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

Date: **28 June 2016**

**TRIAL CHAMBER III**

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

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

**Public Redacted version of**

**“Partly Dissenting Opinion of Judge Ozaki on the Decision on the submission as evidence of items used during the questioning of witnesses but not submitted as evidence by the parties and participants”, ICC-01/05-01/08-3034-Anx of 7 April 2014**

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

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**REGISTRY**

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. Introduction

1. This partly dissenting opinion is in response to the Majority's admission into evidence of 27 items in the "Decision on the submission as evidence of items used during the questioning of witnesses but not submitted as evidence by the parties and participants" ("Decision"), and addresses the reasons underlying my disagreement with the Majority as to the admission of these items.

## II. Mr Bemba's book

2. The Decision admits a book written by Mr Bemba entitled "*Le Choix de la Liberté*", CAR-OTP-0069-0372, used during the questioning of, *inter alia*, Witnesses D04-15, D04-18, D04-21, and D04-54.<sup>1</sup> I disagree with the Majority's reasoning for admitting the book.
3. The book discusses activities of the *Mouvement de Liberation du Congo* ("MLC") and the *Armée de Liberation du Congo* ("ALC"), over a three-year period, from 1998 through 2001.<sup>2</sup> The witnesses were questioned about specific pages in the book.<sup>3</sup>
4. The prosecution originally sought the admission of the book from the bar table for the truth of its content.<sup>4</sup> The prosecution avers that the book is "relevant and probative, *inter alia*, of the [a]ccused's control and to undermine D05-54's credibility" and that the book "was written by the accused who portrays himself as a military commander fully involved in military operations, present at theatre of military operations, communicating with ALC units and giving operations

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<sup>1</sup> See Decision, paragraph 11.

<sup>2</sup> See Decision, paragraph 14.

<sup>3</sup> See Decision, paragraph 15. Witnesses D04-18 and D04-54 were questioned in relation to pages CAR-OTP-0069-0421 to CAR-OTP-0069-0423. Witnesses D04-15 and D04-21 were questioned in relation to four photographs appearing on pages CAR-OTP-0069-0434 and CAR-OTP-0069-0436.

<sup>4</sup> Prosecution's Application for Admission of Materials into Evidence pursuant to Article 64(9) of the Rome Statute, 8 November 2013, ICC-01/05-01/08-2854, with confidential Annex A, ICC-01/05-01/08-2854-Conf-AnxA, page 2.

and tactical orders to his troops”.<sup>5</sup> The prosecution further alleges that the document “contradicts D04-54’s testimony that Mr Bemba was a civilian and did not give operational orders to his troops”.<sup>6</sup>

5. In the Decision, the Majority finds that the book will assist “in contextualising the testimonies of Witnesses D04-15, D04-18, D04-21, and D04-54 and may serve to corroborate other evidence”.<sup>7</sup> The Majority also finds that the admission of the book will allow the Chamber to assess its contents in the proper context.<sup>8</sup> I note that the witnesses were extensively questioned about the relevant parts of the book; as such, each witness’s testimony on the subject is adequately reflected in the record. The primacy of orality cautions against admitting unnecessary documentary evidence when the witnesses’ testimony is sufficient. Thus, I decline to join the Majority’s opinion that the book as a whole should be admitted to contextualise the testimonies of the witnesses.
6. Further, I note that, as the accused, Mr Bemba cannot be compelled to testify about the book. I also note the defence’s arguments as to the preparation of the book and the veracity of the claims therein.<sup>9</sup> However, the book was indeed published by the accused, available to the general public, and discusses issues relevant to the charges. As such, I find that the book in its entirety is relevant and has probative value. As it was published by the accused, I find that the book’s inclusion into evidence will not unduly prejudice his rights so long as the book is admitted not to show the truth of its content or to contextualise witness testimony but rather as evidence of its existence.

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<sup>5</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 2.

<sup>6</sup> ICC-01/05-01/08-2868-Conf-AnxA, page 2.

<sup>7</sup> Decision, paragraph 15.

<sup>8</sup> Decision, paragraph 18.

<sup>9</sup> See Decision, paragraph 13.

