

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 08 October 2012

TRIAL CHAMBER III

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

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

Public Redacted Version of

**“Decision on the Prosecution’s Application for Admission of Materials into
Evidence Pursuant to Article 64(9) of the Rome Statute” of 6 September 2012**

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

The Office of the Prosecutor

Ms Fatou Bensouda

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Counsel for the Defence

Mr Aimé Kilolo-Musamba

Mr Peter Haynes

Legal Representatives of the Victims

Ms Marie-Edith Douzima Lawson

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

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Ms Silvana Arbia

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*, hereby issues the following Decision on the Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute (“Decision”).

I. Background and Submissions

1. On 28 February 2012, the Office of the Prosecutor (“prosecution”) filed its “Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute” (“prosecution’s Application”),¹ where it requests the admission into evidence of 85 documents and 12 audio/video recordings, 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”).²
2. On 19 March 2012, the defence of Mr Jean-Pierre Bemba Gombo (“defence”), filed its “Defence Response to the Prosecution’s Application for Admission of Evidence from the Bar Table” (“defence’s Response”),³ where it requests the Chamber to reject the admission into evidence of 67

¹ Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, 28 February 2012, ICC-01/05-01/08-2147, with two confidential Annexes ICC-01/05-01/08-2147-Conf-AnxA and ICC-01/05-01/08-2147-AnxB.

² ICC-01/05-01/08-2147, paragraph 1.

³ Defence Response to the Prosecution’s Application for Admission of Evidence from the Bar Table, 19 March 2012, ICC-01/05-01/08-2168, with two confidential Annexes ICC-01/05-01/08-2168-Conf-AnxA and ICC-01/05-01/08-2168-Conf-AnxB.

items and admit the remaining 30 items included in the prosecution's Application.⁴

3. On 22 March 2012, the prosecution filed its "Prosecution's Request for leave to reply to 'Defence Response to the Prosecution's Application for Admission of Evidence from the Bar Table'" ("prosecution's Request for Leave to Reply"),⁵ where, pursuant to Regulation 24(5) of the Regulations of the Court, it requested leave to reply to the defence's Response.
4. On 23 March 2012, the Chamber granted the prosecution's Request for Leave to Reply and ordered the prosecution to file its reply no later than 30 March 2012.⁶
5. On 30 March 2012, the prosecution filed its reply to the defence's Response.⁷
6. In accordance with Article 21(1) of the Statute, in making its determination, the Chamber has considered Articles 64, 64(9)(a), 67 and 69 of the Statute, Rules 63, 64 and 69 of the Rules and Regulation 23*bis*(3) of the Regulations of the Court.

⁴ ICC-01/05-01/08-2168, paragraph 50.

⁵ Prosecution's Request for leave to reply to "Defence Response to the Prosecution's Application for Admission of Evidence from the Bar Table", 22 March 2012, ICC-01/05-01/08-2171.

⁶ Decision on the "Prosecution's request for leave to reply to 'Defence Response to the Prosecution's Application for Admission of Evidence from the Bar Table'", 23 March 2012, ICC-01/05-01/08-2173.

⁷ Prosecution's Reply to "Defence Response to the Prosecution's Application for Admission of Evidence from the Bar Table", 30 March 2012, ICC-01/05-01/08-2184 with Public Annex A.

II. Submissions and Analysis

A. Previous findings of the Chamber and the Chamber's general approach to the admission of documents

7. The Chamber recalls that it 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.⁸
8. In applying the admissibility test, the Chamber will examine each of the three requirements above as follows:

Relevance. The first question is whether a submitted item is relevant in the sense that it “relates to the matters that are properly to be considered by the Chamber in its investigation of the charges against the accused.” To pass the relevance test, an item must be logically connected to one or more facts at issue, in the sense that the item must have the capacity to make a fact at issue more or less probable than it would be without the item. Put differently, an item will be relevant only if it has the potential to influence the Chamber’s determination on at least one fact that needs to be determined to resolve the case. The relevance of an item may be assessed in isolation or in relation to other items of evidence in the case.

Probative value. Under the second part of the admissibility test, the Chamber must consider, on a preliminary basis, whether the item in question has probative value. This will always be a fact-specific inquiry and may take into account innumerable factors, including the indicia of reliability, trustworthiness, accuracy or voluntariness that inhere in the item of potential evidence, as well as the circumstances in which the evidence arose. It may also take into account the extent to which the item has been authenticated. While it is not necessary that each item of evidence be authenticated via witness testimony, the Chamber needs to be satisfied that the item is what it purports to be, either because this is evident on its face or because other admissible evidence demonstrates the item’s provenance.

Prejudice. Under the third part of the admissibility test, the Chamber must, where applicable, weigh the probative value of the item in question against the prejudicial

⁸ First decision on the prosecution and defence requests for the admission of evidence, 15 December 2011, ICC-01/05-01/08-2012-Red, paragraph 13.

effect that its admission as evidence “may cause to a fair trial or to a fair evaluation of the testimony of a witness”. While this inquiry extends to prejudice to the proceedings as a whole, one important component is the extent to which an item’s admission would unfairly prejudice the parties in the presentation of their cases. This will always be a fact-sensitive inquiry and the Chamber may consider such factors as whether an item’s admission would encroach on the accused’s rights under Article 67(1) of the Statute or potentially delay proceedings because it is unnecessary or cumulative of other evidence. If potential prejudice is identified, this will not necessarily preclude the item’s admission. The item will be excluded only if its relevance and probative value are insufficient to justify its admission in light of its potentially prejudicial effect. [footnotes omitted]⁹

9. In line with this approach, the Chamber stresses that there is no strict requirement that every document be authenticated officially or by a witness in court. 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.
10. The Chamber recalls that it has determined that when a challenge has been made to an item’s admissibility, the burden rests on the party seeking the item’s admission to demonstrate its admissibility. However, when the admissibility of an item is uncontested, the Chamber may

⁹ ICC-01/05-01/08-2012-Red, paragraphs 14-16.

equally exclude the item if one or more of the requirements of the three-pronged test are clearly not met.¹⁰

11. The Chamber underlines that the admissibility inquiry has no bearing on the Chamber's final determination of the weight that it will give to any particular item of evidence.¹¹ Indeed, the admissibility determination does not – in any way – predetermine the Chamber's final assessment of the evidence or the weight to be afforded to it;¹² this will only be determined by the Chamber at the end of the case when assessing the entirety of the evidence admitted for the purpose of the trial.
12. The Chamber further underlines that, as part of the relevance test, it will analyse whether the information contained in each item of evidence falls within the material, geographical and temporal scope of the charges. This assessment is necessary since, as previously stressed, each item must be logically connected to one or more facts at issue (the charges) and possess the capacity to make any of those facts more or less probable than they would be without it.
13. With regard to materials related to events that occurred during the year 2001 – the *coup d'État* against the government of President Patassé in the CAR and the related Mouvement de Libération du Congo ("MLC") intervention in the CAR – or the 2002 Mambasa attack, the Chamber decides that their admissibility will be dealt with separately. Therefore, in the present Decision the Chamber will not assess or rule on the relevance,

¹⁰ ICC-01/05-01/08-2012-Red, paragraph 17. See also, Order on the procedure relating to the submission of evidence, 31 May 2011, ICC-01/05-01/08-1470, paragraph 7(c).

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

¹² ICC-01/05-01/08-2012-Red, paragraph 18.

probative value or potential prejudice of any of the documents related to those events. The documents concerned include:

- (i) The United Nations (“UN”) Report of the Special Investigation Team on the events in Mambasa from 31 December 2002 to 20 January 2003, contained in document **DRC-OTP-0100-0314** (at ERN pages DRC-OTP-0100-0315 to DRC-OTP-0100-0348);
- (ii) Document **CAR-OTP-0029-0499**, a paper allegedly authored by Paul Melly, an alleged independent researcher from the UK, entitled “Central African Republic – Uncertain Prospects”, which, the prosecution alleges, provides an overview of the allegations of crimes committed by MLC troops in Bangui in May 2001;¹³
- (iii) Document **CAR-OTP-0011-0422**, the *Fédération Internationale des Droits de l’Homme* (“FIDH”) Report number 324 from February 2002, entitled « *Droits de l’Homme en République Centrafricaine “Discours et réalité : un fossé béant”* » ;
- (iv) Document **CAR-OTP-0004-0577**, the Amnesty International (“AI”) Report Index AFR 19/001/2002 entitled “Central African Republic: Refugees flee amid ethnic discrimination as perpetrators go unpunished”, which, the prosecution submits, discusses crimes of rape and other forms of sexual violence perpetrated by MLC troops in Bangui during May 2001;¹⁴

¹³ ICC-01/05-01/08-2147-Conf-AnxA, page 2.

¹⁴ ICC-01/05-01/08-2147-Conf-AnxA, page 3.

- (v) Document **CAR-OTP-0008-0409**, which is apparently the copy of a result of a keyword search made through NewsBank InfoWeb. The document includes news articles apparently published by the BBC on 10 July 2001, citing as the original source of information RFI; and
- (vi) Document **CAR-OTP-0017-0366**, which is an MLC Report, dated 26 February 2003 and entitled « *Rapport sur le déroulement du procès des militaires de l'Armée de Libération du Congo, ALC, impliqués dans les violations des droits de l'homme dans l'Ituri* ».

14. The Chamber notes that in several instances the parties disagree as to the facts to be proven by the items tendered into evidence. The Chamber emphasizes that a determination on the usage the Chamber will make of a specific item of evidence cannot be made, *a priori*, in a decision on the admissibility of evidence. At this stage, the Chamber may only note the existence of the dispute between the parties and decide on the admissibility of each item. Unless the Chamber specifically states that an item is admitted for a limited purpose, once an item has been admitted into evidence, the Chamber, pursuant to Rule 63(2) of the Rules, is free to analyse it in full and within the context of the evidence as a whole.

B. Determination on the admissibility of evidence

15. For the sake of clarity, the Chamber follows the prosecution's submission which divides the evidence into 7 different categories of materials.

1. UN Reports

16. The prosecution requests the admission of four documents identified as UN Reports. The prosecution submits that the four reports collectively provide information on the background of the armed conflict in the CAR in 2002-2003, the identities of the armed groups involved as well as information on the victimisation of CAR civilians during the conflict.¹⁵ Further, the prosecution argues that the reports identify the MLC as the armed group that was deployed extensively to different areas in the CAR and attribute responsibility for rapes, killings and pillaging of civilians' property in different areas of the country to the MLC.¹⁶ The defence objects to the admission of all four documents on the basis that they fail to meet the requirements for admission, since none of them identify the author(s) or sources of information in sufficient detail.¹⁷ The prosecution replies that the documents provide other indicia sufficient for the Chamber to find them reliable.¹⁸ The prosecution also states that it has demonstrated that the tendered documents are what they purport to be and that the defence has not adduced any evidence to the contrary.¹⁹

17. The Chamber notes that among the four documents described by the prosecution as "UN Reports", only one document, DRC-OTP-0100-0314, can be properly characterised as a UN Report. The remaining documents are: (i) apparently copies of online documents allegedly emanating from a UN body (documents CAR-OTP-0004-0645 and CAR-OTP-0004-0654); and

¹⁵ ICC-01/05-01/08-2147, paragraph 7.

¹⁶ Ibid.

¹⁷ ICC-01/05-01/08-2168, paragraphs 19-23.

¹⁸ ICC-01/05-01/08-2184, paragraphs 17-18.

¹⁹ ICC-01/05-01/08-2184, paragraph 19.

(ii) an academic article allegedly authored by an independent researcher and published by the United Nations High Commissioner for Refugees (“UNHCR”) (document CAR-OTP-0029-0499). As indicated in paragraph 13 above, this article will be dealt with in a separate decision. The Chamber will analyse the documents in the order mentioned above.

18. Document **DRC-OTP-0100-0314** is a copy of United Nations Security Council (“UNSC”) document S/2003/674, which is a letter dated 2 July 2003 from the Secretary-General addressed to the President of the Security Council transmitting two reports, one from the United Nations Organization Mission in the DRC and one from the UNHCR regarding the events that occurred in the DRC in December 2002, in Mambasa in January 2003 and in Drodro on 3 April 2003. The prosecution claims that the document has probative value because it provides an overview of the allegations of crimes committed by MLC troops in Mambasa from October 2002 to December 2002.²⁰ The defence objects to the admission of the document on the basis that it is not relevant to the crimes charged in the Revised Second Amended DCC, and that its author and sources are not revealed with sufficient detail.²¹

19. The Chamber observes that document DRC-OTP-0100-0314 contains not one but two UN Reports regarding events that occurred in the DRC: (i) a Report of the Special Investigation Team on the events in Mambasa from 31 December 2002 to 20 January 2003, at ERN pages DRC-OTP-0100-0315

²⁰ ICC-01/05-01/08-2147-Conf-AnxA, page 2.

