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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**

Confidential with Confidential Annex A

**Defence Motion for Admission of Materials pursuant to Article 64(9) of the Rome
Statute**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

Document to be notified in accordance with regulation 31 of the *Regulations of the*

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A. INTRODUCTION

1. Fundamental to adversarial proceedings is the right of the accused to have timely notice of the case he is expected to meet.¹

2. The evidence upon which a Trial Chamber can rely in its deliberations pursuant to Article 74 of the Statute, self-evidently includes the documentary materials and evidence admitted into the record of the case following a judicial assessment of their reliability, probative value and relevance.

3. The evidentiary record in the present proceedings **has only just been finalised**. On 17 March 2014, the Chamber rendered its decision deciding on the admissibility of over 120 documents, including four media articles.² On 7 April 2014, it issued a further decision on the admission of 72 documents, 22 of which were also media articles.³ The same day, it closed the evidence in the present case.⁴

4. As such, only on 7 April 2014, over four months after the evidence of the final Defence witness, was Mr. Bemba finally informed of the scope of the case against him, and the materials that could be relied upon by Trial Chamber III in its deliberations pursuant to Article 74 of the Statute. The Chamber allowed no window between these documents being admitted and declaring the submission of evidence closed. The extremely late admission of evidence in the present case means that, in practical terms, Mr. Bemba was only informed of the complete scope of the case against him at a time when he was precluded from meeting this case through the submission of further evidence.

5. The Chamber had previously set the deadline for the admission of evidence in the present proceedings as 8 November 2013.⁵ This deadline was extended for the purposes of material related to the Chamber's witness, CHM-01, until 29 November 2013.⁶ As such, these deadlines have now expired.

¹ Article 67(1)(a) of the Rome Statute of the International Criminal Court.

² ICC-01/05-01/08-3019-Conf, para. 75.

³ ICC-01/05-01/08-3034-Conf. The Defence recalls that the Chamber's rulings as to relevance of these materials, and notes that if these articles are ultimately relied upon in an attempt to establish Mr Bemba's alleged awareness of their content, the Defence will simply note at this point that 1) no witness suggested or was invited to comment on the fact that Mr Bemba would have known of the content of these articles and 2) it would be unfair for the Chamber to rely upon these articles for purposes that were untested at trial and in relation to which the Defence had no fair notice.

⁴ ICC-01/05-01/08-3035.

⁵ ICC-01/05-01/08-2855, para. 10.

⁶ ICC-01/05-01/08-2898, para. 10.

6. However, in response to Defence concerns regarding the propriety of the Chamber calling additional, and potentially incriminating evidence following the close of the Defence case, without the accused being given an opportunity to bring evidence in reply and as such meet the case against him, the Chamber set down the following exception:⁷

Finally, should the defence identify any specific and concrete prejudice requiring the submission of further evidence essential to the Chamber's determination of the truth, it may submit a substantiated motion **after the deadline of 8 November 2013**, before the Chamber declares the submission of evidence to be closed pursuant to Rule 141(1) of the Rules. Such motion, if and when submitted, will be decided upon by the Chamber in due course, after the prosecution and the legal representatives of victims have been given the opportunity to respond to it.

7. Having closed the case on the same day as it rendered its final decision concerning 72 documents – 65 of which were admitted - the Chamber effectively undermined the exception it had previously granted. Now having been able to reflect, for the first time, on the entirety of the evidence admitted in the present proceedings, the Defence has identified a specific and concrete prejudice, namely that the Trial Chamber's approach to the admission of evidence has created a one-sided record of the contemporaneous press reports and media articles created at the time of the events in question. As such, Mr. Bemba files the present motion for the admission of a discrete number of additional press reports and materials which document in a coherent and corroborated manner, "the other side of the story". The admission of these documents, either at the request of the Defence, or pursuant to the Chamber's powers under Article 69(3), will contribute to the establishment of the truth of the events in question. Absent clear notice of the relevance ascribed by the Chamber to these documents, the Defence reserves its position regarding any other potential prejudice that this course taken could cause.

8. Should Mr. Bemba be denied an opportunity to respond, in a discrete and focused manner, to the newly-admitted evidence, this would condone a practice at the ICC whereby the Prosecution could wait until the last possible moment to seek to introduce swathes of purportedly inculpatory documentary materials, safe in the knowledge that the Chamber would admit them as evidence without giving the accused the opportunity to address the allegations or facts contained therein. Nor should Mr. Bemba have been expected to seek to admit evidence to counter press reports and articles which had not yet been admitted. Not only would this run the risk of flooding the record with extraneous materials and jeopardise his right to expeditious proceedings, but given the International Criminal Court's practice of recharacterising charges under Regulation 55, accused

⁷ ICC-01/05-01/08-2855.

can only be expected to lead evidence to rebut the scope of the case as precisely delineated, lest run the risk of material or evidence being used against them in previously un-notified charges.

9. For these reasons, the Defence requests that the Chamber admit as evidence the media and press reports set out in the present request, in order to establish a balanced record of the events at issue in the present proceedings.

B. APPLICABLE LAW

10. Article 69(3) invests the Trial Chamber with a discretionary power to request the submission of additional evidence necessary for the determination of the truth.