### III. Amnesty International (“AI”) Reports

7. The Majority admits three AI reports, documents CAR-OTP-0073-0624, CAR-OTP-0073-0627, and CAR-OTP-0073-0623, used during the questioning of Witness D04-26.<sup>10</sup> The AI reports relate to [REDACTED]; the prosecution used the reports to challenge [REDACTED] credibility.<sup>11</sup> I disagree with the Majority’s decision to admit these three reports.<sup>12</sup>
8. In regard to these reports, I reiterate my previously expressed opinion regarding the probative value of reports issued by non-governmental organisations.<sup>13</sup> In my view, due to the lack of guarantees concerning the reliability of these reports’ sources and the lack of testimony from the authors of these reports, the probative value of such reports is low.
9. With these particular AI reports, the Majority finds that the reports have probative value because they “bear indicia of reliability [...] indicating that the reports originated from Amnesty International.”<sup>14</sup> The Majority further holds that “admitting these reports would not be prejudicial to a fair trial or to the fair evaluation of the witness’s testimony”.<sup>15</sup>
10. In light of my views as to the probative value of untested non-governmental organisation reports, I find that the identities of the authors and the source of information relied upon in these particular reports are not revealed in sufficient

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<sup>10</sup> See Decision, paragraph 76.

<sup>11</sup> See Decision, paragraph 76.

<sup>12</sup> See Decision, paragraph 77.

<sup>13</sup> Partly Dissenting Opinion of Judge Ozaki on the Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 69(4) of the Rome Statute, 8 October 2012, ICC-01/05-01/08-2300-Conf, paragraphs 11 to 13; Partly Dissenting Opinion of Judge Ozaki on the Decision on the admission into evidence of items deferred 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”, (ICC-01/05-01/08-2299), 27 June 2013; ICC-01/05-01/08-2721-Conf, paragraphs 2 to 4; Partly dissenting opinion of Judge Ozaki to the Third decision on evidence, 6 November 2013, ICC-01/05-01/08-2864-Conf, paragraph 12.

<sup>14</sup> Decision, paragraph 76.

<sup>15</sup> Decision, paragraph 77.

detail. As such, it is not possible to fully investigate the reliability of these reports. Due to the lack of information regarding the reliability of the reports and absent the testimony of the authors of the reports, I find that the probative value of these documents is low. Further, I note that the witness was questioned about these reports in court; as such, the witness's testimony on the subject is adequately reflected in the record. In my view, the Majority's intention to use the reports to assess Witness D04-26's credibility and the reliability of his evidence does not justify its admission.

#### IV. CAR document

11. The Majority admits a CAR document, CAR-OTP-0042-0254. CAR-OTP-0042-0254 is a signed *message porté*, dated 11 February 2003, from the CAR's *Directeur Général of the Gendarmerie Nationale Centrafricaine* addressed to the *Ministre de la Défense Nationale*, the *Chef D'Etat-Major des Armées*, and the *Directeur Général of the Unité de Sécurité Présidentielle ("USP")*.<sup>16</sup> I disagree with the Majority's decision to admit this document.<sup>17</sup>

12. In responding to the Chamber's "Order seeking observations on the submission as evidence of items used during the questioning of witnesses but not submitted as evidence by the parties or participants,"<sup>18</sup> the prosecution supports the document's admission and submits generally that the 69 documents for which the Chamber sought observations "may assist the Chamber in better contextualising the related testimonies".<sup>19</sup> The defence objects to the document's admission and submits that the prosecution listed the document as one it "intended to admit, with no indication that it was used during D04-19's

<sup>16</sup> See Decision, paragraph 89.

<sup>17</sup> Decision, paragraph 90.

<sup>18</sup> Order seeking Observations on the submission as evidence of items used during the questioning of witnesses but not submitted as evidence by the parties or participants, 23 October 2013, ICC-01/05-01/08-2841.

