-Conf, paragraph 27.

²⁹³ *Ibid.*

²⁹⁴ *Ibid.*

²⁹⁵ *Ibid.*

to Bwamanda and back would entail. Therefore, the Chamber is satisfied that the document is relevant as a visual representation of the distances between the various locations referred to by the witness during his testimony, which were in addition not challenged by the witness, but rather confirmed by him.²⁹⁶ The Chamber is satisfied that the map relates 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. The probative value of the document derives from its use to question the witness in court. There is no suggestion that admitting it would cause any prejudice, in particular because the parties had the opportunity to question the witness about it. Document CAR-ICC-0001-0087 is therefore admitted.

131. The defence requests the admission of document **CAR-OTP-0066-0122 (Public)**, a map of the DRC which the defence submits was used by Witness D04-60, the linguistic expert, during his testimony to explain the geographical origins and spread of the Lingala language.²⁹⁷ The defence submits that the witness made annotations to the map, which he also signed and dated.²⁹⁸

132. As a preliminary issue, the Chamber notes that document CAR-OTP-0066-0122, referred to by the defence as the annotated map, is in fact the original, unannotated, version of this map. The correct reference for the annotated version is in fact **CAR-ICC-0001-0080 (Public)**. The Chamber will therefore assess the admissibility of document CAR-ICC-0001-0080 and consider moot the request in relation to document CAR-OTP-0066-0122.

133. In terms of relevance, the defence submits that the map will assist the Chamber in its assessment of Witness D04-60's evidence and its understanding of his

²⁹⁶ See ICC-01/05-01/08-T-287-CONF-ENG ET, page 40, line 24 to page 41, line 25.

²⁹⁷ ICC-01/05-01/08-2590-Conf-AnxA, page 9.

²⁹⁸ *Ibid.*

testimony.²⁹⁹ The defence submits that the document's probative value is evident on its face and that its admission would cause no prejudice to the prosecution.³⁰⁰ The prosecution submits that this document is irrelevant as "the place where Lingala was purportedly born is irrelevant to the issues in this case".³⁰¹ The defence replies that the "Prosecution's extensive reliance on the use of Lingala as a basis for identifying the perpetrators of crimes, and the amount of time dedicated by the Prosecution to attempting to establish this theory, including calling a linguistic expert, undermine any argument that the origins of this language are irrelevant to the case".³⁰² The defence notes that the Chamber has admitted the expert report of prosecution Witness 222, who writes at length about the origins and spread of both Lingala and Swahili.³⁰³

134. As to relevance, the Chamber considers that, as it has stated previously, the evidence of linguistic experts such as Witness D04-60 can contribute to the Chamber's understanding of the language or languages used by perpetrators in this case, as well as contribute to the Chamber's understanding of the overall factual matrix on this issue.³⁰⁴ More specifically, the Chamber considers that the origin and spread of Lingala may be of relevance to the abovementioned issues. In addition, the admission of the map will aid the Chamber in its assessment of the testimony of Witness D04-60. As such, document CAR-ICC-0001-0080 relates to matters which are properly to be considered by the Chamber in this case.

135. Turning to probative value, the Chamber notes that subsequent to annotating this map,³⁰⁵ Witness D04-60 stated that he "was a little bit inaccurate in terms of placing the locality of the birth of Lingala" and that he would need a more

²⁹⁹ *Ibid.*

³⁰⁰ *Ibid.*

³⁰¹ ICC-01/05-01/08-2616-Conf-AnxA, page 6.

³⁰² ICC-01/05-01/08-2636-Conf, paragraph 4.

³⁰³ ICC-01/05-01/08-2636-Conf, paragraph 4. See CAR-OTP-0064-0305.

³⁰⁴ Transcript of hearing of 29 March 2010, ICC-01/05-01/08-T-21-ENG ET, page 24, lines 2 to 11.

³⁰⁵ ICC-01/05-01/08-T-242-ENG ET, page 25, lines 2 to 24.

detailed map to mark “more correctly” the location of Mankandza (the birthplace of Lingala),³⁰⁶ as the map CAR-OTP-0066-0122 was not sufficiently detailed for him to mark with better particularity the location of Mankandza.³⁰⁷ However, the Chamber considers that for the purposes of determining the spread of Lingala, this limited imprecision does not significantly diminish the probative value of this document. This is particularly so in light of the detailed explanation given by the witness as to the location of Mankandza at the time he annotated the map.³⁰⁸ In light of the above, the relevance and probative value of the document derive from its creation and use. There is no suggestion that admitting the map would cause any prejudice, in particular because the parties had the opportunity to question the witnesses about it. For the above reasons, the Chamber admits into evidence document CAR-ICC-0001-0080.