²¹ ICC-01/05-01/08-2168-Conf-AnxA, page 1.

to DRC-OTP-0100-0348 (“First Report”),²² and (ii) a Report of the United Nations High Commissioner for Human Rights on the events of 3 April 2003 in Drodro, ERN pages DRC-OTP-0100-0349 to DRC-OTP-0100-0356 (“Second Report”).²³ As indicated in paragraph 13 above, the First Report will be dealt with in a separate decision.

20. In the view of the Chamber, the Second Report contained in document DRC-OTP-0100-0314 is irrelevant to the charges against the accused as it relates to events that fall outside the material, temporal and geographical scope of the charges. The Chamber therefore rejects the admission of the Second Report contained in document DRC-OTP-0110-0314, or ERN pages DRC-OTP-0100-0349 to DRC-OTP-0100-0356.

21. Document **CAR-OTP-0004-0645** is entitled “Humanitarian Update: Central African Republic 07 Mar 2003”. The prosecution alleges that the source of the document is the United Nations Resident Coordinator (“UN RC”). The prosecution argues that the document is relevant and probative in that it, *inter alia*, provides an overview of the political situation, military activities, food, health and education situation in the CAR during the period of the armed conflict between 2002 and 2003. In addition, it reports on crimes committed by MLC troops against the civilian population in the CAR in areas where they were deployed.²⁴

²² Pages DRC-OTP-0100-0315 (DRC-00100-315) to DRC-OTP-0100-0348 (DRC-00100-348)

²³ Pages ERN numbers DRC-OTP-0100-0349 (DRC-00100-349) to DRC-OTP-0100-0356 (DRC-00100-356).

²⁴ ICC-01/05-01/08-2147-Conf-AnxA, page 2.

22. Document **CAR-OTP-0004-0654** is apparently a copy of an online document entitled “Central African Republic Weekly Humanitarian Update – 17 Dec 02”, the source of which is allegedly the UN RC. The prosecution argues that the document is relevant to and probative of, *inter alia*, rape and pillage committed by MLC troops.²⁵
23. The defence objects to the admission of both documents on the basis that the author(s)’ identit(ies) and sources are not revealed.²⁶
24. Documents CAR-OTP-0004-0645 and CAR-OTP-0004-0654 are both in principle relevant to the case. Document CAR-OTP-0004-0645 provides information on the background of the armed conflict in the CAR during the time period relevant to the charges and document CAR-OTP-0004-0654 contains information related to the role of the MLC in the CAR and the alleged crimes of pillaging and rape committed during the time period relevant to the charges. As for the probative value of these two documents, although the prosecution submits that they are UN Reports, the documents bear no extrinsic indicia – such as a logo, letterhead or seal – that identify them as official UN documents, nor are they publicly available from official UN sources. The headers of both documents mention the UN RC as the documents’ source, but there are no further indicia demonstrating that the documents actually emanate from it. Further, the prosecution has not provided verifiable information on where the items can be obtained²⁷ nor has it demonstrated that the documents

²⁵ ICC-01/05-01/08-2147-Conf-AnxA, page 2.

²⁶ ICC-01/05-01/08-2168-Conf-AnxA, page 1.

²⁷ ICC-01/05-01/08-2184, paragraph 17.

are what they purport to be.²⁸ In view of the foregoing, although the documents may be relevant to the charges, the Chamber is of the view that, since their authenticity and reliability have not been sufficiently established by the tendering party, the probative value of the documents is outweighed by their potentially prejudicial effect on a fair trial. Therefore, the documents are not admitted into evidence.

2. NGO Reports

25. The prosecution requests the admission of six Non Governmental Organizations' ("NGOs") Reports.²⁹ Four of these reports were prepared by the FIDH and two by AI. As indicated in paragraph 13 above, one FIDH Report and one AI Report will be dealt with in a separate decision.

26. The prosecution argues that the remaining FIDH Reports reflect interviews of victims, eye-witnesses as well as other persons present in the CAR during the armed conflict in 2002-2003, and that they provide information on the background of the conflict, the various armed groups involved, the leadership of these groups and the crimes of rape, pillaging and murder committed against CAR civilians in different parts of the country.³⁰ The prosecution alleges that the AI Reports also relate to the CAR conflict in 2002-2003 and provide information about widespread rapes, pillaging and murders committed against the CAR civilian population in areas of the country where MLC troops were deployed.³¹

²⁸ ICC-01/05-01/08-2184, paragraph 19.

²⁹ The prosecution requests the admission of seven documents, however, two of these are the English and French translations of the same FIDH report; therefore there are only six reports.

³⁰ ICC-01/05-01/08-2147, paragraph 9.

³¹ ICC-01/05-01/08-2147, paragraph 8.

27. The defence objects to the admission of all six reports on the basis that they would undermine the fact-finding role of the Chamber,³² since they represent “un-tested and often-times anonymous allegations of crimes which neither the Chamber nor the Defence have had the opportunity to examine”.³³ The defence further objects to the items’ admission on the basis that the prosecution has failed to identify either the author(s) and/or the sources of information of the reports.³⁴

28. The prosecution replies that the documents provide sufficient indicia of authenticity.³⁵

FIDH Reports

29. The FIDH Reports are documents: (i) **CAR-OTP-0001-0034**, which is FIDH Report number 355 from February 2003, entitled « *Crimes de guerre en République Centrafricaine “Quand les éléphants se battent, c’est l’herbe qui souffre”* » (“First FIDH Report”); (ii) **CAR-OTP-0004-0409** and **CAR-OTP-0004-0881**, which are respectively the English and French versions of the same FIDH Report number 457 from October 2006, entitled « *République centrafricaine “Oubliées, stigmatisées : la double peine des victimes de crimes internationaux”* » (“Second FIDH Report”); and (iii) **CAR-OTP-0004-1096**, which is FIDH Report number 382 from February 2004, entitled « *République centrafricaine “Quelle justice pour les victimes de crimes de guerre ?”* » (“Third FIDH Report”), (collectively “FIDH Reports”).

³² ICC-01/05-01/08-2168, paragraphs 24.

³³ ICC-01/05-01/08-2168, paragraph 24.

³⁴ ICC-01/05-01/08-2168, paragraph 29.

³⁵ ICC-01/05-01/08-2184, paragraph 20.

30. The prosecution alleges that the FIDH Reports are relevant to and probative of, *inter alia*, rape, pillage and murder committed by MLC troops and the accused's awareness of the MLC troops' capacity to commit crimes.³⁶ The prosecution asserts that the reports are the result of diverse missions conducted by the FIDH in Bangui from 25 November 2002 to 1 December 2002, from 16 to 23 November 2003, and between 10 and 17 June 2006. The prosecution submits that the FIDH Reports, *inter alia*, give an account of the crimes committed by MLC troops against CAR civilians at the time; evaluate the situation of the CAR victims one year after the cessation of the 2002–2003 military activities in the CAR; and enquire about judicial proceedings related to perpetrators of the most serious crimes committed against the CAR population during October 2002 – March 2003.³⁷

31. The defence objects to the admission of the FIDH Reports, on the basis that the author's identity is not revealed or because there is not sufficient information on the methodology used to compile and analyse the information contained therein. Further, the defence submits that neither the impartiality of the FIDH Reports nor of the FIDH itself can be verified.³⁸ More generally, the defence alleges that the list of persons interviewed to produce one of the reports shows that only people from a very selective and limited group gave information. Finally, the defence asserts that the FIDH Reports are replete with allegations and purported facts, none of which are footnoted, and that there are no references to the

³⁶ ICC-01/05-01/08-2147-Conf-AnxA, pages 2 and 3.

³⁷ Ibid.

³⁸ ICC-01/05-01/08-2168-Conf-AnxA, page 2.

report's sources of information such as to indicate whether the information contained therein is hearsay or double or triple hearsay.³⁹

32. The Chamber notes that the First FIDH Report appears to be the result of an investigative mission carried out by FIDH lawyers in Bangui between 25 November and 1 December 2002.⁴⁰ It describes events developing in the CAR since the attempted *coup* by General Bozizé against President Patassé on 25 October 2002.⁴¹ As such, the Chamber is satisfied that the First FIDH Report relates to matters that are properly to be considered by the Chamber, and is therefore relevant.

33. The Second FIDH Report discusses recurring cycles of conflict in the CAR and particularly the impunity of perpetrators of the most serious crimes against the civilian population. The report critically analyses and summarises the results of previous fact-finding missions of the FIDH, in which information on the crimes committed against the civilian population during the armed conflict in the CAR from October 2002 to March 2003 was collected. As such, the Chamber is satisfied that the Second FIDH Report relates to matters that are properly to be considered by the Chamber, and is therefore relevant.

34. The Third FIDH Report appears to be the result of an investigative mission carried out by the FIDH in Bangui between 16 and 23 November 2003.⁴² The report analyses the situation of the victims, the transitional

³⁹ Ibid.

⁴⁰ CAR-OTP-0001-0034, at 0038.

⁴¹ Ibid.

⁴² CAR-OTP-0004-1096, at 1100.

process and the regime of fundamental freedoms, one year after the beginning of the military operations that lead to the departure of former President Patassé.⁴³ As such, the Chamber is satisfied that the Third FIDH Report relates to matters that are properly to be considered by the Chamber, and is therefore relevant.

35. In terms of its probative value, the Majority is satisfied that the FIDH Reports offer sufficient indicia of authenticity and reliability to warrant their admission into evidence. The documents are Reports publicly available from official FIDH sources. Further, the Majority is not convinced by the argument of the defence concerning the reports' lack of impartiality. In the view of the Majority, official Reports emanating from NGOs can be considered *prima facie* reliable, provided that they offer sufficient guarantees of impartiality.⁴⁴ In relation to the FIDH Reports, the Majority is satisfied that they contain sufficient details of their sources of information and methodology.⁴⁵

36. Finally, the Majority is not persuaded by the defence's argument that the admission of the FIDH Reports will undermine the fact-finding role of the Chamber since, as stated above, the Chamber's determination of admissibility does not predetermine the Chamber's final assessment of the evidence or the weight to be afforded to it. That notwithstanding, the Majority of the Chamber will admit them for the limited purpose that the information contained therein may serve to corroborate other pieces of

⁴³ Ibid.

⁴⁴ Decision on the Prosecutor's Bar Table Motions, 17 December 2010, ICC-01/04-01/07-2635, paragraph 30.

⁴⁵ CAR-OTP-0001-0034, at 0039 and 0070; CAR-OTP-0004-0409, at 0416; CAR-OTP-0004-1096, at 1127.

evidence. In light of the envisioned limited usage of the information contained in these documents, the Majority is of the view that there is no reason to believe that their admission will have a prejudicial effect on a fair trial.

37. In view of the foregoing, the Majority admits into evidence documents: CAR-OTP-0001-0034, the First FIDH Report; documents CAR-OTP-0004-0409 and CAR-OTP-0004-0881, the English and French versions of the Second FIDH Report; and document CAR-OTP-0004-1096, the Third FIDH Report.

AI Report

38. The remaining AI Report is document **CAR-OTP-0011-0503**, which is AI Report Index AFR 19/001/2004, dated 10 November 2004, entitled “Central African Republic: Five months of war against women” (“AI Report”).

39. The prosecution alleges that the AI Report is relevant to and probative of, *inter alia*, rape, pillage and murder committed by MLC troops, since it discusses crimes of rapes and other forms of sexual violence committed by MLC troops against CAR civilian women and the physical and psychological trauma suffered by victims of sexual violence during the time period relevant to the charges.⁴⁶ The defence objects to the admission of the document on the basis that the author’s identity is not revealed and the report relies on “anonymous” sources, whose “evidence” cannot be verified or tested.⁴⁷

⁴⁶ ICC-01/05-01/08-2147-Conf-AnxA, page 3.

⁴⁷ ICC-01/05-01/08-2168-Conf-AnxA, page 3.

40. The Chamber observes that the AI Report appears to be the result of research conducted by AI researchers over a period of one year, within and outside the territory of the CAR, with analysis of interviews collected in Bangui during September 2003. The report discusses allegations of rape and sexual violence allegedly committed against women between October 2002 and March 2003 in Bangui. The report also discusses the involvement of MLC troops in the alleged commission of widespread and systematic rapes against women during the armed conflict in CAR from late 2002 to early 2003. The Chamber is satisfied that the AI Report relates to matters that are properly to be considered by the Chamber, and is therefore relevant.