<sup>19</sup> Prosecution's Observations on possible admission of 69 documents by the Chamber pursuant to Article 69(3) of the Rome Statute, 15 November 2013, ICC-01/05-01/08-2890, paragraph 2, with confidential Annex 1, ICC-01/05-01/08-2890-Conf-Anx.

examination.”<sup>20</sup> The defence also adds that the court’s electronic system does not show that the document was used with a witness.<sup>21</sup>

13. I note that this document was listed as a document that the prosecution intended to submit but it was never used in court. I further note, with approval, that the Chamber has previously admitted materials through the “bar table”.<sup>22</sup> Thus, the fact that the document was not previously discussed in court is not sufficient justification to warrant its exclusion from evidence. However, I note Article 74(2) of the Rome Statute’s instruction that the Chamber base its final decision “only on evidence submitted and discussed before it at the trial.” In view of this rule, I find that a document admitted solely through the bar table should receive adequate rationalisation for its admission in order to ensure that it was properly discussed at trial. Here, I find that, despite the document not having been discussed in court, the prosecution fails to adequately demonstrate the reasons for which the Chamber should admit this document. As such, I find that there is insufficient justification to show that the document’s relevance and probative value outweighs the potential prejudice caused by this document’s admission.

## V. Media Reports

14. The Decision admits 21 media reports.<sup>23</sup> I note that CAR-OTP-0069-0303, which the Majority admits as a media report,<sup>24</sup> is a statement purportedly from Mr

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<sup>20</sup> Defence Submissions pursuant to the “Order seeking observations on the submission as evidence of items used during the questioning of witnesses”, 15 November 2013, ICC-01/05-01/08-2893, with confidential Annex A, ICC-01/05-01/08-2893-Conf-AnxA, page 9.

<sup>21</sup> ICC-01/05-01/08-2893-Conf-AnxA, page 9.

<sup>22</sup> See Decision on the Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, 06 September 2013, ICC-01/05-01/08-2299 (“Decision 2299”).

<sup>23</sup> See Decision, paragraphs 98 to 123 and 125 to 141. Documents CAR-D04-0004-0030, CAR-D04-0004-0032, CAR-OTP-0071-0043, CAR-OTP-0071-0049, CAR-OTP-0071-0063, CAR-OTP-0071-0051, CAR-D04-0002-1380, CAR-DEF-0001-0205, CAR-OTP-0069-0146, CAR-OTP-0069-0271, CAR-OTP-0069-0272, CAR-OTP-0005-0125, CAR-OTP-0005-0127, CAR-OTP-0057-0243, CAR-OTP-0057-0353, CAR-OTP-0036-0041, CAR-OTP-0036-0039, CAR-OTP-0056-0278, CAR-OTP-0013-0098, CAR-OTP-0030-0269 and CAR-D04-0002-2027, (collectively “media articles”).

<sup>24</sup> Decision, paragraph 124.

Bemba placed on the MLC website and not a media report. However, I will consider this document in a similar manner as the media articles.

15. I dissent to the admission of CAR-D04-0004-0030, CAR-D04-0004-0032, CAR-DEF-0001-0205, CAR-OTP-0069-0271, CAR-OTP-0069-0272, CAR-OTP-0071-0043, CAR-OTP-0071-0049, CAR-OTP-0071-0063, CAR-OTP-0071-0051, CAR-OTP-0069-0146, CAR-OTP-0069-0303, CAR-OTP-0030-0269, and CAR-D04-0002-2027. I agree to admit CAR-D04-0002-1380, CAR-OTP-0005-0125, CAR-OTP-0005-0127, CAR-OTP-0013-0098, CAR-OTP-0057-0243, CAR-OTP-0057-0353, CAR-OTP-0036-004, CAR-OTP-0036-0039 and CAR-OTP-0056-0278 but disagree with the Majority's reasoning for admitting these documents.

16. With regard to media articles, I reiterate and incorporate my previously expressed opinion in relation to the admission of media articles.<sup>25</sup> When their authors are not called to testify, the admission of media articles must be approached with great care.<sup>26</sup> The issue of whether the content of such articles may serve to corroborate other pieces of evidence is a factor to be assessed in considering their reliability and probative value but is insufficient to warrant admission.<sup>27</sup> Further, the Chamber can rely on the Court records to evaluate a witness's testimony when a witness is questioned adequately about a media article during his in-court testimony; there is no need to also admit the media article in order to "assess" or "contextualise" the witness's testimony. However, I