11. The Chamber has previously emphasised that there is no strict requirement that every document to be admitted in these proceedings “be authenticated officially or by a witness in court.”⁸ In the view of the Chamber:

items can also be (i) self -authenticating, if they are official documents publicly available from official sources; (ii) agreed upon by the parties as authentic; (iii) prima facie reliable if they bear sufficient indicia of reliability such as a logo, letter head, signature, date or stamp, and appear to have been produced in the ordinary course of the activities of the persons or organisations who created them; or (iv) in case the item itself does not bear sufficient indicia of reliability, shown to be authentic and reliable by the tendering party through provision of sufficient information to enable the Chamber to verify that the documents are what they purport to be.

12. The Chamber has previously held that, for any tendered item to be admitted into evidence, it must satisfy a three-part admissibility test. Under this test, the Chamber will examine, on a preliminary basis, whether the submitted materials (i) are relevant to the case; (ii) have probative value; and (iii) are sufficiently relevant and probative to outweigh any prejudicial effect that could be caused by their admission.⁹

C. SUBMISSIONS

13. The Chamber has taken a broad approach to the admission of documents pursuant to Article 64(9) of the Rome Statute, particularly in admitting press reports and media articles and recordings.

⁸ ICC-01/05-01/08-2299-Red, para. 9.

⁹ ICC-01/05-01/08-2012-Red, para. 13.

14. The Chamber has admitted 48 media articles in the present case.¹⁰ While four of these media articles were originally used by the Defence, they were admitted by the Chamber *proprio motu*.¹¹ The remainder was admitted at the request of the Prosecution, and to support the Prosecution's theory of events in the Central African Republic. Significantly, 18 of these press articles have been submitted through Prosecution "Bar Table" motions, and have not been authenticated or recognised by witnesses testifying before the Chamber.¹²

15. The Defence has consistently adopted the position adopted by Trial Chamber I and Trial Chamber II of the ICC, and the *ad hoc* criminal tribunals that "media reports are generally not considered a source of reliable evidence and their admission is often rejected for lack of probative value."¹³ The Defence has argued that:¹⁴

Most recently, in the *Katanga* case, the Chamber rejected the admission of media reports which the Prosecution had sought to admit through a bar table motion. The Chamber held that media reports often contain opinion evidence about events said to have occurred and rarely provide detailed information about their sources. Opinion evidence is, in principle, only admissible if it is provided by an expert. In the case of the newspaper accounts proffered by the Prosecution, the Chamber found that it had failed to provide information either of the background or qualifications of the journalists or of their sources, in order to satisfy the Chamber as to their objectivity and professionalism. In such circumstances, the Chamber held it was unable to attach sufficient probative value to the opinions of even informed bystanders such as journalists in relation to the contested facts.

This is reflective of the practice at the ICTY, summarised well in the *Kupreškić* case, where it was held that "newspapers and other kinds of media are very often a highly unreliable source of information is common knowledge. Their reports, unsubstantiated by other material, cannot by themselves be sufficient evidence for a court of law."

16. However, it is clear that the Chamber's approach to the admission of media articles and press reports is much broader than that advocated by the Defence.¹⁵ The discrepancy between the position of the Defence and the approach of the Chamber has led to the evidence reflecting a one-

¹⁰ CAR-OTP-0005-0127; CAR-OTP-0005-0125; CAR-OTP-0069-0303; CAR-OTP-0069-0272; CAR-OTP-0069-0271; CAR-DEF-0001-0205; CAR-D04-0002-1380; CAR-OTP-0071-0051; CAR-OTP-0071-0063; CAR-OTP-0071-0049; CAR-OTP-0071-0043; CAR-D04-0004-0032; CAR-D04-0004-0030; CAR-OTP-0008-0413; CAR-OTP-0032-0167; CAR-V20-0001-0165; CAR-OTP-0013-0053; CAR-OTP-0010-0471; CAR-OTP-0004-0667; CAR-OTP-0008-0409.

¹¹ ICC-01/05-01/08-3035, admitting CAR-DEF-0001-0205; CAR-D04-0002-1380; CAR-D04-0004-0032; CAR-D04-0004-0030.

¹² DRC-OTP-0077-0313; CAR-OTP-0013-0065; CAR-OTP-0011-0293; CAR-OTP-0008-0411; CAR-OTP-0013-0151; CAR-OTP-0013-0161; CAR-OTP-0004-0336; CAR-OTP-0005-0141; CAR-OTP-0005-0135; CAR-OTP-0005-0333; CAR-OTP-0013-0005; CAR-OTP-0004-0345; CAR-OTP-0005-0131; CAR-OTP-0005-0133; CAR-OTP-0004-0343; CAR-OTP-0013-0069; CAR-OTP-0069-0363; CAR-OTP-0005-0194.

¹³ ICC-01/05-01/08-2168, para. 11.