41. In terms of its probative value, the Majority is satisfied that the AI Report contains sufficient details of its sources of information and methodology and therefore bears sufficient indicia of reliability to warrant its admission into evidence. Further, the Majority is satisfied that there exist sufficient indicia of the authenticity of the AI Report, since it is publicly available from official AI sources. The Majority is again not persuaded by the defence's argument that the document's admission will undermine the fact-finding role of the Chamber since the Chamber's determination of admissibility of a document does not predetermine the Chamber's final assessment of the evidence or the weight to be afforded to it. That notwithstanding, the Majority of the Chamber will admit it for the limited purpose that the information contained therein may serve to corroborate other pieces of evidence. In light of the envisioned limited usage of the information contained in the AI Report, the Majority is of the view that

there is no reason to believe that its admission will have a prejudicial effect on a fair trial.

42. In view of the foregoing, the Majority of the Chamber admits into evidence the AI Report, document CAR-OTP-0011-0503.

3. Documents belonging to the accused

43. The prosecution requests the admission of seven documents belonging to the accused. The documents are dated between November 2002 and February 2003. The prosecution argues that the accused “signed and/or presumably authored three of these documents”.⁴⁸ The defence does not oppose the admission of these documents for the truth of their contents; however, it disputes the legal basis offered for their admission by the prosecution.⁴⁹ As indicated in paragraph 13 above, one of the documents (CAR-OTP-0017-0366), will be dealt with in a separate decision.

44. Document **CAR-OTP-0017-0349** is entitled « Statistique de criminalité légale pendant la période du 2001 a 2003 ». Document **CAR-OTP-0017-0351** is entitled « Statistique de criminalité légale statuée par la cour martiale ». The prosecution alleges that these two documents emanate from the MLC and provide information on the arrest and trial of MLC soldiers for crimes allegedly committed in the DRC as well as in the CAR conflict in 2002-2003.⁵⁰ The prosecution contends that they are relevant to and probative of, *inter alia*, the accused’s material ability to punish

⁴⁸ ICC-01/05-01/08-2147, paragraph 11.

⁴⁹ ICC-01/05-01/08-2168, paragraph 32.

⁵⁰ ICC-01/05-01/08-2147, paragraph 12.

crimes.⁵¹ The defence alleges that the documents are (i) relevant to and probative of the fact that the MLC was a disciplined force and that there was no basis to suspect that MLC troops dispatched to the CAR would commit crimes; and (ii) relevant to the credibility of prosecution witnesses who testified that Mr Bemba took no measures to punish those responsible during the relevant events.⁵²

45. The Chamber notes that documents CAR-OTP-0017-0349 and CAR-OTP-0017-0351 both contain a table with seven columns headed: (i) serial number, (ii) date of arrest, (iii) name of the accused; (iv) grade and function; (v) cause; (vi) unity of origin; and (vii) punishment. The first has 32 entries ranging in time from 2 July 2001 to 4 February 2003 and the second includes 50 entries from 15 June 2001 to 6 January 2003. In particular, entries 24 to 32 of the first document and entries 8 to 50 of the second document mention arrests allegedly made between November 2002 and February 2003. As such, the documents seem to illustrate the alleged commission of crimes by MLC troops and the alleged punishment of those crimes within the MLC, during the time period relevant to the charges. The Chamber is satisfied that the documents relate to matters that are properly to be considered by the Chamber, *i.e.* how and to what extent crimes committed by MLC soldiers were prosecuted and punished within the MLC at the time of the events. The documents are therefore relevant. The Chamber notes that the parties disagree on the issues in relation to which the documents may be relevant in the Chamber's final determination. As set out above, the Chamber notes the dispute between

⁵¹ ICC-01/05-01/08-2147-Conf-AnxA, pages 3-4.

⁵² ICC-01/05-01/08-2168-Conf-AnxA, page 3.

the parties and stresses that all materials admitted into evidence will be analysed in full within the context of the evidence as a whole at the time of the Chamber's final determination. In this final determination, items of evidence may be relied upon whenever the Chamber believes they may be connected to one or more facts at issue in this case.

46. Document **CAR-OTP-0017-0355** is entitled « Décret No. 035/PRES/MLC/11/02 du Novembre 2002 portant organisation des juridictions de l'Armée de Libération du Congo ». The prosecution alleges that the document is a decree issued by the accused regarding the re-organisation of military justice under the administration of the MLC.⁵³ It alleges that the document is relevant to and probative of the accused's alleged material ability to discipline and punish MLC soldiers, thus establishing his *de jure* and *de facto* control over the MLC.⁵⁴ The defence alleges that the document is (i) relevant to and probative of the fact that the MLC was a disciplined force and that there was no basis to suspect that MLC troops dispatched to the CAR would commit crimes; and (ii) relevant to the credibility of prosecution witnesses who testified that Mr Bemba took no measures to punish the crimes allegedly committed during the relevant events.⁵⁵

47. The Chamber observes that document CAR-OTP-0017-0355 appears to be a decree of the MLC issued and signed by the accused on 16 November 2002. This document allegedly establishes, within the territories administrated by the MLC, a Superior War Counsel and a Garrison War

⁵³ ICC-01/05-01/08-2147, paragraph 11.

⁵⁴ ICC-01/05-01/08-2147-Conf-AnxA, page 4.

⁵⁵ ICC-01/05-01/08-2168-Conf-AnxA, page 3.

Counsel. As such, the Chamber is satisfied that the document relates to matters that are properly to be considered by the Chamber, *i.e.* the system of military justice in place within the MLC during the time period relevant to the charges, and is therefore relevant.

48. Document **CAR-OTP-0017-0363** is a letter of 4 January 2003, apparently signed by the accused and addressed to General Lamine Cissé, Special Representative to the UN Secretary-General in the CAR (“Mr Bemba’s letter”). The prosecution alleges that in the letter Mr Bemba acknowledged having been informed of alleged human rights violations by MLC troops in the CAR and accordingly sought the UN’s assistance in investigating MLC soldiers in the CAR.⁵⁶ Document **CAR-OTP-0033-0209** is a letter of 27 January 2003, signed by General Lamine Cissé and addressed to Mr Jean-Pierre Bemba (“General Cissé’s letter”). The prosecution alleges that both documents are relevant to and probative of the accused’s knowledge of crimes and his position, authority and control within the MLC hierarchy.⁵⁷ The defence alleges that the first document has already been tendered into evidence during the testimony of a witness with no objection from the parties, and as such the prosecution’s submission is unduly repetitive.⁵⁸ Nevertheless, the defence submits that the documents are relevant to and probative of, respectively, the fact that measures taken by the accused were proportionate to the information available to him at the time, and that Mr Bemba was furnished with no better or further information about alleged crimes within the relevant period.⁵⁹

⁵⁶ ICC-01/05-01/08-2147, paragraph 11.

⁵⁷ ICC-01/05-01/08-2147-Conf-AnxA, page 4.

⁵⁸ ICC-01/05-01/08-2168-Conf-AnxA, page 3.

⁵⁹ ICC-01/05-01/08-2168-Conf-AnxA, pages 3 and 4..

49. At the outset, the Chamber notes that according to the record of the case, Mr Bemba's letter has neither been submitted nor admitted into evidence in the trial so far, as contended by the defence, at least not under the ERN number CAR-OTP-0017-0363. The Chamber observes that in Mr Bemba's letter there is an explanation as to why the MLC intervened in the CAR and some comments on certain allegations of human rights violations by MLC soldiers. It is further stated in the letter that the accused ordered the provisional arrest in Bangui of eight soldiers who had acted contrary to the instructions given to the troops before departing. Mr Bemba's letter closes with a request for assistance with the investigations to be conducted among the population concerned, their religious communities and "other credible NGOs", in order to bring to light what really happened in the field. General Cissé's letter contains the acknowledgment of receipt of the previous letter and attaches Mr Bemba's letter, the MLC decree number 035 (Same document as CAR-OTP-0017-0355 referred to in paragraphs 46 and 47 of this Decision) and a Report of the Martial Court in Gbadolite, dated 12 December 2002, detailing the results of the proceedings of the Martial Court with names, personal information, alleged crimes, sentence and term given to each of the prosecuted individuals. As such, the Chamber is satisfied that both documents relate to matters that are properly to be considered by the Chamber.

50. Document **DRC-OTP-0098-0003** is apparently a letter of 27 February 2003, signed by Mr Jean-Pierre Bemba and addressed to the former UN Secretary-General, Mr Kofi Anan, informing him of the steps taken by the MLC to investigate and prosecute MLC soldiers allegedly involved in the

commission of crimes against civilians in Mambasa and Ituri in the DRC.⁶⁰ The prosecution alleges that the document was produced within the time period relevant to the charges and that it is relevant to and probative of the accused's authority and control over the MLC.⁶¹ The defence alleges that the document is relevant and probative because it demonstrates the MLC's cooperation with the United Nations and the transparency with which the MLC operated.⁶²

51. The Chamber notes that in document DRC-OTP-0098-0003, Mr Bemba gives a report to the UN Secretary-General of the results of the Council of War held in Gbadolite from 18 to 25 February 2003 to deal with crimes allegedly committed by MLC troops in the Ituri region of the DRC. As such, although referring to events which occurred outside the geographical scope of the charges, the document contains information on the way in which the MLC leadership responded to allegations of abuses allegedly committed by MLC troops during the time period relevant to the charges. It therefore relates to matters that are properly to be considered by the Chamber, and will enable the Chamber to contextualise other pieces of evidence presented on the responsibility of the accused. The report is therefore relevant to the Chamber's determination of the case.

52. In terms of probative value, the Chamber notes that the defence does not dispute the authenticity of any of the six documents referred to in the paragraphs above. Further, all the documents bear indicia of reliability such as letterheads, dates, signatures and stamps, and appear to have been

⁶⁰ ICC-01/05-01/08-2147, paragraph 11.

⁶¹ ICC-01/05-01/08-2147-Conf-AnxA, page 4.

⁶² ICC-01/05-01/08-2168-Conf-AnxA, page 4.

produced in the ordinary course of operations within the MLC or the UN. The defence does not contend that the admission of the documents may be prejudicial. Further, the Chamber is of the view that there is no reason to believe that their admission will have a prejudicial effect on a fair trial. Documents CAR-OTP-0017-0349, CAR-OTP-0017-0351, CAR-OTP-0017-0355, CAR-OTP-0017-0363, CAR-OTP-0033-0209 and DRC-OTP-0098-0003 are therefore admitted.

4. Documents disclosed by the defence

53. The prosecution requests the admission of twenty-one documents and two videos previously disclosed by the defence. The prosecution argues that the materials are all relevant to and probative of issues related to the mode of liability or the organisation and structure of the MLC and its military judicial system.⁶³ The defence does not oppose the admission of the materials for the truth of their content but disputes the legal basis offered by the prosecution for their admission.⁶⁴

MLC Correspondence

54. Document **CAR-DEF-0001-0152** is a letter dated 20 February 2003, allegedly signed by Mr Bemba and addressed to Mr Kaba, President of the FIDH. Document **CAR-DEF-0001-0154** is a letter dated 26 February 2003, allegedly signed by Mr Kaba and addressed to Mr Bemba. The prosecution alleges that the letters are relevant to and probative of the accused's knowledge of crimes committed by MLC troops and his

⁶³ ICC-01/05-01/08-2147, paragraph 13.

⁶⁴ ICC-01/05-01/08-2168, paragraph 33.

authority and control over the MLC.⁶⁵ The defence submits that the first letter has already been tendered into evidence during the testimony of a witness without objection from the parties, and as such the prosecution submission is unduly repetitive.⁶⁶ Nevertheless, the defence argues that the first letter is (i) relevant to and probative of the fact that Mr Bemba took appropriate measures proportionate to the state of his knowledge, and also took active steps to try to obtain further information; and (ii) relevant to the credibility of prosecution witnesses who testified that Mr Bemba took no measures to punish those responsible during the relevant events.⁶⁷ The defence further submits that the second letter is relevant to and probative in establishing that Mr Bemba was furnished with no further or better information regarding alleged crimes in the CAR, and is also demonstrative of a lack of cooperation on the part of the FIDH with the MLC.⁶⁸

55. At the outset, the Chamber notes that the defence correctly points out that document CAR-DEF-0001-0152 has already been tendered into evidence by the defence – during the testimony of a Witness 15, on 13 February 2012.⁶⁹ However, the document has not yet been admitted into evidence in the case, and taking into account the Chamber’s decision of 26 March 2012,⁷⁰ the prosecution’s submission at this stage does not appear unduly repetitive.

⁶⁵ ICC-01/05-01/08-2147-Conf-AnxA, pages 4 and 6.

⁶⁶ ICC-01/05-01/08-2168-Conf-AnxA, page 4.

⁶⁷ Ibid.

⁶⁸ ICC-01/05-01/08-2168-Conf-AnxA, page 6.

⁶⁹ ICC-01/05-01/08-T-211-ENG ET, page 45, line 20.