<sup>25</sup> ICC-01/05-01/08-2300, paragraphs 3 to 10; ICC-01/05-01/08-2721-Anx, paragraphs 5 to 6; Partly Dissenting Opinion of Judge Ozaki on the Decision on Maître Douzima's "Requête de la Représentante légale de victimes en vue de soumettre des documents en tant qu'éléments de preuve selon l'article 64(9) du Statut de Rome", 29 January 2014, ICC-01/05-01/08-2950-Conf-Anx, paragraphs 2 to 3; Partly Dissenting Opinion of Judge Ozaki on the Third Decision on the prosecution and defence requests for the admission of evidence, 6 November 2013, ICC-01/05-01/08-2864-Conf-Anx, paragraphs 7 to 9; Partly Dissenting Opinion of Judge Ozaki on the Decision on the "Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute" (ICC-01/05-01/08-2868), 17 February 2014, ICC-01/05-01/08-2981-Conf-Anx; Partly Dissenting Opinion of Judge Ozaki on the Decision on the admission into evidence of items deferred in the Chamber's previous decisions, items related to the testimony of Witness CHM-01 and written statements of witnesses who provided testimony before the Chamber, 17 March 2014, ICC-01/05-01/08-3019-Conf-Anx, paragraph 3.

<sup>26</sup> ICC-01/05-01/08-2300, paragraphs 3 to 10; ICC-01/05-01/08-2950-Conf-Anx, paragraphs 2 to 3; ICC-01/05-01/08-2721-Anx, paragraphs 5 to 6; ICC-01/05-01/08-2864-Conf-Anx, paragraphs 7 to 9; ICC-01/05-01/08-2981-Conf-Anx.

<sup>27</sup> ICC-01/05-01/08-2950-Conf-Anx, paragraphs 2 to 3; ICC-01/05-01/08-2981-Conf-Anx, paragraph 4.

do not object to the admission of media articles for the purpose of the Chamber's determination of whether allegations of crimes committed by MLC soldiers in the CAR in 2002 and 2003 were widely reported during the relevant period at issue in this case, which may be relevant to the accused's knowledge of the alleged crimes.

*CAR-D04-0004-0030, CAR-D04-0004-0032, CAR-DEF-0001-0205, CAR-OTP-0069-0271, CAR-OTP-0069-0272*

17. The Majority admits *CAR-D04-0004-0030*,<sup>28</sup> *CAR-D04-0004-0032*,<sup>29</sup> *CAR-DEF-0001-0205*,<sup>30</sup> and *CAR-OTP-0069-0272*,<sup>31</sup> which refer to, *inter alia*, allegations of crimes committed by General Bozizé's rebels during the relevant period under examination.<sup>32</sup> The Decision also admits *CAR-OTP-0069-0271*,<sup>33</sup> which describes the general situation of crisis in the CAR in October 2002 and requests the resignation of President Patassé.<sup>34</sup> I disagree with the Majority's decision to admit these documents.

18. *CAR-D04-0004-0030* was used during the questioning of Witnesses D04-56 and D04-23;<sup>35</sup> *CAR-D04-0004-0032* was used during the questioning of Witness D04-56.<sup>36</sup> *CAR-DEF-0001-0205* was used during the questioning of Witnesses 173 and 178.<sup>37</sup> *CAR-OTP-0069-0271* and *CAR-OTP-0069-0272* were used during the questioning of [REDACTED].<sup>38</sup>

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<sup>28</sup> See Decision, paragraph 105.

<sup>29</sup> See Decision, paragraph 105.

<sup>30</sup> See Decision, paragraph 118.

<sup>31</sup> See Decision, paragraph 122.

<sup>32</sup> See Decision, paragraphs 102 to 104, 115, 121.

<sup>33</sup> See Decision, paragraph 122.

<sup>34</sup> See Decision, paragraph 120.

<sup>35</sup> See Decision, paragraph 101.

<sup>36</sup> See Decision, paragraph 103.

<sup>37</sup> See Decision, paragraph 115.

<sup>38</sup> See Decision, paragraph 119.