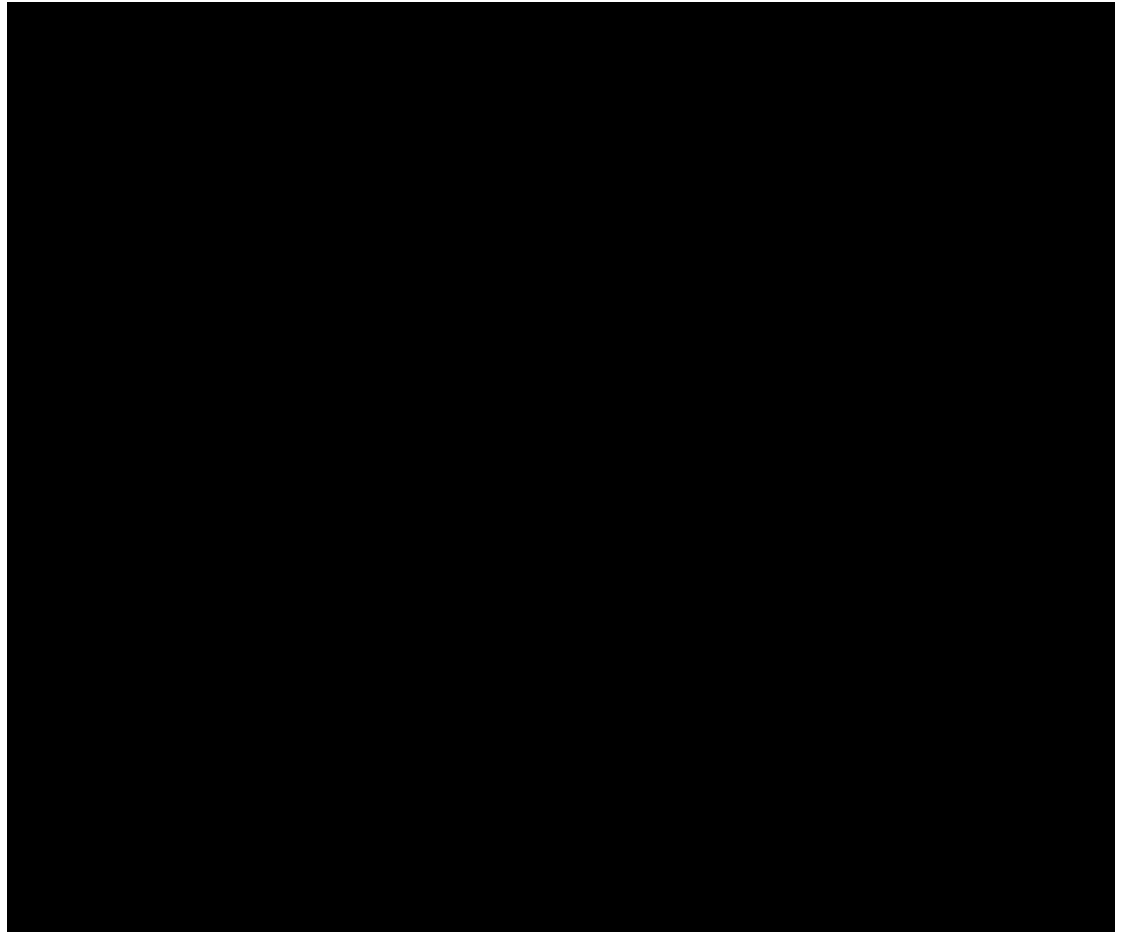
¹⁴ ICC-01/05-01/08-2168, paras. 36-37, citing Decision on the Prosecutor's Bar Table Motions; 17 December 2010; ICC-01/04-01/07-2635, paras. 29-33, and *The Prosecutor v. Kupreskic et al.* Decision, 3 September, 1999, para. 7.

¹⁵ ICC-01/05-01/08-3019-Conf, paras. 58-75; ICC-01/05-01/08-3034-Conf, paras. 98-141.

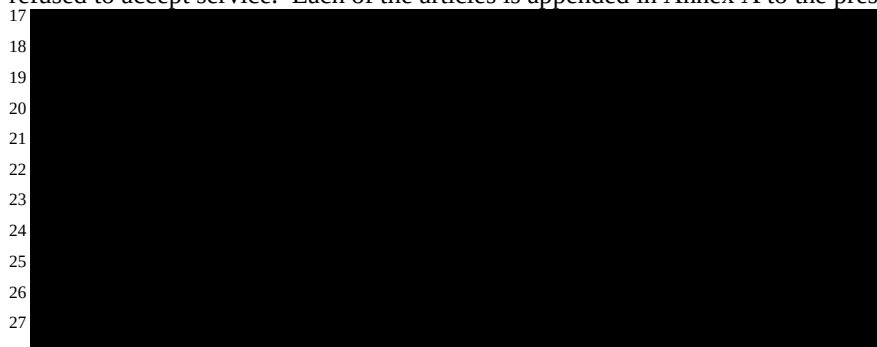
sided picture of events in question. The Defence accordingly submits that it is in the interests of justice that the casefile reflects an accurate and balanced overview of the media reports published concerning the events in the Central African Republic between October 2002 and March 2003.

17. The Defence accordingly submits that the following media articles, all publicly available on [REDACTED] are admissible as evidence in the present proceedings on the basis of the submissions set out below as to their relevance, probative nature, and prejudicial value:¹⁶

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)
- (i)
- (j)
- (k)



¹⁶ The Defence attempted to effect disclosure of these articles on the Prosecution on 16 April 2014. The Prosecution refused to accept service. Each of the articles is appended in Annex A to the present motion.