⁷⁰ Order on the procedure for the submission as evidence of material used during questioning of witnesses, 26 March 2012, ICC-01/05-01/08-2177.

56. The Chamber observes that documents CAR-DEF-0001-0152 and CAR-DEF-0001-0154 provide information on an alleged exchange of correspondence between Mr Bemba and Sidiki Kaba, the President of the FIDH. In his letter, Mr Bemba refers to a previous telephone conversation with Mr Kaba in which allegations of human rights violations in the CAR by the ALC soldiers appear to have been discussed. Mr Bemba further describes the actions taken by the MLC's leadership and himself, to assess the veracity of the allegations and to punish those responsible for the crime of pillaging, including their prosecution and trial before a military court. Finally, Mr Bemba complains about the FIDH not contacting the MLC in order to obtain information on the alleged abuses. In his response, Mr Kaba stressed that Mr Bemba had diligently initiated proceedings for the investigation of human rights violations by the ALC in the CAR, but expressed reservations as to the legitimacy, impartiality and independence of those proceedings. Mr Kaba also encouraged Mr Bemba to transmit the information at his disposal to the ICC.

57. Document **CAR-DEF-0001-0155** is a letter dated 17 January 2003, allegedly signed by [REDACTED] on behalf of the MLC National Secretary of Justice and addressed to the Secretary-General of the MLC. The document includes the results of an enquiry on alleged acts of pillaging in the CAR attributed to ALC troops. Document **CAR-DEF-0002-0001**, dated 27 November 2002, contains a transmission of a dossier concerning pillaging to the ALC Commander in Chief. The prosecution alleges that the two documents are relevant to and probative of the accused's knowledge of crimes, his authority and control over the MLC and his material ability to punish crimes. The prosecution further alleges that the first document

shows that the accused had the authority to initiate an investigation into pillaging and the accused's awareness of the reports of rape and pillaging made by *Radio France International* ("RFI"). In relation to the second document, the prosecution alleges that it shows the accused's alleged authority to convene courts-martial for trying alleged crimes committed by MLC troops in the CAR and his knowledge of the crimes of rape and pillaging mentioned in the dossier.⁷¹ The defence alleges that the documents are relevant and probative because they demonstrate the measures taken by Mr Bemba, which, it submits, were proportionate to the information available to him, and relevant to the credibility of prosecution witnesses who testified that Mr Bemba took no measures to punish perpetrators of crimes during the relevant events.⁷²

58. The Chamber notes that document CAR-DEF-0001-0155, dated 17 January 2003, appears to be a transmission of the results of an enquiry into alleged acts of pillaging in the CAR attributed to ALC troops, sent from the MLC National Secretary of Justice to the MLC's Secretary-General in Gbadolite. Document CAR-DEF-0002-0001 appears to give an account of the transmission, on 27 November 2002, of a dossier regarding pillaging directly to the ALC Commander in Chief, namely Mr Bemba.

59. The Chamber is satisfied that the four documents referred to in the previous paragraphs relate to matters that are properly to be considered by the Chamber, *i.e.* the accused's alleged knowledge of the existence of allegations of the commission of crimes by MLC troops in the CAR, and the measures taken to punish them. They are therefore relevant.

⁷¹ ICC-01/05-01/08-2147-Conf-AnxA, page 5.

⁷² ICC-01/05-01/08-2168-Conf-AnxA, page 4.

60. Document **CAR-D04-0002-1513** is a letter dated 31 May 2000, allegedly signed by Mr Bemba and addressed to all Brigade Commanders of the ALC. The prosecution submits that the document is relevant to and probative of, *inter alia*, the accused's alleged ability to submit orders to subordinate commanders.⁷³ The defence alleges that the document is relevant and probative because it demonstrates that rape was not tolerated within the MLC, and that Mr Bemba could not have suspected that MLC troops sent to the CAR would commit crimes.⁷⁴

61. The Chamber notes that in document CAR-D04-0002-1513, Mr Bemba appears to have reminded the commanders that upon the approval of the President of the ALC's High Command, the death penalty was applicable in accordance with the ALC Code of Conduct for infractions such as rape. Further, Mr Bemba specifically ordered the Commanders to apply the death penalty for these types of offenses and to report directly to him on the matter. Although the document was issued outside the temporal scope of the charges, the Chamber is satisfied that it is relevant since it provides information about the measures that were at the disposal of the accused to punish crimes and the power he had to repress their commission.

62. In terms of probative value, the Chamber is mindful that the defence does not dispute the authenticity of any of the five documents referred in the paragraphs above. Further, the documents bear indicia of reliability such as dates, signatures and stamps, and appear to have been produced in the

⁷³ ICC-01/05-01/08-2147-Con-AnxA, page 5.

⁷⁴ ICC-01/05-01/08-2168-Conf-AnxA, page 4.

ordinary course of operations within the MLC and the FIDH. The defence does not contend that the admission of the documents may be prejudicial. Further, the Chamber is of the view that there is no reason to believe that their admission will have a prejudicial effect on a fair trial. Documents CAR-DEF-0001-0152, CAR-DEF-0001-0154, CAR-DEF-0001-0155, CAR-DEF-0002-0001 and CAR-D04-0002-1513 are therefore admitted.

63. Document **CAR-D04-0002-1508** is a draft letter, without signature and containing some handwritten notes, apparently addressed to the High Commissioner for Human Rights. The prosecution alleges that the letter is relevant to and probative of the military judicial resources available to the accused.⁷⁵ The defence submits that the document is relevant to and probative in establishing that a competent jurisdiction for the punishment of crimes was in existence.⁷⁶

64. The Chamber notes that, although disagreeing on the reasons, both parties consider the document to be relevant and probative. In the view of the Chamber, the document may be relevant to the case since it provides information on the military judicial authorities within the MLC. In addition, both parties have agreed on the authenticity of the document. The Chamber considers that the admission of this document will not cause prejudice to the fairness of the trial or the rights of the accused, particularly considering that both parties agree to its admission. The Chamber therefore admits document CAR-D04-0002-1508 into evidence.

⁷⁵ ICC-01/05-01/08-2147-Conf-AnxA, page 6.

⁷⁶ ICC-01/05-01/08-2168-Conf-AnxA, page 5.

65. Document **CAR-DEF-0001-0826** is exactly the same document as CAR-OTP-0033-0209 already submitted and admitted into evidence in paragraph 48 above. The Chamber therefore considers the question of admission of this document moot and will not address the parties' submissions in this regard.

MLC decrees

66. Document **CAR-D04-0002-1399** is entitled MLC Decree No. 016/Pres./MLC/07/02; document **CAR-D04-0002-1481** is entitled MLC Decree No. 019/Pres./MLC/07/02; document **CAR-D04-0002-1499** is entitled MLC Decree No. 017/Pres./MLC/07/02; and document **CAR-D04-0002-1500** is entitled MLC Decree No. 020/Pres./MLC/07/02. All four documents are dated 14 July 2002 and apparently signed by Mr Bemba. The prosecution alleges that the four documents are relevant to and probative of the accused's authority to promote general officers, company grade officers and non-commissioned officers.⁷⁷ The defence submits that the documents are relevant to and probative of the fact that decisions were taken in collaboration with the *Conseil Politico-Militaire* of the MLC.⁷⁸

67. The Chamber notes that all four documents referred in the paragraph above give account of the promotion of ALC officers at different levels. Although the documents were issued outside the temporal scope of the charges, the Chamber is satisfied that they are relevant since they refer to the powers exercised by Mr Bemba within the MLC.

⁷⁷ ICC-01/05-01/08-2147-Conf-AnxA, pages 5-6.

⁷⁸ ICC-01/05-01/08-2168-Conf-AnxA, page 5.

68. Document **CAR-DEF-0002-0580** is entitled MLC Decree No. 002/Pres./MLC/2002 and dated 25 March 2002. Document **CAR-D04-0002-2004** is entitled MLC Decree No. 035/PRES/MLC/11/02 and dated 16 November 2002. Both documents are apparently signed by Mr Bemba. The prosecution alleges that the documents are relevant to and probative of the accused's authority to convene courts-martial and of the MLC court-martial system.⁷⁹ The defence submits that the documents are relevant to and probative in establishing the existence of a competent jurisdiction within the MLC to punish crimes.⁸⁰

69. The Chamber notes that both documents referred in the paragraph above give account of MLC decrees allegedly issued and signed by Mr Bemba during 2002, establishing a Martial Court in Gbadolite and re-organising the military judicial authority within the MLC. As such, the Chamber is satisfied that the documents are relevant since they refer to the mechanisms which existed within the MLC to punish crimes and the measures at the accused's disposal to repress the commission of crimes.

70. The defence does not dispute the authenticity of any of the six MLC decrees referred to above. Further, the MLC decrees bear indicia of reliability such as dates, signatures and stamps, and appear to have been produced in the ordinary course of operations within the MLC. The defence does not contend that the admission of the six MLC decrees may be prejudicial and the Chamber is of the view that there is no reason to believe that their admission will have a prejudicial effect on a fair trial.

⁷⁹ ICC-01/05-01/08-2147-Conf-AnxA, pages 6-7.

⁸⁰ ICC-01/05-01/08-2168-Conf-AnxA, page 6.

Documents CAR-D04-0002-1399, CAR-D04-0002-1481, CAR-D04-0002-1499, CAR-D04-0002-1500, CAR-DEF-0002-0580 and CAR-D04-0002-2004 are therefore admitted.

Internal MLC Documents

71. Document **CAR-D04-0002-1413** is entitled “Les Mots Convenus” and contains several tables with different codes. The prosecution alleges that the document is relevant to and probative of, *inter alia*, the MLC’s standard operating procedures as regards radio communications.⁸¹ Document **CAR-DEF-0001-0161** is entitled « Code de Conduite ». The prosecution alleges that the document is relevant to and probative of the MLC system of discipline.⁸² Document **CAR-D04-0002-1511** is a letter dated 31 October 2000, apparently signed by Mr Bemba and addressed to the MLC Secretary-General in charge of Military Activities and Intelligence in Gbadolite. The prosecution alleges that the document is relevant to and probative of the alleged authority of the accused to order investigations.⁸³ The defence agrees with the prosecution’s assessment of the probative value of all three documents.⁸⁴

72. The Chamber notes that the two first documents do not contain any indication as to the date on which they were produced. Nevertheless, the defence does not dispute the relevance or probative value of any of the three documents nor does it suggest that their admission would be prejudicial. Further, the Chamber is of the view that there is no reason to

⁸¹ ICC-01/05-01/08-2147-Conf-AnxA, page 5.

⁸² ICC-01/05-01/08-2147-Conf-AnxA, page 7

⁸³ ICC-01/05-01/08-2147-Conf-AnxA, page 7.

⁸⁴ ICC-01/05-01/08-2168-Conf-AnxA, page 7.

believe that the admission of the three documents referred to in the paragraph above will have a prejudicial effect on a fair trial. Against this background and considering that the three documents are relevant to the case and bear indicia of reliability, the Chamber finds that there is no reason to refuse their admission. Documents CAR-D04-0002-1413, CAR-DEF-0001-0161 and CAR-D04-0002-1511 are therefore admitted.

73. Document **CAR-D04-0002-1514** is a notebook of communication entitled “Messages in c/man” with the first registered date being 4 September 2002,⁸⁵ and the last registered date being 1 November 2002.⁸⁶ Document **CAR-D04-0002-1641** is a notebook of communication with the first registered date being 21 December 2002,⁸⁷ and the last registered date being 7 February 2003.⁸⁸ The prosecution submits that the two documents are relevant to and probative of the MLC communication systems, reporting within the MLC and MLC operations. Further, the prosecution alleges that the documents are probative of the accused’s alleged authority and control over the Echo Brigade deployed in the CAR, which reported to and received orders from the MLC chain of command, and requested supplies through the situation reports.⁸⁹ The defence submits that the documents are relevant to and probative of the absence of operational orders from Gbadolite to the MLC troops in the CAR.⁹⁰

⁸⁵ CAR-D04-0002-1514, at 1516.

⁸⁶ CAR-D04-0002-1514, at 1638.

⁸⁷ CAR-D04-0002-1641, at 1642.

⁸⁸ CAR-D04-0002-1641, at 1767.

⁸⁹ ICC-01/05-01/08-2147-Conf-AnxA, page 6.

⁹⁰ ICC-01/05-01/08-2168-Conf-AnxA, page 5.

74. The Chamber notes that both documents refer to the means of communication used within the MLC during the time period relevant to the charges. They have both been used in court by the parties, *inter alia*, to question prosecution Witnesses 33, 36 and 65.⁹¹ In the view of the Chamber, both documents are relevant to matters that are properly to be considered by the Chamber and have probative value given their source and purpose of creation, the fact that they were created contemporaneously with the time period relevant to the charges and the fact that they were recognised by witnesses in court. The defence does not contend that the admission of the two documents referred to in the paragraph above may be prejudicial and the Chamber is of the view that there is no reason to believe that their admission will have a prejudicial effect on a fair trial. Documents CAR-D04-0002-1514 and CAR-D04-0002-1641 are therefore admitted.