19. The Majority finds that these documents may assist the Chamber to contextualise the testimony, assess the credibility and the reliability of the evidence of various witnesses.<sup>39</sup> The Majority also considers the documents to have probative value and finds that they are sufficiently relevant and probative to outweigh any prejudice their admission would cause.<sup>40</sup> The Majority admits CAR-D04-0004-0030 and CAR-D04-0004-0032 for a limited purpose, “namely, to provide contextual information about the CAR 2002-2003 events and the armed groups involved therein”.<sup>41</sup> CAR-DEF-0001-0205 is also admitted for a limited purpose – to corroborate other pieces of evidence and to assess whether the conduct described in the charges was widely reported.<sup>42</sup> The Majority admits CAR-OTP-0069-0271 and CAR-OTP-0069-0272, finding that they may serve to assist the Chamber in better contextualising [REDACTED] testimony and for a limited purpose of assessing his credibility and the reliability of his testimony.<sup>43</sup> In light of my views on the admission of media articles, expressed in paragraph 16 above and in previous dissents, I object to CAR-D04-0004-0030, CAR-D04-0004-0032, CAR-DEF-0001-0205, CAR-OTP-0069-0271 and CAR-OTP-0069-0272’s admission for the above described purposes. Further, as the documents relate to crimes allegedly committed by General Bozizé’s troops, they are irrelevant to the Chamber’s determination of whether allegations of crimes committed by MLC soldiers in the CAR in 2002 and 2003 were widely reported during the relevant period at issue in this case.

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<sup>39</sup> Decision, paragraphs 105, 115, 122.

<sup>40</sup> Decision, paragraphs 105, 118, 122.

<sup>41</sup> Decision, paragraph 105.

<sup>42</sup> Decision, paragraph 118.

<sup>43</sup> Decision, paragraph 122.

*CAR-OTP-0071-0043, CAR-OTP-0071-0049, CAR-OTP-0071-0063, CAR-OTP-0071-0051, CAR-OTP-0069-0146, CAR-OTP-0069-0303, CAR-OTP-0030-0269, and CAR-D04-0002-2027*

20. The Majority admits *CAR-OTP-0071-0043*,<sup>44</sup> *CAR-OTP-0071-0049*,<sup>45</sup> *CAR-OTP-0071-0063*,<sup>46</sup> *CAR-OTP-0071-0051*,<sup>47</sup> *CAR-OTP-0069-0146*,<sup>48</sup> *CAR-OTP-0069-0303*,<sup>49</sup> *CAR-OTP-0030-0269*,<sup>50</sup> and *CAR-D04-0002-2027*<sup>51</sup> in the Decision. I disagree with the Majority's decision to admit these documents.

21. *CAR-OTP-0071-0043*, *CAR-OTP-0071-0049*, *CAR-OTP-0071-0063*, *CAR-OTP-0071-0051* were used during the questioning of Witness D04-21.<sup>52</sup> *CAR-OTP-0069-0146* was used during the questioning of Witness D04-65.<sup>53</sup> *CAR-OTP-0069-0303* was used during the questioning of Witness D04-49 and D04-21.<sup>54</sup> *CAR-OTP-0030-0269* and *CAR-D04-0002-2027* was used during the questioning of Witness D04-18.<sup>55</sup>

22. *CAR-OTP-0071-0043* is an article referring to an open letter apparently sent by Mr Bemba on 13 April 2011, in which he called upon the resistance, members of parliament and senators of the MLC to resist the attempts made by political opponents to weaken the MLC and its role serving the people of the Congo.<sup>56</sup> *CAR-OTP-0071-0049*, an article dated 13 August 2012, relates to a speech allegedly given by the Secretary General of the MLC, Thomas Luhaka, about the

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<sup>44</sup> Decision, paragraph 109.

<sup>45</sup> Decision, paragraph 109.

<sup>46</sup> Decision, paragraph 113.

<sup>47</sup> Decision, paragraph 113.

<sup>48</sup> Decision, paragraph 118.

<sup>49</sup> Decision, paragraph 124.

<sup>50</sup> Decision, paragraph 139.

<sup>51</sup> Decision, paragraph 141.

<sup>52</sup> See Decision, paragraph 106.

<sup>53</sup> See Decision, paragraph 116.

<sup>54</sup> See Decision, paragraph 123.

<sup>55</sup> See Decision, paragraph 137.