18. In the alternative, the Defence submits that these materials could also properly be admitted pursuant to the Chamber's discretionary powers under Article 69(3) for the determination of the truth.²⁸ The Defence recalls the Chamber's recent finding that:²⁹

The power of the Chamber under Article 69(3) of the Statute is a discretionary power to be exercised where the Chamber considers that certain additional evidence may be necessary for the determination of the truth. In considering whether or not to exercise this power in any particular case, it is appropriate for the Chamber to have regard to a broad range of factors, including the evidence already before it, the potential impact on the fairness and expeditiousness of the trial and the rights of the accused, and the centrality and relevance of the additional evidence to the core matters for determination by the Chamber.

19. Given that these press releases and media articles serve to present an alternative historical version of many of the questions central to the present proceedings, are relevant to core matters for determination of the Chamber, and their admission would serve to counter the prejudice caused by the Prosecution's wholesale failure to either search for or disclose exculpatory media or press articles in the present case (discussed further below), the Defence submits that they fall within the Chamber's discretion for admission pursuant to Article 69(3).

(i) Relevance of the Materials

a. [REDACTED]

20. This article, which is publicly available,³⁰ is dated [REDACTED], and cites "AFP" as its source. It reports [REDACTED]

The article states that:

[REDACTED]

²⁸ ICC-01/04-01/06-2727-Red.

²⁹ ICC-01/05-01/08-3029, para. 29.

³⁰ [REDACTED]

21. This article is therefore relevant to the Prosecution's theory that any Lingala speaking soldiers in the Central African Republic during the 2002-2003 events can be safely identified as part of the MLC contingent. By contrast, this article reports on at least [REDACTED] soldiers present on the ground at the time who it appears would also have been speaking Lingala amongst themselves, and have nothing to do with the MLC force.

22. This article is corroborative of the evidence of the Defence military expert, and Defence geo-political expert, who spoke of an agreement to have CEMAC forces come in to the Central African Republic to replace the CEN-SAD forces who had been on the ground.³¹ It is also corroborative more generally of the evidence of witnesses who spoke of CEMAC forces being present during the conflict,³² and also those who identified the Libyan troops present in the Central African Republic at its commencement.³³

23. It is also relevant to the Prosecution's theory concerning the ability of the MLC to operate without reference to the other loyalist troops on the ground, and provides important contextual background as to the overall composition of the troops fighting on behalf of former President Ange-Félix Patassé.

b. [REDACTED]

24. This article is dated [REDACTED] and cites "AFP" as its source. It is publicly available.³⁴ It speaks of [REDACTED]

[REDACTED] It states:

[REDACTED]

³¹ D04-53, T-299, page 5; D04-59, T-236, pages 34-40.

³² See, for example, D04-50, T-255, page 35; D04-51, T-263, page 40.

³³ See, for example, D04-65, T-247, page 24; D04-64, T-260, page 57; D04-51, T-261, page 33.

³⁴ [REDACTED]

25. As such, this article is also relevant to the composition of the loyalist troops on the ground, the ability of the MLC troops to manoeuvre without coordination or a single line of command over the loyalist troops. It is also relevant to the Chamber's assessment of the credibility of the evidence of Prosecution witnesses who deduce that an unrecognised or unfamiliar language was necessarily Lingala.

26. Significantly, the article also speaks about the location of the position of the forces to the conflict, stating that:

[REDACTED]

27. As such, this article is relevant to the Chamber's assessment of the testimony of witnesses who spoke about crimes committed in the north between October 2002 and the date of this article (23 January 2003).³⁵

c. [REDACTED]

28. This news article, dated [REDACTED] cites "Nations Unies (IRIN)" as its source. It firstly provides an important insight into the composition of loyalist troops present in the Central African Republic during the events in 2002-2003. As such, it is relevant to an assessment of the testimony of the wealth of both Prosecution and Defence witnesses who testified as to the identity of the troops on the ground, referring to significant contingents from countries other than the DRC, and notably [REDACTED] troops from Congo Brazzaville:

[REDACTED]

29. The Chamber has heard expert evidence that Lingala is the national language of Congo-Brazzaville, and that it is also spoken in Gabon.³⁶ As such, this contemporaneous report of which troops were on the ground is directly relevant to the Prosecution's case theory that troops speaking

³⁵ See, for example, D04-65, T-246, page 6; D04-07, T-248, pages 45-48.

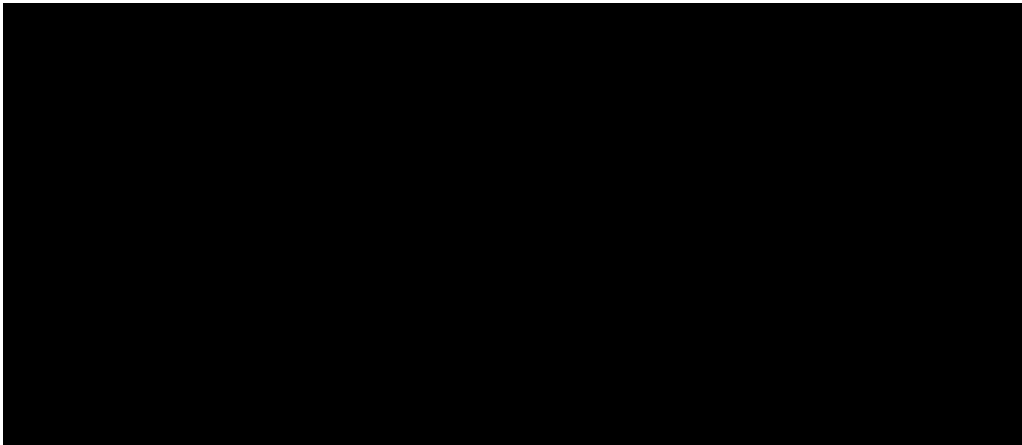
³⁶ See, for example, D04-60, T-243, pages 6-7.