Ninth Category: Book

136. The prosecution seeks the admission of document **CAR-DEF-0002-0108 (Public)**, a book purportedly written by Witness D04-65 regarding his personal experience during the 2002-2003 events in the CAR.³⁰⁹ The prosecution submits that the book was published in January 2006,³¹⁰ and formed the basis of the witness’s testimony.³¹¹ The prosecution submits that the book is relevant to the witness’s credibility as well as to issues that were put to the witness such as the identification of MLC troops, the arrival of MLC troops in Bangui, the MLC’s control over operations in the CAR, and the role of the MLC brigade commander after the witness was released by Bozizé’s rebels.³¹² The prosecution notes that

³⁰⁶ *Ibid.*

³⁰⁷ ICC-01/05-01/08-T-243-CONF-ENG ET, page 5, lines 11 to 21.

³⁰⁸ ICC-01/05-01/08-T-242-ENG ET, page 25, lines 2 to 24.

³⁰⁹ ICC-01/05-01/08-2596-Conf, paragraph 18.

³¹⁰ ICC-01/05-01/08-2596-Conf, paragraph 18 citing ICC-01/05-01/08-T-246-CONF ENG ET, page 10, lines 7 to 17.

³¹¹ ICC-01/05-01/08-2596-Conf, paragraph 18.

³¹² ICC-01/05-01/08-2596-Conf, paragraph 18 citing ICC-01/05-01/08-T-246-CONF ENG ET, pages 17 to 21; ICC-01/05-01/08-2596-Conf-AnxA, page 11.

the book was provided by the defence and recognised by Witness D04-65 in court.³¹³

137. The defence disputes the prosecution's basis for seeking the admission of this book, but does not object to the book's admission in principle.³¹⁴ However, the defence provides no information as to which aspects of the prosecution's submissions it disputes, or the reasons for which it disputes them.

138. In terms of relevance, the Majority considers that document CAR-DEF-0002-0108 provides considerable information on a number of issues properly to be addressed by the Chamber in this case, including those identified by the prosecution. Moreover, the document was referred to extensively throughout the testimony of Witness D04-65, and as such is relevant to the Chamber's understanding of his testimony.³¹⁵ For these reasons, the Majority considers document CAR-DEF-0002-0108 to be relevant.

139. The Chamber considers that there is no reason to doubt that document CAR-DEF-0002-0108 is other than what it purports to be, that is, a book authored by Witness D04-65 relating to events in the CAR in 2002-2003. Witness D04-65 confirmed that, while he could not review the entire copy in complete detail, it did seem to be his book.³¹⁶ Moreover, throughout his testimony, the witness read various sections of the book put to him by the prosecution.³¹⁷

³¹³ ICC-01/05-01/08-2596-Conf, paragraph 18 citing ICC-01/05-01/08-T-246-CONF ENG ET, page 10, line 7 to page 12, line 2.

³¹⁴ ICC-01/05-01/08-2617-Conf, paragraph 51.

³¹⁵ ICC-01/05-01/08-T-246-CONF ENG ET, page 12, line 5 to page 14, line 19, page 20, line 23 to page 24, line 12, page 26, line 14 to page 28, line 5, and page 32, line 10 to page 33, line 9; and ICC-01/05-01/08-T-247-CONF ENG ET, page 19, line 9 to page 26, line 21.

³¹⁶ ICC-01/05-01/08-T-246-CONF ENG ET, page 11, lines 4 to 6.

³¹⁷ ICC-01/05-01/08-T-246-CONF ENG ET, page 12, line 5 to page 14, line 19, page 20, line 23 to page 24, line 12, page 26, line 14 to page 28, line 5, and page 32, line 10 to page 33, line 9; and ICC-01/05-01/08-T-247-CONF ENG ET, page 19, line 9 to page 26, line 21.

140. Taking into account that the document was authored by the witness, that the defence did not object to its admission in principle, and that the parties both had the opportunity to question the witness on its content, the Majority considers that this document is sufficiently relevant and probative for the purposes of admission and sees no reason to believe that its admission would cause a prejudice to a fair trial. The Chamber, Judge Ozaki dissenting on reasoning, admits Document CAR-DEF-0002-0108.

Tenth Category: Video material

141. The prosecution seeks the admission of document **CAR-OTP-0068-0002 (Public)**, a video entitled “Battle for Congo” allegedly showing the accused in his living room surrounded by radios and satellite phones discussing the MLC with a reporter, and document **CAR-OTP-0066-0318 (Public)**, a transcription thereof.³¹⁸

142. The prosecution submits that document CAR-OTP-0068-0002, “[a]lthough outside the temporal framework of the Charges [...] is directly related to the Accused’s communication means and ability to command military operations from Gbadolite, which serves to contradict the testimony of the military expert witness [Witness D04-53].”³¹⁹ The prosecution submits that “the video clearly shows that the Accused had the *ability* to communicate and thus, command, from Gbadolite, which D04-0053 thought impossible.”³²⁰ The prosecution also submits that this video is relevant to show the effective control for the purposes of Article 28(a) of the Statute.³²¹ In terms of probative value, the prosecution submits that the video “contains sufficient indicia of reliability as it is of good quality,

³¹⁸ ICC-01/05-01/08-2596-Conf, paragraph 17; ICC-01/05-01/08-2596-Conf-AnxA, page 10.