<sup>56</sup> See Decision, paragraph 107.

status of Mr Bemba's trial before the Court.<sup>57</sup> CAR-OTP-0071-0063, an article dated 12 May 2011, relates to the Mr Luhaka's visit to Brussels, where he organised an informational meeting dealing with Mr Bemba's situation, the situation of the MLC and the situation of the country.<sup>58</sup> CAR-OTP-0071-0051, an article dated 4 September 2012, appears to contain the transcription of an interview given to Radio Okapi by the Deputy Secretary General of the MLC, Jean-Lucien Busa, in which he commented on the presentation of evidence at the accused's trial, on behalf of the MLC, stating, *inter alia*, that Mr Bemba did not have control over his troops in the CAR.<sup>59</sup> CAR-OTP-0069-0146, an article dated 12 October 2011, relates to how Prosper N'Douba, Director of Publications of the website "*Centrafrique-Presse*," obtained information about the CAR and the Bozizé regime, which was published on the website.<sup>60</sup>

23. CAR-OTP-0069-0303 is a print of an online document published on a webpage which purports to be the official site of the MLC and appears to contain a message from Mr Bemba addressed to the people of the DRC.<sup>61</sup> CAR-OTP-0030-0269, an article dated 8 June 2001, reproduces an interview of Mr Bemba by *Radio France International* ("RFI") stating that he had sent his troops to Bangui to restore peace, security and stability, and to prevent the security situation from spilling over to Zongo.<sup>62</sup> CAR-D04-0002-2027, an article dated 13 June 2001, contains a chronology of events between 27 May 2001 and 8 June 2001, after the 2001 attempted coup in the CAR.<sup>63</sup>

24. Despite CAR-OTP-0071-0043, CAR-OTP-0071-0049, CAR-OTP-0071-0063, CAR-OTP-0071-0051, CAR-OTP-0069-0146, CAR-OTP-0069-0303 and CAR-D04-0002-

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<sup>57</sup> See Decision, paragraph 108.

<sup>58</sup> See Decision, paragraph 110.

<sup>59</sup> See Decision, paragraph 111.

<sup>60</sup> See Decision, paragraph 116.

<sup>61</sup> See Decision, paragraph 124.

<sup>62</sup> See Decision, paragraph 138.

<sup>63</sup> See Decision, paragraph 140.

2027 falling outside of the temporal scope of the charges, the Majority finds that they may be relevant to assist the Chamber to better contextualise the relevant witnesses' testimony and assess their credibility and the reliability of their evidence.<sup>64</sup> CAR-OTP-0030-0269 also falls outside of the temporal scope of the charges; the Majority finds that the document may be relevant to issues properly to be considered by the Chamber as it describes "the context in which the MLC troops intervened in the CAR in 2001 and Mr Bemba's capacity to repress potential abuses by the MLC troops".<sup>65</sup> In light of my views expressed above in paragraph 16 and in previous dissents, I object to the documents' admission for the above mentioned purposes. Further, as the documents fall outside of the temporal scope of the charges, they are irrelevant to the Chamber's determination that allegations of crimes committed by MLC soldiers were widely reported during the relevant period at issue in this case.

*CAR-D04-0002-1380, CAR-OTP-0005-0125, CAR-OTP-0005-0127, and CAR-OTP-0013-0098*

25. The Decision admits CAR-D04-0002-1380,<sup>66</sup> CAR-OTP-0005-0125,<sup>67</sup> CAR-OTP-0005-0127,<sup>68</sup> and CAR-OTP-0013-0098.<sup>69</sup> I disagree with the Majority's reasoning for admitting these documents.

26. CAR-D04-0002-1380 is an article used during the questioning of Witness 209, which relates to the recovery of the city of Damara by forces loyal to President Patassé, stating that they are composed by FACA elements, USP, and MLC forces.<sup>70</sup> CAR-OTP-0005-0125 and CAR-OTP-0005-0127 were used during the

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<sup>64</sup> Decision, paragraphs 108, 112, 116, 124, 140.

<sup>65</sup> Decision, paragraph 138.

<sup>66</sup> See Decision, paragraph 118.

<sup>67</sup> See Decision, paragraph 128.

<sup>68</sup> See Decision, paragraph 128.

<sup>69</sup> See Decision, paragraph 136.