Lingala can safely be identified as coming from the MLC contingent. It is also relevant to the Prosecution's theory of command responsibility, and whether the MLC troops could have been manoeuvring without any reference to or coordination with other groups of troops on the ground.

d. [REDACTED]

30. This news article is dated [REDACTED], and cites "AFP" as its source. It concerns the credibility of the [REDACTED]

[REDACTED] Notably, the article discusses the commission of crimes by Bozizé's rebels in areas in which the Prosecution alleges the MLC were committing crimes, and the date of arrival of the MLC, which are matters that are properly to be considered by the Chamber. The author notes:³⁷



31. As such, the article is corroborative of the testimony of the Defence witnesses who have testified as to the commission of crimes by Bozize's troops.³⁸ It is also relevant to the testimony of those Prosecution witnesses who testified that Bozize's troops committed no crimes in the Central African Republic during the relevant events.³⁹ It will accordingly contextualise and facilitate the Chamber's assessment of their evidence.

32. This article is also demonstrative of the state of confusion in the press at the time as to the responsibility for crimes, which is directly relevant to both the charges against Mr. Bemba and the proposed recharacterisation pursuant to Regulation 55. It is also indicative of the bias and

³⁷ Each of the press reports referred to in the present motion are in French. The English translations provided in the current motion are unofficial, and provided for the convenience of the Chamber.

³⁸ Witnesses D04-65, D04-07, D04-50, D04-64, D04-51, D04-19, D04-56, D04-30, D04-29, D04-36, D04-06, D04-04, D04-03, D04-09, D04-02, D04-23, D04-26.

³⁹ See, for example, CAR-OTP-PPPP-0038, T-35, pages 40-42; CAR-OTP-PPPP-0068, T-49, page 11; CAR-OTP-PPPP-0082, T-58, pages 17-21; T-60, p.26; CAR-OTP-PPPP-0080, T-61, page 17; CAR-OTP-PPPP-0073, T-70, pages 10, 13; CAR-OTP-PPPP-0119, T-82, pages 25-26; CAR-OTP-PPPP-0006, T-99, pages 11-12; CAR-OTP-PPPP-0112, T-128, page 46; CAR-OTP-PPPP-0178, T-157, page 19; CAR-OTP-PPPP-0151, T-173, page 43.

credibility of reports by the FIDH in the Central African Republic, which is of particular relevance given that the Chamber has admitted inculpatory reports from this NGO into evidence.⁴⁰ The article is publicly available.⁴¹

e. [REDACTED]

33. This news article, also publicly available,⁴² is dated [REDACTED] and cites “AFP” as its source. It concerns [REDACTED]
[REDACTED] In the article, [REDACTED]
[REDACTED] As such, it is relevant to the Prosecution’s allegations concerning the accused’s motivation for sending troops to the CAR.⁴³

[REDACTED]

34. The article also addresses the arrest of MLC soldiers for pillage committed in the Central African Republic which is relevant to whether contemporaneous measures were taken in response to the alleged crimes committed, and also to the extent of Mr. Bemba’s alleged awareness of problems with some members of the MLC contingent. It also provides context to, and is corroborative of the testimony of witnesses who have testified, *inter alia*, concerning the arrest of MLC soldiers who were suspected of pillage.⁴⁴

[REDACTED]

35. The article reports [REDACTED]
[REDACTED]⁴⁵ [REDACTED] which is directly relevant to both the charges against Mr. Bemba concerning his actual knowledge of the crimes allegedly committed by his troops, but also to the proposed recharacterisation pursuant to Regulation 55:

⁴⁰ See, for example CAR-OTP-0001-0034, Crimes de Guerre en République Centrafricaine; CAR-OTP-0004-088, République centrafricaine. Oubliées, stigmatisées : la double peine des victimes de crimes internationaux; CAR-OTP-0004-1096, Mission Internationale d’Enquête; CAR-OTP-0011-042, Droits de l’Homme en République Centrafricaine. Discours et réalité: un fossé béant.

⁴¹ [REDACTED]

⁴² [REDACTED]

⁴³ ICC-01/05-01/08-856-Red-AnxA, para. 14.

⁴⁴ See, for example, P-36, T-214, pages 47-48; D04-53, T-231, pages 47-48; D04-53, T-231, pages 47-48.

⁴⁵ CAR-DEF-0001-0076.