³¹⁹ ICC-01/05-01/08-2596-Conf, paragraph 17 citing, as an example, transcript of hearing of 21 August 2012, ICC-01/05-01/08-T-233-CONF-ENG CT, page 54, line 22 to page 55, line 7; and page 56 line 3 to page 58 line 12; see also ICC-01/05-01/08-2596-Conf-AnxA, page 10.

³²⁰ ICC-01/05-01/08-2596-Conf-AnxA, page 10. Citing, as an example, ICC-01/05-01/08-T-233-CONF-ENG CT, page 54, line 22, to page 55, line 7.

³²¹ ICC-01/05-01/08-2596-Conf-AnxA, page 10.

complete and clearly identifies the Accused and other persons therein,” information which the prosecution submits “is equally reflected in the corresponding extract transcription.”³²²

143. The defence disagrees with the prosecution’s “self-serving characterisation of what this video purports to demonstrate in terms of Mr Bemba’s ability to command troops.”³²³ The defence “notes that the Prosecution showed less than a minute of the 47 minutes of footage to General Seara,³²⁴” but submits that the prosecution “now seeks the admission of the entire video.”³²⁵ Contrary to the prosecution’s submission that the video “clearly shows that the Accused had the ability to communicate and thus, command, from Gbadolite”³²⁶ the defence submits that, “in fact, the video shows nothing more that [*sic*] the accused speaking on what appears to be a communication device, to an unidentified person or persons, in Lingala, with no translation provided.”³²⁷ The defence cites the testimony of Witness D04-53, who, after watching CAR-OTP-0068-0002 from 00:11:52 to 00:12:36, when asked whether the video excerpt called into question his conclusion that the accused could not operate his radio alone, testified as follows:

I can’t speak on that, having seen this video, because we don’t know what happened before. We don’t know what happens afterwards. What happened before this communication? Did somebody set it up for him, get it working? He had a connection there. What happened before that in order to establish that communication link? We know nothing about that. That doesn’t change my mind.³²⁸

In conclusion, the defence “submits that the video and accompanying transcript are not relevant to the credibility of General Seara’s testimony or conclusions, nor

³²² ICC-01/05-01/08-2596-Conf, paragraph 17.

³²³ ICC-01/05-01/08-2617-Conf, paragraph 49.

³²⁴ ICC-01/05-01/08-2617-Conf, paragraph 49 citing ICC-01/05-01/08-T-233-CONF-ENG CT, page 56.

³²⁵ ICC-01/05-01/08-2617-Conf, paragraph 49.

³²⁶ ICC-01/05-01/08-2596-Conf-AnxA, page 10.

³²⁷ ICC-01/05-01/08-2617-Conf, paragraph 49.

³²⁸ ICC-01/05-01/08-T-233-CONF-ENG CT, page 56, line 22 to page 57, line 1.

is it relevant to the question of command, as alleged, and the Defence objects to its admission.”³²⁹

144. In terms of relevance, the Chamber notes that document CAR-OTP-0068-0002 is a video file showing a documentary, apparently filmed in the summer of 2000,³³⁰ and produced by the Channel Four Television Corporation from the United Kingdom, which shows various persons and events related to the MLC, including the accused. The Chamber notes that the video appears to twice show the accused communicating with unidentified persons from his residence using some form of communication device.³³¹

145. The Chamber notes that this item was used during the questioning of Witness D04-53, who testified that the video did not provide enough information for him to revise his conclusion that the accused could not operate his radio alone or to assuage his doubts regarding the distances over which the radios the accused had could be used.³³² The video was also used during the testimony of Witness D04-49, who was shown the same excerpt as Witness D04-53,³³³ and who recognised the location as the residence of the accused.³³⁴ Witness D04-49 also testified that he believed the accused was using “phonie equipment” which the witness testified he would have had to have asked for, since generally the accused did not have the equipment with him; it was generally in the “radio transmission centre.”³³⁵ This item was also used during the testimony of Witness D04-25, who agreed that the video showed Mr Bemba in his residence in Gbadolite and commented on the close proximity of a guard to Mr Bemba’s residence and how this related to his testimony to the effect that the guards

³²⁹ ICC-01/05-01/08-2617-Conf, paragraph 50.

³³⁰ CAR-OTP-0068-0002, at 00:00:02.

³³¹ CAR-OTP-0068-0002, from 00:11:52 to 00:12:36, and from 00:41:25 to 00:42:36.

³³² ICC-01/05-01/08-T-233-CONF-ENG CT, page 56, line 22 to page 57, line 24.

³³³ CAR-OTP-0068-0002, from 00:11:52 to 00:12:36.

³³⁴ Transcript of hearing of 22 November 2012, ICC-01/05-01/08-T-273-CONF-ENG ET, page 15, line 11.