Defence Correspondence

75. Document **CAR-D04-0002-1455** is a letter dated 21 April 2011, apparently signed by Mr Aimé Kilolo Musamba and addressed to Mr Stephen Mathias, Assistant Secretary-General in charge of the UN Office of Legal Affairs. Document **CAR-D04-0002-1462** is a letter of 26 May 2011, apparently signed by Mr Mathias and addressed to Mr Kilolo, in response to the letter of 21 April 2011. The prosecution alleges that the documents are relevant to and probative of the accused's alleged failure to take all necessary and reasonable measures to submit the matter to a competent

⁹¹ See ICC-01/05-01/08-T-163-ENG, ICC-01/05-01/08-T-168, ICC-01/05-01/08-T-169-ENG, ICC-01/05-01/08-T-170-ENG, ICC-01/05-01/08-T-171-ENG, ICC-01/05-01/08-T-214-ENG, ICC-01/05-01/08-T-217-ENG and ICC-01/05-01/08-T-218-ENG.

authority.⁹² The defence submits that the documents are relevant to and probative in establishing that the UN was unable to provide concrete information concerning crimes committed in the CAR, nor was such information subsequently provided.⁹³

76. The Chamber notes that documents CAR-D04-0002-1455 and CAR-D04-0002-1462 provide information on an exchange of correspondence between Mr Kilolo and the Assistant Secretary-General in charge of the UN Office of Legal Affairs. In his letter, Mr Kilolo enquires about the work and findings of the international commission of enquiry mentioned by General Lamine Cissé in a letter directed to Mr Bemba in January 2003. Mr Kilolo further refers to a request for assistance made by Mr Bemba in a letter sent by him to General Cissé in January 2003 and requests information on the possible responses or actions taken following that request. In his response, Mr Mathias indicates that the Department of Political Affairs and the UN Integrated Peacebuilding Office in the CAR have not found any records of the establishment of a commission of enquiry or records of assistance provided by the UN to Mr Bemba for the purpose of investigating crimes allegedly committed by MLC troops in the CAR.

77. The Chamber is satisfied that the documents are relevant to matters to be considered and decided upon, since they refer to the measures allegedly taken by the accused to repress the commission of crimes. Further, since the letter sent by Mr Kilolo and the response he received both refer to a

⁹² ICC-01/05-01/08-2147-Conf-AnxA, page 7.

⁹³ ICC-01/05-01/08-2168-Conf-AnxA, page 6.

prior written correspondence between the accused and a UN representative (documents CAR-OTP-0017-0363 and CAR-OTP-0033-0209), which were already admitted into evidence in paragraph 52 above, the Chamber is satisfied that there are no reasons to doubt their reliability. Further, the letters bear indicia of reliability such as dates, signatures and stamps. Lastly, the defence does not allege that their admission may be prejudicial, and therefore the Chamber sees no reason to believe that their admission will have a prejudicial effect on a fair trial. Documents CAR-D04-0002-1455 and CAR-D04-0002-1462 are therefore admitted.

ALC Decisions

78. Document **CAR-DEF-0001-0127** is entitled ALC Decision No. ALC/010/EMG-COMDT/2001, dated 13 March 2001, and apparently signed by Mr Dieudonné Amuli Bahigwa. The prosecution submits that the document is relevant to and probative of the MLC procedure followed when temporary authority was transferred.⁹⁴ The defence submits that the document is relevant to and probative in establishing General Amuli's ability and authority to make high level appointments.⁹⁵

79. The Chamber notes that document CAR-DEF-0001-0127 appears to be an ALC Decision signed by Mr Dieudonné Amuli Bahigwa in which it appoints Colonel Bitanihirwa Kamara as interim Chief of the ALC, in the absence of the Commander in Chief and the Chief of General Staff of the ALC from the Gbadolite headquarters. The Chamber is satisfied that the document relates to matters that are properly to be considered by the

⁹⁴ ICC-01/05-01/08-2147-Conf-AnxA, page 7.

⁹⁵ ICC-01/05-01/08-2168-Conf-AnxA, page 7.

Chamber, *i.e.* the military hierarchy within the ALC, and it is therefore relevant. Further, the document has been used in Court during the questioning of witness 36,⁹⁶ and is therefore relevant to the assessment of that witness's testimony. The defence does not dispute the authenticity of the document – which further bears indicia of reliability such as dates, signatures and stamps, and appears to have been produced in the ordinary course of operations within the MLC – nor does it allege that its admission may be prejudicial to the defence. The Chamber is of the view that there is no reason to believe that the admission of the document will have a prejudicial effect on a fair trial. Document CAR-DEF-0001-0127 is therefore admitted.

Video and Audio Materials

80. Video **CAR-D04-0002-1382** is a recording of a program called "*A Coeur Ouvert*", which is a 33 minutes 20 seconds interview with Mr Olivier Kamitatu, Secretary-General of the MLC, registered as broadcast on 15 April 2003. The prosecution alleges that the video is relevant to and probative of the accused's alleged knowledge of the crimes committed in the CAR.⁹⁷ The defence submits that the video is relevant to and probative of many aspects of the defence case. In particular, the defence submits that the material demonstrates that crimes were punished and shows a lack of knowledge of crimes allegedly committed in the CAR by MLC troops.⁹⁸

81. The Chamber is satisfied that the video relates to matters that are properly to be considered by the Chamber, *i.e.* the allegations of the commission of

⁹⁶ ICC-01/05-01/08-T-217-ENG, page 26 line 11 to page 33 line 8.

⁹⁷ ICC-01/05-01/08-2147-Conf-AnxA, page 5.

⁹⁸ ICC-01/05-01/08-2168-Conf-AnxA, page 4.

crimes by MLC soldiers in the CAR and the knowledge of those allegations on the part of the ALC high command, which includes Mr Bemba. The video material is therefore relevant to the charges. The defence does not dispute the authenticity of the video – which further bears indicia of reliability, originality and integrity such as a date of emission shown during almost the entire duration of the video, a logo of the TV programme and the image and voice of Mr Olivier Kamitatu, with no interruptions in what seem to be full answers to the questions posed by the interviewer – nor does it allege that its admission may be prejudicial to the defence. The Chamber is of the view that there is no reason to believe that the admission of the video recording will have a prejudicial effect on a fair trial. Video CAR-D04-0002-1382 is therefore admitted.

82. Audio recording **CAR-DEF-0001-0830** is a recording of 4 minutes 46 seconds of a monologue attributed to Mr Olivier Kamitatu, Secretary-General of the MLC. The prosecution alleges that the recording is relevant to and probative of the accused's duty to prevent crimes.⁹⁹ The defence submits that it objects in principle to the admission of an interview conducted so far in advance of the events relevant to the charges, but it alleges that it is in any event relevant to and probative in establishing that measures were taken by the MLC to prevent and punish crimes.¹⁰⁰

83. The Chamber notes that the date of this audio recording is unknown. Further, the recording contains no questions. It is clearly not a full interview; it does not contain all answers and appears to start in the middle of a sentence. The recording is clearly an excerpt and not a full

⁹⁹ ICC-01/05-01/08-2147-Conf-AnxA, page 6.

¹⁰⁰ ICC-01/05-01/08-2168-Conf-AnxA, page 6.

interview or even a full answer to a question on a relevant matter in this case. This Chamber has expressed preference for the admission of whole documents or recordings rather than excerpts.¹⁰¹ In the case at hand, the prosecution should have provided the recording in full and not just an excerpt thereof.

84. The Chamber does not have sufficient information to determine the relevance or probative value of the audio material as the prosecution did not provide evidence to verify that the voice recorded is that of Mr Olivier Kamitatu, nor did it produced any evidence to confirm the date, circumstances and context in which this recording was created. The Chamber therefore refuses to admit audio recording CAR-DEF-0001-0830 into evidence.

5. Press/Media Articles

85. The prosecution requests the admission of 27 media articles. The prosecution alleges that the media articles were prepared and distributed in 2002-2003 by media organisations in the DRC, CAR and other international news agencies and that they deal with the events relevant to the charges.¹⁰² The prosecution argues that the media articles provide information on (i) the background to the armed conflict in the CAR in 2002-2003; (ii) the various armed groups involved in that conflict, and more specifically, on the MLC's intervention; (iii) the crimes allegedly committed by MLC troops against CAR civilians in the areas in which

¹⁰¹ ICC-01/05-01/08-1470, paragraph 11 and ICC-01/05-01/08-2012-Red, paragraph 90.

¹⁰² ICC-01/05-01/08-2147, paragraph 14.

they were deployed; (iv) the withdrawal of the MLC troops from the CAR in March 2003; (v) the MLC military and political structure during the period relevant to the charges; and (vi) the accused's position as the President of the MLC and Commander-in-Chief of the ALC during the period of 2002-2003.¹⁰³

86. The defence alleges that for eleven of the media reports the Prosecutor is unable to provide the author and as such, they should not be admitted.¹⁰⁴ Further, the defence alleges that the admission of the media articles submitted by the prosecution cannot be reconciled with the consistent jurisprudence that media reports are generally not considered a source of reliable evidence and their admission is often rejected for lack of probative value.¹⁰⁵ In this regard, the defence refers to a decision of Trial Chamber II indicating that media reports often contain opinion evidence about events said to have occurred and rarely provide detailed information about their sources. The defence stresses that Trial Chamber II held that opinion evidence is, in principle, only admissible if provided by an expert and, given that the prosecution in that instance was unable to provide information either on the background or qualifications of the journalists or their sources, that Chamber held that it was unable to attach sufficient probative value to the opinions of – even informed – bystanders such as journalists.¹⁰⁶ On this basis, the defence submits that the prosecution's request to admit media reports should be rejected.¹⁰⁷

¹⁰³ Ibid.

¹⁰⁴ ICC-01/05-01/08-2168, paragraph 34.

¹⁰⁵ ICC-01/05-01/08-2168, paragraph 35.

¹⁰⁶ ICC-01/05-01/08-2168, paragraph 36.

¹⁰⁷ ICC-01/05-01/08-2168, paragraph 37.

87. The prosecution replies that the defence arguments go to the credibility and weight of the media reports as opposed to their admissibility. The prosecution submits that identifying the relevant authors is not the sole indicia for determining reliability and asserts that the reports satisfy other indicia of reliability and should thus be admitted. The prosecution further contends that the journalists had no interest in the CAR events other than reporting what was happening and that these articles are contemporaneous, supported by prosecution evidence on the record and were publicly available at the time of the events. Finally, the prosecution argues that the admission of these articles is sought solely to supplement evidence already on the record and if not admitted for the truth of their content they should be admitted at the very least for the purposes described in Annex A, as proof that crimes committed by MLC troops were widely reported by the media, including by well-known media outlets, which is relevant to the accused's alleged knowledge of the alleged crimes.¹⁰⁸

88. In relation to the submissions for each particular item, the Chamber notes that the defence objects to the admission of all the documents in this category for the same reasons, as set out in the body of its response.¹⁰⁹

89. Document CAR-OTP-0004-0336 is a copy of certain pages of an issue of the newspaper *Le Citoyen*, published in Bangui on 26 November 2002. The prosecution alleges that this document is relevant to and probative of, *inter alia*, crimes committed by MLC troops against the CAR civilian

¹⁰⁸ ICC-01/05-01/08-2184, paragraph 22.

¹⁰⁹ ICC-01/05-01/08-2168-Conf-AnxA, pages 7-9.

population and the accused's role in the deployment of MLC troops to the CAR. The prosecution further submits that *Le Citoyen* is a local Central African newspaper, and quotes former President Patassé as its source of information.¹¹⁰

90. The Chamber notes that document CAR-OTP-0004-0336 contains the front page and pages 4 to 7 of the 26 November 2002 issue of the newspaper *Le Citoyen*, published in Bangui (ERN pages number CAR-OTP-0004-0336, CAR-OTP-0004-0337, CAR-OTP-0004-0339, CAR-OTP-0004-0338 and CAR-OTP-0004-0342) and pages 6 and 7 of what appears to be an incomplete article published in the same newspaper on the following day, 27 November 2002 (ERN pages number CAR-OTP-0004-0340 and CAR-OTP-0004-0341).