[REDACTED]

f. [REDACTED]

36. This news article, dated [REDACTED] cites “Nations Unies (IRIN)” as its source. Having been published [REDACTED] it is a contemporaneous record of the events in issue in the present case. It cites [REDACTED]

[REDACTED] and as such is relevant to matters that are properly to be considered by the Chamber, namely the identity of perpetrators of crimes committed in the CAR during the events. It is also directly relevant to both the charges against Mr. Bemba concerning his actual knowledge of the crimes allegedly committed by his troops, but also to the proposed recharacterisation pursuant to Regulation 55:

[REDACTED]

37. The article also talks of the taking of [REDACTED] and as such provides context to, or corroboration of, those witnesses who described the movement of the rebels and the loyalist forces through the north of the country:

[REDACTED]

38. [REDACTED] the article is accordingly also relevant to the testimony of those witnesses who spoke about Bozizé’s birthplace and stronghold, and crimes having been committed in particular locations as a result.⁴⁶

⁴⁶ CAR-OTP-PPPP-0178, T-155, p.14; D04-07, T-248, page 53.

g. [REDACTED]

39. This news article, dated [REDACTED] cites “AFP” as its source. It is publicly available.⁴⁷ It is the first in a series of articles which provide an important insight into the “retreat” of the MLC troops, a matter concerning which the record in the case remains remarkably confused, and about which the Chamber itself has actively solicited clarification from witnesses. These articles demonstrate that the decision to withdraw the MLC troops was not taken unilaterally by Mr. Bemba on the basis of his personal convenience or desire, but as a result of a multi-state process aimed at facilitating a Central African Republic “national dialogue” between the regime of Ange-Félix Patassé and the rebellion of François Bozizé.

40. The first article talks about the [REDACTED]
[REDACTED] in order to attempt to work towards a peaceful resolution of the conflict:

[REDACTED]

41. Significantly, the article reports that:

[REDACTED]

42. This article is therefore relevant to not only the credibility of the Prosecution’s allegations concerning the motivation behind the retreat of the MLC troops, but the Chamber’s overall assessment of the testimony of those witnesses who painted a very different picture of the MLC’s withdrawal; Witness CAR-OTP-PPPP-0209 cited international opinion hating the regime in place,

⁴⁷ [REDACTED]

and Patassé no longer being loved;⁴⁸ Witness CAR-OTP-PPPP-0032 testified that the MLC troops never received an order to retreat but rather they fled the Central African Republic;⁴⁹ CAR-OTP-PPPP-0213 testified that Mr. Bemba gave an order to his troops to retreat, having received pressure from France;⁵⁰ CAR-OTP-PPPP-0045 testified that the MLC troops retreated and were replaced by CEMAC forces;⁵¹ while CAR-OTP-PPPP-0015 spoke of an agreement made by Mr. Bemba to withdraw his troops on 16 January 2003.⁵²

43. By contrast, Witness D04-53 testified that the decision that the MLC troops should withdraw was taken by President Patassé, who issued an order to the Ministry of Defence and General Bombayake to ask the MLC Commander General Mukiza Mustapha Gabby to withdraw his forces.⁵³ This finds corroboration in the testimony of Witness D04-19.⁵⁴ The admission of this contemporaneous report of an apparent genesis for the withdrawal and retreat of MLC troops is therefore of undoubted assistance in any search for the truth of the events in question.

44. It is also relevant to the testimony of other Prosecution witness CAR-OTP-PPPP-0042, who place the MLC still in Bangui on the night before 15 March 2003, sharpening their knives and threatening to slit their throats,⁵⁵ or witness CAR-OTP-PPPP-0073 who claims the Banyamulenge left PK12 on 15 March 2003, promising to finish off the population as they were withdrawing.⁵⁶

h.

45. This article, also publicly available,⁵⁷ is dated [REDACTED] and cites “AFP” as its source. It reports the [REDACTED]
[REDACTED] It therefore follows from the article discussed directly above concerning the push for a national dialogue for peace in the Central African Republic. The article states:

⁴⁸ T-120, page 32.

⁴⁹ T-167, page 33.

⁵⁰ T-188, pages 24-25.

⁵¹ T-204, page 70.

⁵² T-208, page 28.

⁵³ T-231, pages 37-38.

⁵⁴ T-292, page 16.

⁵⁵ T-65, pages 39-40.

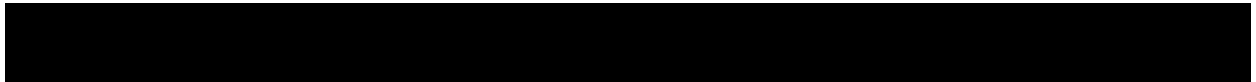
⁵⁶

⁵⁷ [REDACTED]