<sup>70</sup> See Decision, paragraph 114.

testimony of Witness D04-45.<sup>71</sup> CAR-OTP-0005-0125, an online article from RFI, relates to, *inter alia*, combat between General Bozizé troops and loyalist forces, including possibly MLC forces.<sup>72</sup> CAR-OTP-0005-0127 is an article, also from RFI, relating to a counter-offensive launched by President Patassé and his allies – including Mr Bemba’s MLC soldiers – against General Bozizé.<sup>73</sup> CAR-OTP-0013-0098 is an article used during the questioning of Witness D04-02 and relates to allegations of looting, pillaging, murders, and rapes committed by Mr Bemba’s troops.<sup>74</sup>

27. The Majority purports to admit CAR-D04-0002-1380 and CAR-OTP-0013-0098 for a limited purpose – to corroborate other pieces of evidence and to assess whether “the conduct described in the charges was widely reported”.<sup>75</sup> Similarly, the Majority admits CAR-OTP-0005-0125 and CAR-OTP-0005-0127 to corroborate other pieces of evidence and to assess “whether the armed conflict under examination was widely reported.”<sup>76</sup> In light of my views on the admission of media articles, expressed in paragraph 16 above and in previous dissents, I object to the documents’ admission for these purposes. I do not object, however, to the documents’ admission for the Chamber’s determination of whether allegations of crimes committed by MLC troops in the CAR in 2002 and 2003 were widely reported.

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<sup>71</sup> See Decision, paragraph 125.

<sup>72</sup> See Decision, paragraph 126.

<sup>73</sup> See Decision, paragraph 126.

<sup>74</sup> See Decision, paragraph 133 to 134.

<sup>75</sup> Decision, paragraph 118.

<sup>76</sup> Decision, paragraph 128.

*CAR-OTP-0057-0243, CAR-OTP-0057-0353, CAR-OTP-0036-0041, CAR-OTP-0036-0039 and CAR-OTP-0056-0278*

28. The Decision admits CAR-OTP-0057-0243,<sup>77</sup> CAR-OTP-0057-0353,<sup>78</sup> CAR-OTP-0036-0041,<sup>79</sup> CAR-OTP-0036-0039<sup>80</sup> and CAR-OTP-0056-0278,<sup>81</sup> which are transcripts of audio broadcasts from RFI previously admitted in Decision 2299.<sup>82</sup> I disagree with the Majority's reasoning for admitting these documents.

29. The Majority admits the transcripts for the same purpose as it previously admitted the audio broadcasts, namely to corroborate other pieces of evidence and to assess the prosecution's allegations that the conduct described therein was widely broadcast.<sup>83</sup> Here, in the case of the transcripts, I reiterate the reasoning of my initial dissent to the audio broadcasts.<sup>84</sup> I do not consider the possibility of corroboration of other evidence sufficient to justify the admission of these transcripts of audio broadcasts. However, I do not object to the admission of these transcripts of media reports for the Chamber's assessment of whether allegations of crimes committed by MLC troops in the CAR in 2002 and 2003 were widely reported.

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<sup>77</sup> Decision, paragraph 130.

<sup>78</sup> Decision, paragraph 130.

<sup>79</sup> Decision, paragraph 130.

<sup>80</sup> Decision, paragraph 132.

<sup>81</sup> Decision, paragraph 132.

<sup>82</sup> See ICC-01/05-01/08-2299-Conf, paragraphs 123 to 124, and paragraphs 127 to 128. CAR-OTP-0057-0243, CAR-OTP-0057-0353, CAR-OTP-0036-004 were admitted as CAR-OTP-0031-0116, CAR-OTP-0031-0122, and CAR-OTP-0031-0099 respectively. CAR-OTP-0036-0039 and CAR-OTP-0056-0278 are the French and English transcripts of admitted document CAR-OTP-0031-0093.

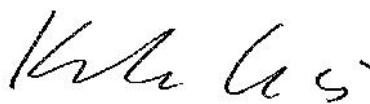
<sup>83</sup> Decision, paragraphs 130, 132.

<sup>84</sup> Partly Dissenting Opinion of Judge Ozaki to 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.

## V. Conclusion

30. For these reasons, I disagree with the decision to admit three AI reports, one CAR document, 12 media articles, and one public statement. I disagree with the Majority's reasoning for admitting Mr Bemba's book and nine media articles.

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



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**Judge Kuniko Ozaki**

Dated this 28 June 2016

At The Hague, the Netherlands