91. At Pages 4 and 5 of the *Le Citoyen* 26 November 2002 issue there is a transcription of a speech attributed to former CAR President Angel-Félix Patassé, which was addressed to the nation in the aftermath of a victory of his supporters in combat in Bossembelé. In this speech, former President Patassé described the events which had taken place since the commencement of clashes between the forces loyal to him and an alleged "horde of armed mercenaries" coming from Chad as a civil war.¹¹¹ After describing the measures taken by the government, he invited the population to continue living in harmony with all the foreign communities present in the CAR territory, particularly the Chadians and

¹¹⁰ ICC-01/05-01/08-2147-Conf-AnxA, page 7.

¹¹¹ CAR-OTP-0004-0336, at 0337.

the Congolese.¹¹² Lastly, in his role as Commander in Chief of the Army, he congratulated the soldiers and members of the armed and security forces that had defended the nation and expressed his gratefulness to all the countries friendly to the CAR for their “precious contribution”; and particularly, to “M. Jean-Pierre Bemba, *President du Mouvement de Liberation du Congo, pour son concours indispensable et salutaire.*”¹¹³

92. In what seems to be a second speech of former President Patassé, transcribed at pages 6 and 7 of the 26 November 2002 issue of *Le Citoyen*, former President Patassé explains why Mr Bemba’s men were in the CAR, describing the moment when the Chadians invaded Bangui and stating that he immediately decided to call his “son” Mr Bemba, to ask him to send his men in order to give a “*coup de main*”.¹¹⁴ In relation to that, President Patassé goes on to say that he dealt with the “things that happened” and decided to establish a commission to evaluate the events.¹¹⁵ At the end of page 7 of the journal dated 26 November 2002, it is indicated that the article will continue in the following edition (“*Suite au prochain N°*”).¹¹⁶ The remaining pages submitted are taken from the issue published the following day. However, these pages do not follow the report of the previous day. Page 6 of the journal dated 27 November 2002 contains a message from the bishops to the Christian community,¹¹⁷ whereas page 7, of the journal dated 27 November 2002, on the lower half of the page, contains what appears to be the end of an interview or speech,

¹¹² CAR-OTP-0004-0336, at 0339.

¹¹³ *Ibid.*

¹¹⁴ CAR-OTP-0004-0336, at 0338 and 0342.

¹¹⁵ CAR-OTP-0004-0336, at 0338.

¹¹⁶ CAR-OTP-0004-0342.

¹¹⁷ CAR-OTP-0004-0341.

but indicates that it is a continuation from page 5 of that issue (“Suite de la page 5”).¹¹⁸ This page has not been submitted to the Chamber.

93. The Chamber is satisfied that the transcription of the two speeches contained at pages 4 to 7 of the 26 November 2002 issue of the newspaper *Le Citoyen* (ERN pages number CAR-OTP-0004-0336, CAR-OTP-0004-0337, CAR-OTP-0004-0339, CAR-OTP-0004-0338 and CAR-OTP-0004-0342) are relevant to the charges against the accused and refer to matters that are properly to be considered by the Chamber.

94. In relation to the probative value of the two speeches contained at pages 4 to 7 of the 26 November 2002 issue of the newspaper *Le Citoyen* (ERN pages number CAR-OTP-0004-0336, CAR-OTP-0004-0337, CAR-OTP-0004-0339, CAR-OTP-0004-0338 and CAR-OTP-0004-0342) the Chamber notes that the document bears indicia of reliability and appears to be an authentic copy of certain pages of a well-known newspaper. Further, during the questioning of Witness 108, the defence questioned the witness about the speech and made the Chamber aware that the speech delivered by President Patassé on 25 November 2002 was subsequently published in the local newspaper *Le Citoyen* on 26 November 2002, quoting the ERN number of this document for the record.¹¹⁹ As such, the Chamber sees no reason to doubt the authenticity of the document.

¹¹⁸ CAR-OTP-0004-0340.

¹¹⁹ See ICC-01/05-01/08-T-135-ENG ET, page 31 line 24 to page 32 line 2: “MR KILOLO: (Interpretation) Now, for the record, let me draw the Court's attention to the fact that this speech was delivered on Monday, 25 November 2002, and published the day after, Tuesday, 26 November 2002, in a Central African newspaper called *Le Citoyen*. I'm referring here to document CAR-OTP-0004-0036”.

95. Although the Majority is not persuaded by the defence's argument that press/media reports should be rejected because the prosecution was unable to provide information about the author of such reports, it will approach the admissibility of such reports with caution. Indeed, the Majority is of the view that they may be admitted for limited purposes to be determined on a case-by-case basis. In the present case, the Chamber is satisfied that the speeches attributed to former President Patassé, as transcribed at pages 4 to 7 of the 26 November 2002 issue of the newspaper *Le Citoyen* (ERN pages number CAR-OTP-0004-0336, CAR-OTP-0004-0337, CAR-OTP-0004-0339, CAR-OTP-0004-0338 and CAR-OTP-0004-0342) are relevant and will assist in the analysis of Witness 108's testimony. Moreover, the fact that the defence referred to this particular transcription of the speech during the questioning of Witness 108 and does not contest its authenticity mean that the risk of unfair prejudice is low and is outweighed by the probative value of the document.

96. The Chamber acknowledges its expressed preference for the admission of whole documents rather than excerpts.¹²⁰ Notwithstanding, in the case at hand, the Chamber is of the view that pages 4 to 7 of the 26 November 2006 issue of the newspaper *Le Citoyen* (ERN pages numbers CAR-OTP-0004-0336, CAR-OTP-0004-0337, CAR-OTP-0004-0339, CAR-OTP-0004-0338 and CAR-OTP-0004-0342) in themselves comprise a complete document which can be properly assessed in its context. However, pages 6 and 7 of the 27 November 2002 issue of the newspaper *Le Citoyen* (ERN pages number CAR-OTP-0004-0340 and CAR-OTP-0004-0341), which

¹²⁰ ICC-01/05-01/08-1470, paragraph 11 and ICC-01/05-01/08-2012-Red, paragraph 90.

were scanned together with the pages of the previous issue of the same newspaper, do not contain a full article, report or transcript, and therefore, cannot be properly assessed in its context.

97. Therefore, with respect to document **CAR-OTP-0004-0336**, the Chamber admits into evidence only pages 4 to 7 of the 26 November 2006 issue of the newspaper *Le Citoyen*, that is the pages with ERN numbers CAR-OTP-0004-0336, CAR-OTP-0004-0337, CAR-OTP-0004-0339, CAR-OTP-0004-0338 and CAR-OTP-0004-0342, and rejects the admission of the submitted pages of 27 November 2007 issue, that is the pages that bear the ERN numbers CAR-OTP-0004-0340 and CAR-OTP-0004-0341.

98. Document **CAR-OTP-0004-0343** is a copy of certain pages of the 13 November 2002 issue of the newspaper *Le Citoyen*. The prosecution asserts that this document is relevant to and probative of, *inter alia*, crimes perpetrated by MLC troops against the CAR civilian population and the accused's role in the deployment of MLC troops to the CAR.¹²¹ Document **CAR-OTP-0004-0345** is a copy of certain pages of the 6 December 2002 issue of the newspaper *Le Citoyen*. The prosecution submits that this document is relevant to and probative of, *inter alia*, crimes perpetrated by MLC troops against the CAR civilian population, and the accused's knowledge of the crimes.¹²²

99. The Chamber notes that document CAR-OTP-0004-0343 appears to contain the transcription of a letter sent on behalf of the population from

¹²¹ ICC-01/05-01/08-2147-Conf-AnxA, page 7.

¹²² ICC-01/05-01/08-2147-Conf-AnxA, page 8.

PK12, PK13 and PK22 to Mr Lamine Cissé, Representative of the UN Secretary-General in Bangui. In the letter, the population requests the urgent opening of an international inquiry against the CAR government and Mr Bemba for the violence committed against civilians. The letter includes a detailed description of crimes allegedly committed by the “Banyamulengués” in Bégoua, PK12 and PK22, including pillaging, killings, rapes, robbery and destruction.¹²³

100. The Chamber notes that document CAR-OTP-0004-0345 appears to contain, at pages 3 to 5, the complete transcription of an interview conducted by RFI with Bernard Najotte (“BN”), who appears to be a CAR citizen. It also includes various excerpts of testimony provided by other persons, allegedly: a priest from Gobongo, President Patassé, a lawyer named Mr Goungaye, a father, a lady, Abel Goumba, a doctor, a Congolese citizen, another priest, Léonard Chéokitundu and Gabriel Koyambounou. The persons interviewed and the excerpts of testimony provide information on crimes and abuses allegedly committed by the “Banyamulengues” or “Mr Bemba’s men”, in the 4th *arrondissement*, in Gobongo, PK10, PK11, PK12, PK22 and Bégoua. The document also contains, at page 7, an article, allegedly written by G. Ouangalé, which describes abuses allegedly committed by the “Banya” or “Nyama Mulengues” in the northern areas of the capital.

101. The Chamber is satisfied that both documents referred to above are relevant to the charges against the accused. The Chamber is further

¹²³ CAR-OTP-0004-0343, at 0344.

satisfied that the documents bear certain indicia of reliability; both appear to be authentic copies of newspaper pages. As previously stated, press/media reports may be admitted for limited purposes to be determined on a case-by-case basis. In relation to these two documents, the Majority of the Chamber is satisfied that, in particular, the information contained therein may serve to corroborate other pieces of evidence. In addition, the Chamber may examine these documents when assessing the prosecution's allegation that the conduct described in the charges was widely broadcast which, according to the prosecution, may have implications with regard to the accused's alleged knowledge of the crimes charged. Against this background and taking into consideration the Chamber's finding that the documents are relevant to the case and have probative value, the Majority finds that their admission will not unfairly prejudice the defence. Documents CAR-OTP-0004-0343 and CAR-OTP-0004-0345 are therefore admitted.

102. Document **CAR-OTP-0004-0667** is a compilation of news reports apparently compiled through *Factiva* with the search words "Bemba" and "Bangui" for the period "2002-2006". It includes 21 different news articles apparently published by the *BBC*, the *Associated Press*, *Contra Costa Times*, *Comtex*, *AFP*, *Reuters*, *Factiva* and *Le Monde*, from 5 November 2002 to 21 February 2003. Document **CAR-OTP-0008-0413** seems to be a copy of a news article taken from *NewsBank InfoWeb* and includes a news article apparently published by the *BBC* on 4 November 2002, citing as the original source of the information *Radio France Internationale* ("RFI"). The prosecution alleges that all these articles are relevant to and probative of,

inter alia, crimes perpetrated by MLC troops against the CAR civilian population, and the accused's knowledge of the crimes.¹²⁴

103. The Chamber notes that document CAR-OTP-0004-0667 -- a compilation of news reports -- and CAR-OTP-0008-0413 -- a news report -- describe, *inter alia*, allegations of massacres, acts of vandalism or violence, rapes, looting, atrocities, massive and systematic human rights violations, and cruel acts, attributed either to MLC soldiers, forces fighting for the CAR government, foreign forces, Congolese rebels, Libyan troops and/or Mr Bemba's rebels, during the time period relevant to the charges. As such, the Chamber is satisfied that the documents are relevant to the charges against the accused and refer to matters that are properly to be considered by the Chamber.

104. In relation to probative value, although the documents seem to have been produced by an Internet search and are not directly downloaded from the news agencies that originally produced them, the Chamber is satisfied that they provide sufficient *indicia* that the articles are what they purport to be, that is news and press releases issued during the time period relevant to the charges. As previously indicated, the Majority of the Chamber is of the view that these materials can be considered for a limited purpose; in particular, the information contained therein may serve to corroborate other pieces of evidence and might be examined when assessing the prosecution's allegation that the conduct described in the charges was widely broadcast which, according to the prosecution, may have implications with regard to the accused's alleged knowledge of

¹²⁴ ICC-01/05-01/08-2147-Conf-AnxA, pages 8.

the crimes charged. In light of the envisioned limited usage of the information contained in these documents, the Majority is of the view that there is no reason to believe that their admission for this purpose will have a prejudicial effect on a fair trial. Documents CAR-OTP-0004-0667 and CAR-OTP-0008-0413 are therefore admitted.