³³⁵ ICC-01/05-01/08-T-273-CONF-ENG ET, page 15, line 19 to page 16, line 14.

would be seated “about 75 metres away from him”.³³⁶ During his testimony Witness D04-25 also commented on a part of the video in which Mr Bemba stated that he had received military training and discussed whether Mr Bemba was a soldier or not..³³⁷

146. The Chamber considers that the abovementioned excerpts of the video provide information relevant to the means of communication allegedly available to the accused and also information relevant to Witness D04-25’s testimony as to the positioning of guards at Mr Bemba’s residence in Gbadolite. Moreover, Witnesses D04-53, D04-49 and D04-25 were all questioned in relation to the excerpts of the video and testified in relation to their content; as such, these excerpts’ admission into evidence would assist the Chamber in its analysis and understanding of the relevant sections of these three witnesses’ testimony. As such, the abovementioned excerpts of item CAR-OTP-0068-0002 are relevant to issues properly to be considered by the Chamber.

147. In terms of probative value, the Chamber considers that the document possesses probative value because: (i) the accused and other persons are clearly identifiable in the video; (ii) the prosecution has submitted the video in its entirety, allowing the Chamber to assess the relevant sections in context; (iii) the video emanates from a well-known media organisation; and (iv) the location of the video, during the sections referred to by the prosecution, was recognised by Witnesses D04-49, D04-53 and D04-25, who provided accompanying testimony.

148. In terms of potential prejudice, the Chamber notes that of the 47-minute long video, only a little less than two minutes appears to be relevant to the purpose for which the prosecution seeks its admission, and it was only the

³³⁶ Transcript of hearing of 27 August 2013, ICC-01/05-01/08-T-337-CONF-ENG ET, page 34, line 23 to page 37, line 2 and page 37, lines 7 to 15. See Transcript of hearing of 26 August 2013, ICC-01/05-01/08-T-336-CONF-ENG ET, page 14, lines 7 to 12.

³³⁷ ICC-01/05-01/08-T-337-ENG ET, page 33, line 3 to page 34, line 4.

abovementioned excerpts that were put to witnesses in court. While the Majority has expressed its preference for the admission of whole videos or documents rather than excerpts with a view to avoiding selective references,³³⁸ the Chamber considers that in the present case it would be more appropriate to admit only the excerpts of the video which were used in court. In this regard, the Chamber considers that the excerpts with the time codes 00:11:52 to 00:12:36, and 00:41:25 to 00:42:36, of item CAR-OTP-0068-0002, can properly be assessed in their context without the admission of the entirety of the video.³³⁹

149. In addition, the Chamber considers that the excerpts of the video with the time codes 00:00:00 to 00:00:04 and 00:46:41 to 00:47:11 should be admitted as they provide information relating to the source of the video and the time at which it was filmed, which speak to the probative value of the video as discussed above.

150. For the above reasons, the Chamber admits into evidence the excerpts of item CAR-OTP-0068-0002 with the following time codes: 00:00:00 to 00:00:04, 00:11:52 to 00:12:36, 00:41:25 to 00:42:36, and 00:46:41 to 00:47:11. The Chamber also admits into evidence item CAR-OTP-0066-0318, the transcription of the excerpts of item CAR-OTP-0068-0002 with the time codes 00:11:52 to 00:12:36 and 00:41:25 to 00:42:36.

151. The Chamber notes that documents CAR-OTP-0066-0321 and CAR-OTP-0066-0340 are respectively the French and English translations of the transcription of the excerpts of item CAR-OTP-0068-0002 with the time codes 00:11:52 to 00:12:36, and 00:41:25 to 00:42:36. In the view of the Chamber, both translations should be admitted into evidence along with the relevant transcripts of the video, as they appear necessary in order to ensure a proper understanding of the information contained in the video. Considering that the documents are relevant, have

³³⁸ 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.

³³⁹ See ICC-01/05-01/08-2299-Red, paragraph 96.

probative value, and that there is no suggestion their admission would cause any prejudice to the rights of the accused or to a fair trial, the Chamber admits into evidence documents CAR-OTP-0066-0321 and CAR-OTP-0066-0340, the translations of the transcripts of the excerpts of with the time codes 00:11:52 to 00:12:36 and 00:41:25 to 00:42:36, in accordance with Articles 64(6)(d) and 69(3) of the Statute.

Eleventh Category: Notes brought into the location of the video-link by Witness D04-45

152. The prosecution request the admission of document **CAR-ICC-0001-0089 (Public)**, which the prosecution submits is “a script that was brought into the courtroom by D04-45 to assist him in testifying before the judges”.³⁴⁰ The prosecution submits that the notes are relevant to the credibility of Witness D04-45 as they demonstrate that Witness D04-45 was aware of material issues in the case prior to commencing his testimony and had a “clear agenda for his testimony”, including general information which he should have been in a position to recall without prompting, such as who his superior was during the events in the CAR.³⁴¹ The prosecution submits that Witness D04-45 testified that the notes were to assist his recollection of the events. However, some information contained in the notes, such as the contacts with defence lawyers, had no link to the events in question.³⁴² The prosecution alleges that “[w]ithout being coached, it is implausible that a lay witness would have anticipated this issue”.³⁴³ The prosecution submits that Witness D04-45 “failed to reveal the extent of the full information contained [in the notes] but instead only referred to ‘dates’”.³⁴⁴ The prosecution alleges that this “script” demonstrates that Witness D04-45 was

³⁴⁰ ICC-01/05-01/08-2596-Conf, paragraph 16 citing, ICC-01/05-01/08-T-293-CONF-ENG ET, page 36, line 6 to page 40, line 13.