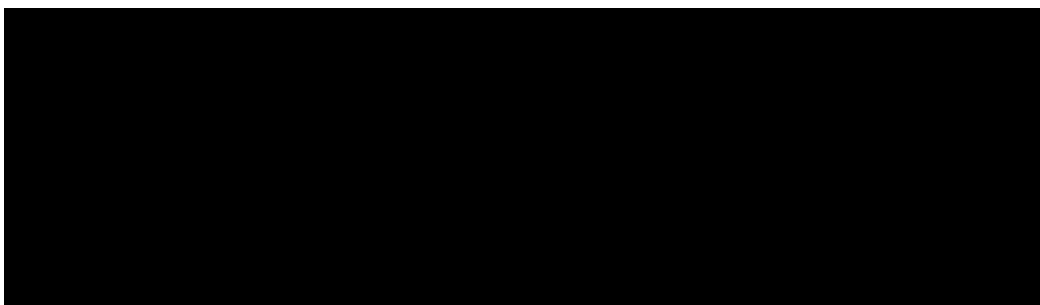
46. The article therefore has Bozizé's troops controlling towns until at least mid-February. It also has the loyalist troops launching strikes together with MLC allies, which is relevant to the Chamber's assessment of the Prosecution theory that the MLC troops operated alone in the Central African Republic and without coordination with other Central African or loyalist troops. It is corroborative of those witnesses who testified as to such coordination,⁵⁸ and is relevant to the credibility of those who said there was none.⁵⁹ It also more generally provides important contextual background as to the reasons behind the MLC retreat from the Central African Republic, and is relevant to the Chamber's assessment of the testimony of those Prosecution witnesses cited above who characterised the decision to retreat as a unilateral one taken by Mr. Bemba himself.

i.



47. This article, dated [REDACTED], cites "AFP" as its source. It is also publicly available.⁶⁰ It continues the story concerning the push for a Central African "national dialogue", and describes [REDACTED]

[REDACTED] The article states:



⁵⁸ See, for example, P-36, T-214, page 46; D04-53, T-229, pages 59-60; T-230, page 33; D04-07, T-248, pages 30-31; D04-51, T-262, page 17.

⁵⁹ See, for example, P-38, T-33, page 48; P-23, T-52, pages 8-9; P-42, T-64, pages 52-53; P-06, T-95, page 40; 43; P-09, T-104, pages 10-11; P-63, T-110, page 14; P-63, T-113, page 31; P-209, T-120, pages 21-22; P-173, T-144, page 50; P-178, T-151, page 35; P-151, T-172, page 36; P-31, T-182, pages 43-44.

⁶⁰ [REDACTED]

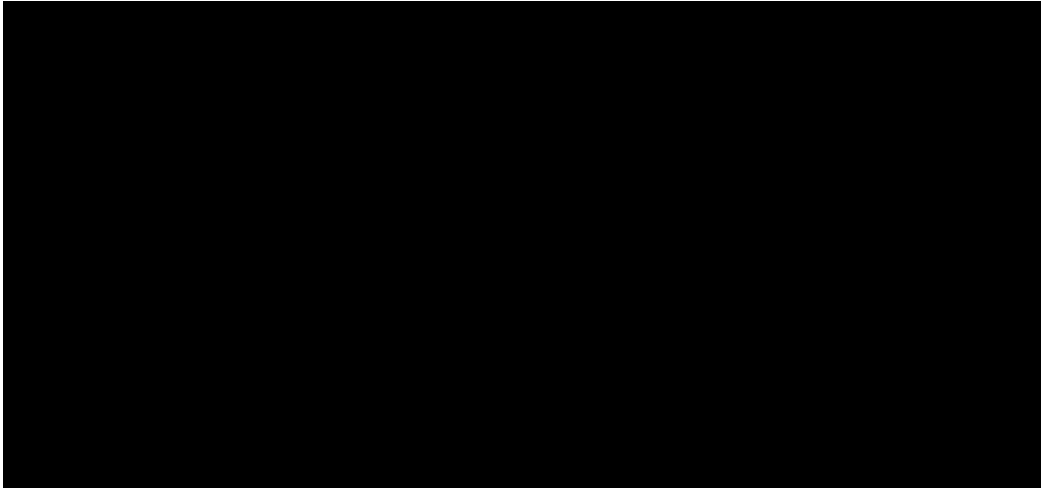
48.

49. This article therefore provides important contextual background as to the reasons for, and conduct of, the MLC retreat from the Central African Republic during the relevant events. It also provides context to the evidence of those witnesses who talk about widespread criminal activity of Bozizé's rebels as they re-entered Bangui on 15 March 2003. The reference to [REDACTED] CEMAC forces is corroborative of the information listed in other articles referred to above, is pertinent to the Chamber's assessment of the evidence of witnesses concerning the composition of the loyalist forces, and is also relevant to whether Central African civilians could necessarily recognise a foreign soldier as coming from the MLC contingent.

j.

50. This article, available online,⁶¹ is dated [REDACTED] and cites "AFP" as its source. Building on the articles discussed above, it reports on (and quotes in full) a press release citing [REDACTED]