105. Document **CAR-OTP-0005-0133** is a copy of an online article apparently authored by Mr Didier Samson, published by RFI on 21 November 2007 and bearing a handwritten date of 5 November 2002. Document **CAR-OTP-0005-0141** is a copy of an online article apparently authored by Mr Didier Samson, published by RFI on 13 February 2003; the date of copy is 20 November 2007 and it bears a handwritten date of 13 February 2003. Document **CAR-OTP-0005-0147** is a copy of an online article apparently authored by Mr Gabriel Kahn, published by RFI; the date of copy is 20 November 2007 and it bears a handwritten date of 26 February 2003. Document **CAR-OTP-0005-0194** is a copy of an online article apparently authored by Ms Ariane Poissonnier, published by RFI; the date of copy is 1 October 2008, the date of publishing is not indicated. The prosecution alleges that all these articles are relevant to and probative of, *inter alia*, crimes perpetrated by MLC troops against the CAR civilian population, and the accused's knowledge of the crimes.¹²⁵ Document **CAR-OTP-0005-0135** is a copy of an online article apparently authored by Mr Didier Samson, published by RFI, the date of copy is 20 November 2007 and it bears a handwritten date of 13 December 2002. The

¹²⁵ ICC-01/05-01/08-2147-Conf-AnxA, pages 8.

prosecution alleges that the document is relevant to and probative of, *inter alia*, the MLC logistics in the CAR.¹²⁶

106. The Chamber notes that the five documents mentioned in the paragraph above refer, *inter alia*, to the military crisis in the CAR; the intervention of the MLC and units from Libya to support the CAR's army in the protection of Mr Patassé's regime, which had been assaulted by supporters of François Bozizé; allegations of pillaging and rapes attributed to the Congolese soldiers; the use of arms from Libya by MLC soldiers in the CAR; and the announcement by Mr Bemba of the withdrawal of MLC troops from the CAR. As such, the Chamber is satisfied that the documents are relevant to the charges against the accused and refer to matters that are properly to be considered by the Chamber.

107. In relation to their probative value, although some of the documents do not contain information as to the date on which they were published, the prosecution has provided the Chamber with verifiable information on where the items could be obtained,¹²⁷ which has allowed the Chamber to verify that the documents are what they purport to be and that the date of publication provided is in fact correct. As previously indicated, the Majority of the Chamber is of the view that these materials can be considered for a limited purpose; in particular, the information contained therein may serve to corroborate other pieces of evidence and might be examined when assessing the prosecution's allegation that the conduct described in the charges was widely broadcast which, according

¹²⁶ ICC-01/05-01/08-2147-Conf-AnxA, page 8.

¹²⁷ The exact Uniform Resource Locator ("URL") for each of the articles was provided at the bottom of each page of each article.

to the prosecution, may have implications with regard to the accused's alleged knowledge of the crimes charged. In light of the envisioned limited usage of the information contained in these documents, the Majority is of the view that there is no reason to believe that their admission will have a prejudicial effect on a fair trial. Documents CAR-OTP-0005-0133, CAR-OTP-0005-0135, CAR-OTP-0005-0141, CAR-OTP-0005-0147 and CAR-OTP-0005-0194 are therefore admitted.

108. Document **CAR-OTP-0005-0333** is a copy of an online article published by *Le Soft Online* on 5 March 2003; the date of reprint is 24 January 2008. Document **CAR-OTP-0011-0293** is a copy of an online article published by the Integrated Regional Information Networks ("IRIN") Africa, a project of the UN Office for the Coordination of Human Affairs, on 31 October 2002. Document **CAR-OTP-0013-0065** is an article published in the newspaper *Le Citoyen* on 27 November 2002. Document **CAR-OTP-0013-0161** is an article published in the newspaper *Le Confident* on 24 February 2003. The prosecution alleges that these four articles are relevant to and probative of, *inter alia*, crimes perpetrated by MLC troops against the CAR civilian population, and the accused's knowledge of the crimes.¹²⁸ Document **CAR-OTP-0013-0005** is an article published in the newspaper *Le Citoyen* on 24 February 2003. The prosecution alleges that the article was compiled during the period relevant to the charges and that it mentions the commission of war crimes by MLC troops in the CAR, an accusation denied by the interviewee, former President Patassé.¹²⁹ Document **CAR-OTP-0013-0053** is an article published in the newspaper

¹²⁸ ICC-01/05-01/08-2147-Conf-AnxA, pages 8-10.

¹²⁹ ICC-01/05-01/08-2147-Conf-AnxA, page 9.

Le Citoyen on 14 November 2002. Document **CAR-OTP-0013-0151** is an article published in the newspaper *Le Confident* on 23 January 2003. The prosecution alleges that these last two documents are relevant to and probative of, *inter alia*, the accused's alleged authority and control over the MLC and his knowledge of crimes committed by MLC troops.¹³⁰

109. The Chamber notes that the seven documents referred to in the paragraph above all appear to be newspaper articles and reports published by different locally available media sources or international press agencies – the Central African newspaper *Le Soft* online, IRIN, *Le Citoyen*, *Le Confident*, and the Congolese newspaper *Le Phare* – between 31 October 2002 and 5 March 2003. The news articles describe, *inter alia*, the tensions in Bangui and the neighbouring areas since the start of the rebellion on 25 October 2002, allegations of widespread looting and abuses attributed to MLC forces in the CAR and the role played by Mr Bemba. As such, the Chamber is satisfied that the documents are relevant to the charges against the accused and refer to matters that are properly to be considered by the Chamber.

110. In relation to probative value, the Chamber is satisfied that the documents bear sufficient *indicia* of authenticity and reliability; they all appear to be authentic copies of certain pages of actual newspapers or the online version of news articles publically available on the relevant media outlet's website. As previously indicated, the Majority of the Chamber, is of the view that these materials can be considered for a limited purpose; in

¹³⁰ ICC-01/05-01/08-2147-Conf-AnxA, page 9.

particular, the information contained therein may serve to corroborate other pieces of evidence and might be examined when assessing the prosecution's allegation that the conduct described in the charges was widely broadcast which, according to the prosecution, may have implications with regard to the accused's alleged knowledge of the crimes charged. In light of the envisioned limited usage of the information contained in the documents, the Majority is of the view that there is no reason to believe that their admission will have a prejudicial effect on a fair trial. Documents CAR-OTP-0005-0333, CAR-OTP-0011-0293, CAR-OTP-0013-0005, CAR-OTP-0013-0053, CAR-OTP-0013-0065, CAR-OTP-0013-0151 and CAR-OTP-0013-0161 are therefore admitted.

111. Document **CAR-OTP-0032-0167** is a copy of an issue of the newspaper *Le Phare*, printed in Kinshasa, DRC on 17 July 2002. The prosecution alleges that the document is relevant to and probative of, *inter alia*, the accused's alleged authority to promote field grade officers.¹³¹ The Chamber notes that, at pages 2 and 6 of the newspaper, there is a transcription of several MLC Decrees of 13 and 14 July 2002 in which Mr Bemba promotes a number of officials. Although the newspaper refers to events that took place outside the time period relevant to the charges, the Chamber is satisfied that the document is relevant to matters that are properly to be considered by it. The newspaper was used during questioning of Witness 15,¹³² and is therefore also relevant to the assessment of that witness's testimony. Further, as the defence suggested in court, the admission of the document into evidence will aid the

¹³¹ ICC-01/05-01/08-2147-Conf-AnxA, page 10.

¹³² ICC-01/05-01/08-T-208-ENG ET, page 15 lines 16 to 21.

Chamber in understanding the testimony of the witness.¹³³ In relation to its probative value, the Chamber is satisfied that the document bears sufficient *indicia* of reliability and appears to be an authentic copy of certain pages of a Congolese newspaper. Against this background, the Chamber finds that the admission of this document will not unfairly prejudice the defence. Document CAR-OTP-0032-0167 is therefore admitted.

112. Document **CAR-OTP-0008-0426** is a copy of an online article apparently published by *AFP* on 27 December but with no year indicated. Document **CAR-OTP-0010-0326** is a copy of an online article apparently authored by Mr Jean-Dominique Geslin, published by *jeuneafrique.com* on 9 March 2003. Document **CAR-OTP-0010-0346** is a copy of an online article apparently published by *AFP* on 15 February but with no year indicated. The prosecution alleges that these articles are relevant to and probative of, *inter alia*, crimes perpetrated by MLC troops against the CAR civilian population, and the accused's alleged knowledge of the crimes.¹³⁴ Document **CAR-OTP-0005-0198** is a copy of an online document extracted from the web page *www.congonline.com*, which apparently reproduces the founding document of the MLC. Document **CAR-OTP-0005-0204** is a copy of an online document extracted from the web page *www.congonline.com*, which details the composition of the Political and Military Council of the MLC. The prosecution alleges that the documents are relevant to and probative of, *inter alia*, the structure and organisation

¹³³ ICC-01/05-01/08-T-208-ENG ET, page 15 lines 5 to 7.

¹³⁴ ICC-01/05-01/08-2147-Conf-AnxA, page 8.

of the MLC during the time period relevant to the charges.¹³⁵ Document **CAR-OTP-0005-0212** is a copy of an online document extracted from the web page *www.congonline.com*, which describes news of the MLC from October to 18 November 2000. The prosecution alleges that the document is relevant to the historical background of the MLC and provides an update on its activities in the year 2000.¹³⁶

113. The Chamber notes that the six documents referred to in the above paragraph are all copies of online publications, quoting as their source of information either news agencies such as the AFP or the MLC directly. The documents are copies from unofficial open sources – whose reliability can not be established – and therefore 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. Under these circumstances, although the documents may contain information relevant to the case, the Chamber is of the view that the documents do not bear sufficient *indicia* of reliability or authenticity and therefore the alleged probative value of the documents is outweighed by their potentially prejudicial effect on a fair trial. The Chamber therefore refuses to admit documents CAR-OTP-0008-0426, CAR-OTP-0010-0326, CAR-OTP-0010-0346, CAR-OTP-0005-0198, CAR-OTP-0005-0204 and CAR-OTP-0005-0212.

114. Document **CAR-OTP-0011-0405** is apparently a copy of an online article published by IRIN on 19 August 2005. The prosecution alleges that the article is relevant to and probative of, *inter alia*, the crimes perpetrated

¹³⁵ ICC-01/05-01/08-2147-Conf-AnxA, page 9.

¹³⁶ ICC-01/05-01/08-2147-Conf-AnxA, page 9.

by MLC troops against the CAR civilian population and the accused's knowledge of the crimes.¹³⁷

115. The Chamber notes that the document referred to in the above paragraph is an article published outside the time period relevant to the charges. Further, in the view of the Chamber, the document does not provide any information that may be relevant in the Chamber's determination of the case and, as such, is inadmissible. The Chamber therefore refuses to admit document CAR-OTP-0011-0405.

116. Document **CAR-OTP-0013-0082** is an extract of an issue of the newspaper *Le Citoyen* published on 5 November 2002. The prosecution alleges that the document is relevant to and probative of, *inter alia*, crimes perpetrated by the MLC against the CAR civilian population, the accused's alleged authority and control over the MLC, and his knowledge of crimes committed by MLC troops.¹³⁸ The Chamber notes that the document is a copy of pages 5, 6 and 9 to 14, of the 5 November 2002 issue of the newspaper *Le Citoyen*. It contains an incomplete report of the events in Bangui from 25 October to 2 November 2002, without pages 7 and 8 missing. The Chamber notes that the missing pages prohibit the Chamber from sufficiently assessing the relevance of the document. Given the Chamber's preference for admitting full documents rather than excerpts,¹³⁹ the Chamber considers that any potential probative value that this report might have is outweighed by the prejudice its admission would cause to

¹³⁷ ICC-01/05-01/08-2147-Conf-AnxA, page 9.

¹³⁸ ICC-01/05-01/08-2147-Conf-AnxA, page 9.

¹³⁹ ICC-01/05-01/08-1470, paragraph 11 and ICC-01/05-01/08-2012-Red, paragraph 90.

the defence. The Chamber therefore refuses to admit document CAR-OTP-0013-0082.

6. Audio/Video Media Recordings

117. The prosecution requests the admission of 10 contemporaneous audio recordings of RFI broadcasts concerning events in the CAR in 2002-2003. The prosecution submits that RFI is a well-known and reputable international broadcasting entity which had field correspondents in the CAR in 2002-2003. The prosecution further affirms that the reports were prepared and broadcast contemporaneously with the time period relevant to the charges and are based in part on observations by RFI's CAR correspondents as well as victims and witnesses who experienced the relevant events. The prosecution submits that the reports provide background information on the conflict in different areas of the CAR, the identity of the armed groups involved, as well as accounts from victims and eye-witnesses on the crimes included in the charges against the accused.¹⁴⁰ For all recordings except one, the prosecution submits that they are relevant to and probative of, *inter alia*, crimes perpetrated by MLC troops against the CAR civilian population, the accused's alleged authority and control over the MLC and the accused's knowledge of the crimes.¹⁴¹ For the recording CAR-OTP-0031-0136, the prosecution submits that it is relevant to the *chapeau* elements of Article 8 of the Statute as it

¹⁴⁰ ICC-01/05-01/08-2147, paragraph 15.