³⁴¹ ICC-01/05-01/08-2596-Conf, paragraph 16; ICC-01/05-01/08-2596-Conf-AnxA, page 8.

³⁴² ICC-01/05-01/08-2596-Conf-AnxA, page 9.

³⁴³ *Ibid.*

³⁴⁴ ICC-01/05-01/08-2596-Conf, paragraph 16.

“coached to discuss, *inter alia*, contact with Defence counsel, purported Lingala speakers within the ranks of the Bozize rebels, that [the] ALC went and returned on 26 October 2002, and the 4 May 2003 report”.³⁴⁵ Finally, the prosecution submits that “[i]t would be prejudicial to the fair evaluation of Witness D04-45’s testimony and the Chamber’s determination of the truth to exclude his script”.³⁴⁶

153. The defence submits that the admission of document CAR-ICC-0001-0089 has already been decided and that the prosecution has provided no basis warranting reconsideration or review of the Chamber’s decision.³⁴⁷ The defence submits that Witness D04-45 was erroneously allowed to enter the video-link location with “this item of his personal property”, which he was visibly making no effort to hide.³⁴⁸ The defence recalls the explanation given by the witness in relation to the notes in that, he had thought that he would give a speech or statement to the Court.³⁴⁹ The defence then submits that the Presiding Judge’s position was unequivocal in that the notes should be taken from the witness and returned to him at the end of his testimony and that they will not be part of the case file.³⁵⁰

154. The defence then submits that, a week later, the Presiding Judge, citing previous practice, reversed her original decision, and ordered that the notes be distributed to the parties who could then use them during their questioning.³⁵¹ The defence recalls that it objected contemporaneously on the basis that this later reversal of the Presiding Judge’s original decision was prejudicial to the defence.³⁵² Nonetheless, the defence submits that the Chamber’s decision concerned only the decision to seize the notes and distribute them to the parties and did not include

³⁴⁵ ICC-01/05-01/08-2596-Conf-AnxA, page 9.

³⁴⁶ ICC-01/05-01/08-2596-Conf, paragraph 16.

³⁴⁷ ICC-01/05-01/08-2617-Conf, paragraph 28.

³⁴⁸ *Ibid.*

³⁴⁹ *Ibid.*

³⁵⁰ ICC-01/05-01/08-2617-Conf, paragraph 29.

³⁵¹ ICC-01/05-01/08-2617-Conf, paragraph 30.

³⁵² ICC-01/05-01/08-2617-Conf, paragraph 31.

a reconsideration of the original decision that the notes would not be part of the case file.³⁵³

155. In conclusion, the defence submits that the Presiding Judge's original decision was correct in law. In particular, the defence submits that the notes, "were points about which the witness wished to remind himself, are not admissible, particularly when the notes were taken from the witness before he gave any testimony."³⁵⁴ The defence submits that a parallel can be drawn with prosecution witnesses being permitted to read their prior recorded statements before testifying without this rendering the statements admissible as evidence.³⁵⁵ The defence also submits that the testimony of Witness D04-45 bore almost no resemblance to the notes, asserting that much of his testimony fell outside the scope of the notes.³⁵⁶ The defence states that the prosecution's assertion that the sole existence of these notes puts into question the testimony of Witness D04-45, ignores the fact that the vast majority of his testimony was credible, detailed and substantially unchallenged.³⁵⁷ Finally, the defence submits that the prosecution fails to specify the particular points of the witness's testimony which should be disbelieved on the basis of the existence of the notes, and submits that simply alleging that the notes are relevant to "credibility" is insufficient to render them admissible.³⁵⁸

156. The prosecution replies that this document is "plainly relevant to the Chamber's assessment of the witness, his evidence, and his credibility."³⁵⁹ The prosecution adds that the document was used extensively during the witness's questioning

³⁵³ ICC-01/05-01/08-2617-Conf, paragraph 32.

³⁵⁴ ICC-01/05-01/08-2617-Conf, paragraph 33.