⁶¹

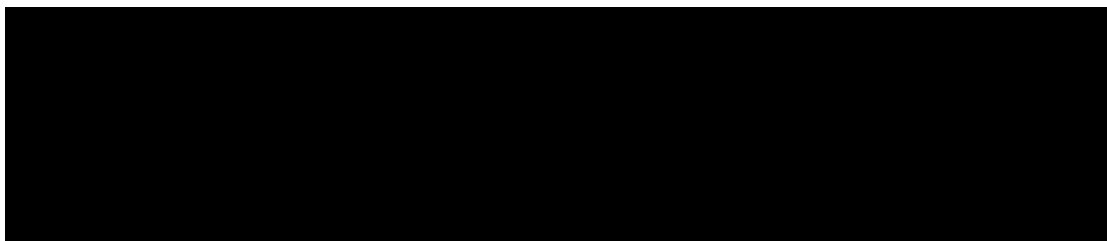
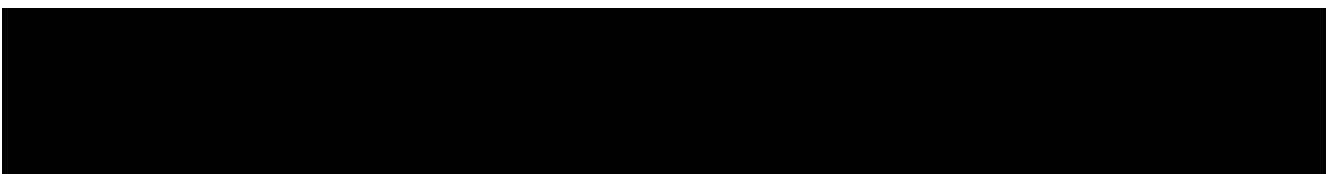


51. [REDACTED]

52. As such, this article is corroborative of the articles cited above concerning the background to the retreat of the MLC troops. Again, it places [REDACTED] foreign CEMAC troops in the Central African Republic, including “Congolese” troops with no link to the MLC contingent. As such, it is directly relevant to the Prosecution thesis that Lingala speaking troops in the Central African Republic during the 2002-2003 events can be safely identified as coming from the MLC troops present on the ground.

k. [REDACTED]

53. This article is dated [REDACTED] and cites “Nations Unies (IRIN)” as its source. It is publicly available.⁶² It is the final in this series of articles concerning the retreat of the MLC forces from the Central African Republic. Significantly, it reports that on [REDACTED]



⁶² [REDACTED]

54. As such, this article completes the picture of the MLC withdrawal from the Central African Republic; it was President Patassé's decision to reduce the effort on the part of the loyalist troops, with a hope that this would facilitate dialogue with the armed rebels against whom they were fighting. This reduction in fighting on the part of the loyalists provides context and corroboration to evidence concerning the ability of Bozizé's rebels to re-capture the capital and ultimately seize control of the country. This article is manifestly relevant to the Chamber's assessment of the testimony of those witnesses who place President Patassé at the ultimate head of the chain of command within which the MLC fell, and who testified that the Central African authorities assumed and remained in command of the overall strategy. It is also relevant more generally to the credibility of Prosecution's theory of command responsibility over the MLC troops.

(ii) Probative Value

55. The Defence recalls the Chamber's ruling of 7 April 2014, that: "the press articles bear sufficient indicia of reliability **as they are dated as well as publicly available on the Internet**. Moreover, the articles appear to have been produced in the ordinary course of the activities of either a well-known international media organisation (AFP source) or a known Central African media outlet, further supporting their reliability."⁶³ The Defence submits that the same reasoning is equally applicable to the articles submitted for admission through the present motion. The articles are moreover consistent and corroborative of each other as to content, often repeating the same events, dates and figures concerning, *inter alia*, troop numbers and the progress of the conflict. Their internal indicia of reliability such as dates, sources, and the fact of their publication are sufficient for the Chamber to make a *prima facie* evaluation of reliability.

(iii) Potential Prejudice

56. The requested articles are all available online, at [REDACTED]. The Prosecution is accordingly aware of their existence, having disclosed, relied upon, and successfully sought admission of articles from [REDACTED] published during the same time period.⁶⁴ As such, there is absolutely no prejudice to the Prosecution in their admission, even at this late stage of the proceedings.

⁶³ ICC-01/05-01/08-3034-Conf, para. 117; See also para 122: "Moreover, the prosecution has provided the Chamber with verifiable information on where the documents could be obtained, which has enabled the Chamber to access the documents from the Internet to verify that the documents are what they purport to be and that the date of their publication provided is correct", citing to: [REDACTED]

⁶⁴ ICC-01/05-01/08-3034-Conf, paras. 114, 122.

57. The more relevant question, however, is why the Prosecution had not disclosed these clearly exculpatory articles itself. The Prosecution was either (a) fully aware that an alternative theory of events was reported in the contemporaneous press and decided not to disclose this material to the accused despite its undoubtedly exculpatory nature; or (b) failed to search for exculpatory material in the body of contemporaneous media reports available to it. The Defence submits that given that the Prosecution sought the admission of other documents from [REDACTED] the latter thesis is difficult to accept. The admission of these materials is therefore necessary to remedy the prejudice inflicted on the accused by the Prosecution's continuing breach of its disclosure obligations, and its failure to disclose one single item of exculpatory material coming from press reports at the time. No burden rested with the Defence, with its markedly fewer resources and different statutory obligations, to search for and bring this information to the attention of the Chamber. The Prosecution, by contrast, had a clear obligation which it again failed to meet.

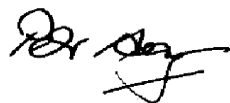
D. RELIEF REQUESTED

58. On the basis of the above the Defence requests that the Chamber:

ADMIT the press articles identified herein as evidence in the present proceedings at the request of the Defence; or, in the alternative

ADMIT the press articles identified herein pursuant to Article 69(3).

The whole respectfully submitted.



Peter Haynes, QC

Lead Counsel of Mr. Jean-Pierre Bemba

Done this day 16 April 2014

In The Hague, The Netherlands