³⁵⁵ *Ibid.*

³⁵⁶ *Ibid.*

³⁵⁷ *Ibid.*

³⁵⁸ *Ibid.*

³⁵⁹ ICC-01/05-01/08-2635-Conf, paragraph 15.

by the prosecution and that it will contend that the document shows that his testimony was not candid.³⁶⁰

157. The Chamber recalls that the Presiding Judge merely ensured that the witness was prevented from referring to his notes during his testimony in accordance with the Chamber's wishes. The Presiding Judge's statement that "*for the time being, the document – the notes – are to be kept by the court officer*" was clear and the defence omitted in its summary to mention the "Presiding Judge's assertion that "*in principle, the document should be returned to the witness at the end of his testimony, which will take us maybe a week. In the meantime, the Chamber can review its own decision if it appears that it's necessary to seize the notes prepared by the witness.*"³⁶¹

158. Subsequently, during the hearing on 20 March 2013, the Chamber instructed the Registry to provide the Chamber and the parties and participants with a copy of the notes in order to give the parties the opportunity to question the witness on them if necessary.³⁶² The Presiding Judge noted that this was done at that stage in order to allow the parties to question the witness on the notes prior to the conclusion of his testimony.³⁶³ The defence's assertion that this instruction did not reconsider the Presiding Judge's initial "decision that 'the notes will not be part of the case file'", is misleading because the Presiding Judge at no stage issued any decision relating to the notes' admissibility as evidence for this instruction to reconsider.

159. For the above reasons, the Chamber considers that since no ruling as to the admissibility of document CAR-ICC-0001-0089 as evidence has been made, the

³⁶⁰ *Ibid.*

³⁶¹ ICC-01/05-01/08-T-293-CONF-ENG ET, page 40, lines 8 to 12.

³⁶² ICC-01/05-01/08-T-298-CONF-ENG ET, page 23, lines 12 to 19.

³⁶³ ICC-01/05-01/08-T-298-CONF-ENG ET, page 50, lines 5 to 7.

prosecution's current request for its admission into evidence is not repetitive and has not already been decided. Accordingly, the Chamber will assess document CAR-ICC-0001-0089 against the three-part admissibility test.

160. In terms of relevance, the Chamber considers that the information contained in document CAR-ICC-0001-0089 may potentially be of relevance to assessing the credibility of Witness D04-45. Moreover, Witness D04-45 was questioned extensively by the prosecution, the Chamber and the defence in relation to the notes;³⁶⁴ as a result, the admission of the notes into evidence would also assist in the Chamber's analysis and understanding of these parts of the witness's testimony. In view of the above, the Chamber considers that document CAR-ICC-0001-0089 relates to matters that are properly to be considered by the Chamber.

161. Turning to probative value, the Chamber considers that there is no question that the notes are anything but what they purport to be, that is, hand-written notes made by Witness D04-45, as acknowledged by the witness in court, and taken by him into the location of the video-link.³⁶⁵ As for potential prejudice, the Chamber notes that the witness was given the opportunity to explain the nature of the notes, how they were prepared, and the purpose for which they were made.³⁶⁶ In addition, the prosecution put its hypothesis to the witness – that the notes indicated that the witness had been coached. This gave the witness the opportunity to respond and explain.³⁶⁷ Moreover, the defence had the opportunity to question the witness in relation to the notes, further minimising the potential for any prejudice to be caused by their use or admission as evidence.

³⁶⁴ Transcript of hearing of 21 March 2013, ICC-01/05-01/08-T-299-CONF-ENG ET, page 7, line 4 to page 24, line 10 and page 28, line 6 to page 32, line 18; transcript of hearing of 22 March 2013, ICC-01/05-01/08-T-300-CONF-ENG ET, page 20, line 25, to page 25, line 12.

³⁶⁵ ICC-01/05-01/08-T-299-CONF-ENG ET, page 13, lines 2 to 4.

³⁶⁶ ICC-01/05-01/08-T-299-CONF-ENG ET, page 7, line 4 to page 24, line 10.

³⁶⁷ *Ibid.*

As such, the Chamber sees no reason to believe that the admission of document CAR-ICC-0001-0089 would be prejudicial to the fairness of the trial. For the above reasons, the Chamber admits into evidence document CAR-ICC-0001-0089.

Twelfth Category: NGO report

162. The prosecution requests the admission of document **CAR-OTP-0069-0148 (Public)**, a report from the International Crisis Group (“ICG”), dated 13 December 2007.³⁶⁸ The prosecution submits that this document is relevant to Witness D04-57’s credibility and bias against former President Bozize’s government and will allow the Chamber to fairly evaluate Witness D04-57’s testimony against the information contained in the report.³⁶⁹ The prosecution states that the report [REDACTED].³⁷⁰ The prosecution submits that the witness denied any knowledge [REDACTED] during his testimony in court.³⁷¹ In terms of reliability the prosecution submits that the document is reliable because it emanates from the ICG website – from where it is still available in unaltered form – and was prepared in the ordinary course of the organisation’s activities.³⁷² The prosecution adds that the report is complete and carries the ICG’s logo.³⁷³

163. The defence objects to the admission of this report, which it notes is 48 pages long while only one sentence was shown to Witness D04-57.³⁷⁴ The defence submits that the report [REDACTED] at some unspecified time and for some unspecified period, and no source is identified for this allegation”.³⁷⁵ The defence

³⁶⁸ ICC-01/05-01/08-2596-Conf, paragraph 20.

³⁶⁹ *Ibid.*

³⁷⁰ *Ibid.*

³⁷¹ ICC-01/05-01/08-2596-Conf, paragraph 20 citing transcript of hearing of 18 October 2013 ICC-01/05-01/08-T-257-CONF-ENG ET, pages 13 to 15.

³⁷² ICC-01/05-01/08-2596-Conf, paragraph 20; ICC-01/05-01/08-2596-Conf-AnxA, page 12.

³⁷³ ICC-01/05-01/08-2596-Conf, paragraph 20.

³⁷⁴ ICC-01/05-01/08-2617-Conf, paragraph 53.

³⁷⁵ *Ibid.*

notes that the witness [REDACTED].³⁷⁶ In these circumstances, the defence submits, “the simple statement that the report comes from a ‘reputable international organisation’ is insufficient to demonstrate indicia of reliability”.³⁷⁷ Finally, the defence submits that the report falls outside the temporal limitations of the case as it was published in December 2007.³⁷⁸

164. The Chamber notes that document CAR-OTP-0069-0148 is a report emanating from the ICG, regarding the Central African Republic, entitled “Anatomy of Phantom State” and dated 13 December 2007. The document states that [REDACTED].³⁷⁹ The report states that [REDACTED].³⁸⁰

165. This document was used to challenge Witness D04-57’s testimony that he did not know [REDACTED].³⁸¹ The Chamber notes that this document was also used in the questioning of Witness D04-65, who was shown a footnote indicating that he was a [REDACTED].³⁸² Witness D04-65 denied being in any way [REDACTED].³⁸³

166. In terms of relevance, the Majority of the Chamber considers that a report allegedly providing information to the effect that Witness D04-57 [REDACTED] may be relevant to the Chamber’s assessment of the credibility of this witness. The same may be said in relation to Witness D04-65. Regarding the defence’s argument that the document falls outside the temporal scope of the Charges, the Chamber considers this argument to be misconceived. In light of the purpose for which the document is tendered, i.e. to challenge the credibility of Witness D04-57, the fact that the document was created in 2007 does not undermines its

³⁷⁶ *Ibid.*

³⁷⁷ *Ibid.*

³⁷⁸ *Ibid.*

³⁷⁹ CAR-OTP-0069-0148, at pages 0177 and 0178.

³⁸⁰ CAR-OTP-0069-0148, at page 0178.

³⁸¹ Transcript of hearing of 18 October 2012, ICC-01/05-01/08-T-257-CONF-ENG ET, page 13, line 13 to page 15, line 19.

³⁸² ICC-01/05-01/08-T-246-CONF-ENG ET, page 53, line 11 to page 54, line 15.

³⁸³ ICC-01/05-01/08-T-246-CONF-ENG ET, page 54, lines 5 to 15.

relevance. In addition, the Majority finds that the admission of this document will facilitate the Chamber's comprehension of the sections of Witness D04-57 and Witness D04-65's testimony in which they addressed the content of the report.

167. In terms of probative value, the Chamber first notes that there is no question that this report is anything other than what it purports to be. The Chamber notes that the report emanates from a well-known international organisation and appears to have been created in the normal course of activities of that organisation. The report also provides sources for its information, including, contrary to the defence's contention, a source for the specific allegation relied upon by the prosecution, namely "Crisis Group interview, serving defence attaché, Bangui, July 2007",³⁸⁴ albeit with rather limited detail. For these reasons, without prejudice to the Chamber's final determination as to the weight to be afforded to this document, if any, the Majority of the Chamber considers that document CAR-OTP-0069-0148 has sufficient probative value to be admitted as evidence.

168. The Chamber notes that the prosecution only seeks the admission of this document for the limited purpose of challenging the credibility of Witness D04-57 and that the Majority of the Chamber considers it to be relevant also to the assessment of the credibility of Witness D04-65. Under these circumstances, the Majority finds that the defence's objection that, of the 48 pages in the report, the prosecution showed only one sentence to the witness does not bar its admission. The Majority notes that the submission of the entire report would allow the Chamber to properly assess its content in its context, while it may nevertheless be admitted for a limited purpose, avoiding any potential that prejudice be caused by the admission of a lengthy and detailed document into evidence without any submission as to the admissibility of the vast majority of the

³⁸⁴ CAR-OTP-0069-0148, at page 0178, footnote 151.

information contained therein. In light of the limited purpose for which it is admitted, the Majority sees no reason to believe that the admission of document CAR-OTP-0069-0148 will cause unfair prejudice to a fair trial. For the above reasons, The Majority, Judge Ozaki dissenting, admits Document CAR-OTP-0069-0148.

III. Conclusions

169. In view of the foregoing, the Chamber:

- a. ADMITS into evidence the following items: CAR-OTP-0012-0005_R01, CAR-OTP-0020-0085_R02, CAR-OTP-0012-0006_R01, CAR-OTP-0020-0114_R02, CAR-OTP-0012-0007_R01, CAR-OTP-0020-0122_R02, CAR-OTP-0012-0008_R01, CAR-OTP-0020-0151_R02, CAR-OTP-0012-0009_R01, CAR-OTP-0020-0171_R02, CAR-OTP-0012-0010_R01, CAR-OTP-0020-0191_R02, CAR-OTP-0012-0011_R01, CAR-OTP-0020-0215_R02, CAR-OTP-0012-0012_R01, CAR-OTP-0020-0239_R02, CAR-OTP-0012-0013_R01, CAR-OTP-0020-0263_R02, CAR-OTP-0012-0014_R01, CAR-OTP-0020-0283_R02, CAR-OTP-0012-0015_R01, CAR-OTP-0020-0310_R02, CAR-OTP-0012-0016_R01, CAR-OTP-0020-0317_R02, CAR-OTP-0012-0017_R01, CAR-OTP-0020-0335_R02, CAR-OTP-0024-0010_R01, CAR-OTP-0027-0536_R02, CAR-OTP-0024-0011_R01, CAR-OTP-0027-0561_R02, CAR-OTP-0024-0012_R01, CAR-OTP-0027-0585_R02, CAR-OTP-0024-0013_R01, CAR-OTP-0027-0607_R02, CAR-OTP-0024-0014_R01, CAR-OTP-0027-0629_R02, CAR-OTP-0024-0015_R01, CAR-OTP-0027-0655_R02, CAR-OTP-0024-0016_R01, CAR-OTP-0027-0681_R02, CAR-OTP-0024-0017_R01, CAR-OTP-0027-0703_R02, CAR-OTP-0024-0018_R01, CAR-OTP-0027-0729_R02, CAR-OTP-0024-0019_R01, CAR-OTP-0027-0748_R02, CAR-OTP-0056-0426, CAR-OTP-0058-0443, CAR-OTP-0056-0427, CAR-OTP-0058-0472, CAR-OTP-0056-0428, CAR-OTP-0058-0504, CAR-OTP-0056-

0429, CAR-OTP-0058-0535, CAR-OTP-0056-0430, CAR-OTP-0058-0566, CAR-OTP-0056-0431, CAR-OTP-0058-0599, CAR-OTP-0042-0235, CAR-OTP-0042-0236, CAR-OTP-0042-0242, CAR-OTP-0042-0243, CAR-OTP-0042-0246, CAR-OTP-0042-0253, CAR-OTP-0042-0255, CAR-OTP-0064-0265, CAR-OTP-0069-0363, CAR-OTP-0011-0381, CAR-OTP-0011-0382, CAR-OTP-0011-0383, CAR-OTP-0011-0384, CAR-OTP-0011-0385, CAR-OTP-0011-0375_R01, CAR-OTP-0056-0439, CAR-OTP-0024-0004_R01, CAR-ICC-0001-0085, CAR-ICC-0001-0086, CAR-OTP-0013-0118, CAR-OTP-0013-0114, CAR-OTP-0030-0274, CAR-OTP-0005-0129, CAR-OTP-0005-0131, CAR-OTP-0010-0471 and CAR-V20-0001-0165, CAR-D04-0003-0527, CAR-DEF-0001-0102, CAR-DEF-0001-0096, CAR-D04-0003-0440, CAR-D04-0003-0509, CAR-D04-0003-0470, CAR-D04-0003-0503, CAR-ICC-0001-0087, CAR-ICC-0001-0080, CAR-DEF-0002-0108, excerpts of item CAR-OTP-0068-0002 with the following time codes: 00:00:00 to 00:00:04, 00:11:52 to 00:12:36, 00:41:25 to 00:42:36, and 00:46:41 to 00:47:11, CAR-OTP-0066-0318, CAR-OTP-0066-0321, CAR-OTP-0066-0340, and CAR-ICC-0001-0089;

- b. REJECTS the admission into evidence of items: CAR-OTP-0031-0011, CAR-DEF-0001-0324, CAR-DEF-0001-0326 and CAR-DEF-0001-0128;
- c. CONSIDERS MOOT the request to admit items: CAR-DEF-0001-076 (CAR-DEF-0001-0076), CAR-DEF-0001-0830 (CAR-DEF-0001-0826), CAR-D04-PPPP-0019 (CAR-DEF-0002-0567) and CAR-OTP-0066-0122;
- a. POSTPONES the decision on the admission into evidence of items: CAR-OTP-0069-0010, CAR-OTP-0069-0083_R01, CAR-OTP-0069-0043, CAR-OTP-0069-0045, CAR-D04-0003-0128, CAR-D04-0003-0130, CAR-D04-0003-0131, CAR-D04-0003-0132, CAR-D04-0003-0133, CAR-D04-0003-0136, CAR-D04-0003-0137, CAR-D04-0003-0138, CAR-D04-0003-0139, CAR-D04-0003-0140, CAR-D04-0003-0129, CAR-D04-0003-0134, CAR-D04-0003-0141, CAR-D04-0003-0342 and CAR-D04-0003-0398;

- 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. ORDERS the parties to file by 15 November 2013 public redacted versions of their filings and corresponding annexes or to inform the Chamber that they may be reclassified as public without redactions;

170. The Majority of the Chamber, Judge Kuniko Ozaki dissenting, admits into evidence items: CAR-OTP-0069-0148.

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

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 22 June 2016

At The Hague, The Netherlands