¹⁴¹ ICC-01/05-01/08-2147-Conf-AnxA, pages 10-11.

refers to the situation in the CAR during the time period relevant to the charges and refers to the background of the conflict.¹⁴²

118. The defence opposes the admission of all 10 recordings, arguing that media reports are not sufficiently reliable to be considered admissible. The defence contends that Witness 15 questioned the reliability of RFI reports in his testimony.¹⁴³ The defence also refers to the practice adopted in the *Katanga* case, in which Trial Chamber II concluded that before audio material could be admitted, the Chamber required evidence of originality and integrity. The defence contends that the fact that the prosecution has not produced any evidence to this effect lends further support to the defence's submission that these recordings are insufficiently reliable and possess insufficient probative value to warrant their admission.¹⁴⁴

119. In its reply the prosecution submits that these recordings bear *indicia* of reliability. They were made contemporaneously to the events covered in the charges and RFI is a reputable organisation. The prosecution further states that the recordings identify the reporters and the information detailing the chain-of-custody shows that these recordings were received directly from RFI. The prosecution submits that the defence does not indicate that these recordings are anything other than what they purport to be. The prosecution alternatively submits that if these audio recordings are not admitted for the truth of their contents, they should be admitted to prove that crimes committed by MLC troops were widely

¹⁴² ICC-01/05-01/08-2147-Conf-AnxA, page 11.

¹⁴³ ICC-01/05-01/08-2168, paragraphs 38-39 and Conf-AnxB, referring to ICC-01/05-01/08-T-208-CONF-ENG ET, page 31 and ICC-01/05-01/08-T-209-CONF-ENG ET, page 36.

¹⁴⁴ ICC-01/05-01/08-2168, paragraph 40, refers to Decision on the Prosecutor's Bar Table Motions, 17 December 2010, ICC-01/04-01/07-2635, paragraph 24(d).

broadcast by the media, including well-known international media organisations. The prosecution submits that this is relevant to the issue of the accused's alleged knowledge of the allegations reported by RFI.¹⁴⁵

120. The Chamber considers it useful to refer to its previous findings as regards recordings. The Chamber has expressed a preference for the admission of whole documents or recordings rather than excerpts.¹⁴⁶ The Chamber has also stated that recordings that have not been authenticated in court can still be admitted, as in-court authentication is but one factor for the Chamber to consider when determining an item's authenticity and probative value.¹⁴⁷ As stated above, there is no strict requirement establishing that every piece of evidence must be authenticated officially or by a witness in court in order for it to be considered authentic, reliable and holding probative value.

121. Recording **CAR-OTP-0005-0159**, is dated 13 February 2003 and is approximately one minute long. According to the prosecution this is an interview by journalist Ms Carinne Frenck with the accused in which he indicates that his troops will start withdrawing from the CAR.¹⁴⁸ However, the Chamber notes that, contrary to the prosecution's submissions, nowhere in the recording is the journalist identified. Further, the prosecution has provided no evidence whatsoever as to this recording's originality or integrity. In fact, the recording is evidently an excerpt of a longer interview which has not been submitted to the Chamber in its

¹⁴⁵ ICC-01/05-01/08-2184, paragraph 23.

¹⁴⁶ ICC-01/05-01/08-2012-Red, paragraph 90; ICC-01/05-01/08-1470, paragraph 11.

¹⁴⁷ ICC-01/05-01/08-2012-Red, paragraph 93.

¹⁴⁸ ICC-01/05-01/08-2147-Conf-AnxA, page 9; CAR-OTP-0005-0159.

entirety. As regards the origin of the recording, although the prosecution states that the source is RFI, no evidence has been provided to that effect. The Chamber notes, however, that the defence has not contested that this recording emanates from RFI or that the voice of one of the persons in this recording is that of the accused.

122. In the view of the Chamber, although the audio recording purports to be an interview of the accused by a journalist concerning the MLC's withdrawal from the CAR in March 2003, the item is unlikely to assist in the Chamber's determination of this particular issue. The recording would only be of minimal relevance to the Chamber's determination of the case. Further, the recording is only an excerpt and the Chamber has not been provided with sufficient information in order to verify that this brief excerpt actually emanates from RFI or one of its reporters or correspondents. As previously stated, the prosecution should provide recordings in full and not just excerpts of them,¹⁴⁹ and unless the recording bears sufficient *indicia* that it is what it purports to be (i.e. an RFI transmission), the prosecution must also provide information on its source, originality and integrity. In light of the absence of this information, the alleged probative value of the recording is outweighed by its potentially prejudicial effect on a fair trial. The Chamber therefore rejects the admission of recording CAR-OTP-0005-0159.

123. Recording CAR-OTP-0031-0099 is an RFI programme concerning the situation in the CAR dated 5 December 2002. In the view of the

¹⁴⁹ ICC-01/05-01/08-2012-Red, paragraphs 85 and 90.

Chamber, the recording is relevant to the case as it refers to events that allegedly took place in the CAR during the time period relevant to the charges and it is contemporaneous with the events. As regards probative value, the Chamber considers that there are sufficient *indicia* that this recording is what it purports to be, namely a programme from RFI. The source is clearly identified and reporters, correspondents and interviewees are introduced and identified in the recording.

124. Although the Majority of the Chamber is not persuaded by the defence's argument that audio recordings of radio reports are generally not sufficiently reliable, it will approach the admissibility of such recordings with caution. Indeed, the Majority is of the view that such radio recordings containing the accounts of persons interviewed may be considered for limited purposes, to be determined on a case-by-case basis. For this particular RFI radio-broadcast, the information contained therein may serve to corroborate other pieces of evidence and might be examined when assessing the prosecution's allegation that the conduct described in the charges was widely broadcast which, according to the prosecution, may have implications with regard to the accused's alleged knowledge of the crimes charged. In light of the envisioned limited usage of the information contained in this recording, the Majority is of the view that there is no reason to believe that the admission of this recording will have a prejudicial effect on a fair trial. In light of the above, the Majority admits into evidence recording CAR-OTP-0031-0099.

125. Recording **CAR-OTP-0031-0104**, dated 8 December 2002, contains four tracks of the news programme "*Journal Afrique*" and one interview

with Captain Mbaye on the programme "*Invité Afrique*". The Chamber notes that although not all of the information in the "*Journal Afrique*" tracks is relevant to the case, as they also refer to other events taking place on the African continent, each track contains information which is relevant to the case, namely information on the events taking place in the CAR during the time period relevant to the charges. While the entirety of the programme is not available, the excerpts include the complete segment of the programme relevant to the CAR and the interview of Captain Mbaye is also reproduced in its entirety. Furthermore, the recording, as well as the cover page of the CD containing these recordings (CAR-OTP-0030-0105), indicate that they are contemporaneous with the relevant events in this case, having been broadcast from 8 to 14 December 2002. As such, the Chamber is satisfied that this audio recording is relevant to the charges against the accused and refers to matters that are properly to be considered by the Chamber.

126. As regards the probative value of this recording, the Chamber considers that there are sufficient *indicia* that the passages are what they purport to be, *i.e.* news programmes from RFI. The source is clearly identified in the recording and reporters, correspondents and interviewees are introduced and identified therein. As previously indicated, the Majority of the Chamber is of the view that such radio recordings may be considered for a limited purpose; in particular, the information contained therein may serve to corroborate other pieces of evidence and might be examined when assessing the prosecution's allegation that the conduct described in the charges was widely broadcast which, according to the prosecution, may have implications with regard to the accused's alleged

knowledge of the crimes charged. In light of this envisioned limited usage of the information contained in the radio recording, the Majority is of the view that there is no reason to believe that its admission will have a prejudicial effect on a fair trial. In light of the above, the Majority admits into evidence radio recording CAR-OTP-0031-0104.

127. The following seven recordings submitted by the prosecution, materials **CAR-OTP-0031-0093, CAR-OTP-0031-0106, CAR-OTP-0031-0116, CAR-OTP-0031-0120, CAR-OTP-0031-0122, CAR-OTP-0031-0124** and **CAR-OTP-0031-0136**, contain in total 20 tracks of the news programme "*Journal Afrique*". The Chamber notes that, as was the case in respect of the previous radio recording, although not all of the information provided in the "*Journal Afrique*" radio programme is relevant to the case, as it refers to other events taking place on the African continent, each track contains information which is relevant to this case, namely information on the events taking place in the CAR during the time period relevant to the charges. While the entirety of the programme is not available in some of these recordings, the recordings (which usually cover 15 minutes of the 30-minute programme) include the complete segments of the programme relevant to the CAR and the MLC's activity. Furthermore, the recordings as well as the cover pages of the CDs containing these recordings (materials identified with the ERN numbers **CAR-OTP0031-0094, CAR-OTP-0031-0107, CAR-OTP-0031-0117, CAR-OTP-0031-0121, CAR-OTP-0031-0123, CAR-OTP-0031-0125, and CAR-OTP-0031-0137**) indicate that they were broadcast contemporaneously with the time period relevant to the charges, having been broadcast from 30 October to 4 November 2002, from 14 to 25 December 2002, from 13 to

19 February 2003 and from 14 to 16 March 2003. As such, the Chamber is satisfied that the audio recordings are relevant to the charges against the accused and refer to matters that are properly to be considered by the Chamber.

128. As regards the probative value of the recordings, the Chamber considers that there are sufficient *indicia* that the passages are what they purport to be, *i.e.* news programmes from RFI. The source is clearly identified in the recording and reporters, correspondents and interviewees are introduced and identified therein. As previously indicated, the Majority of the Chamber is of the view that such radio recordings may be considered for a limited purpose; in particular, the information contained therein may serve to corroborate other pieces of evidence and might be examined when assessing the prosecution's allegation that the conduct described in the charges was widely broadcast which, according to the prosecution, may have implications with regard to the accused's alleged knowledge of the crimes charged. In light of this envisioned limited usage of the information contained in the radio recordings, the Majority is of the view that there is no reason to believe that the admission of these recordings will have a prejudicial effect on a fair trial. Consequently, the Majority admits into evidence radio recordings CAR-OTP-0031-0093, CAR-OTP-0031-0106, CAR-OTP-0031-0116, CAR-OTP-0031-0120, CAR-OTP-0031-0122, CAR-OTP-0031-0124 and CAR-OTP-0031-0136.

6. Other documents

129. The prosecution requests the admission of 19 miscellaneous documents originating from a variety of sources. The prosecution submits that, in general, these documents comprised or supported the referral of the CAR situation to the Court. This category also contains a joint United Nations Development Program (“UNDP”) and CAR Government report on rapes of women and children in the CAR in 2002-2003 as well as other reports providing information on the conflict in the CAR in 2002-2003. This category also includes a report detailing call records emanating from the Thuraya Telecommunications Company, two logbooks from Bangui airport which provide information on flights, including MLC flights, into and out of Bangui during the time period relevant to the charges as well as the findings of a piece of academic research on the CAR conflict in 2002-2003. This category also contains forensic reports relevant to and probative of murders committed by MLC troops.¹⁵⁰

130. The defence objects to the admission of all 19 documents.¹⁵¹ In relation to all documents for which the prosecution cites no author, the defence repeats and relies on the same arguments it has made previously in relation to documents for which no author is cited.¹⁵² A number of documents emanate from the United States (“US”) State Department; the defence submits that these documents do not have sufficient probative value or reliability to be considered admissible.¹⁵³ A number of the

¹⁵⁰ ICC-01/05-01/08-2147, paragraph 16.

¹⁵¹ ICC-01/05-01/08-2168, paragraphs 41-49.

¹⁵² ICC-01/05-01/08-2168, paragraph 42.

¹⁵³ ICC-01/05-01/08-2168, paragraphs 43-44.

documents are photographs; the defence alleges that such photographs should have been introduced through the individual who took them who testified for the prosecution.¹⁵⁴ A number of the documents are medical reports; the defence alleges that for at least one of these reports, which the prosecution itself qualifies as an “expert report”, the prosecution should have properly sought to have the authors qualified as experts, admitted to the ICC register of experts, and then called to give evidence before the Chamber giving the defence the chance to examine and test their alleged expertise.¹⁵⁵ As regards the alleged telephone records of the accused emanating from the Thuraya Telecommunications Company, the defence alleges that the records fall outside the time period relevant to the charges and that the prosecution has offered absolutely no basis for their provenance or authenticity, or even any foundation for its assertion that the telephone number cited belonged to the accused.¹⁵⁶ Similarly, the defence alleges that the prosecution has provided no information regarding the provenance of the alleged “logbooks” and that no information or evidence has been provided to support their authenticity.¹⁵⁷

131. In its reply the prosecution alleges that the documents from the US State Department emanate from a country with no biased interest in the events in CAR and that the documents are sufficiently reliable. The prosecution also asserts that issues of credibility and weight will be assessed by the Chamber in due course against the totality of the evidence

¹⁵⁴ ICC-01/05-01/08-2168, paragraph 45.

¹⁵⁵ ICC-01/05-01/08-2168, paragraph 46.

¹⁵⁶ ICC-01/05-01/08-2168, paragraph 48.

¹⁵⁷ ICC-01/05-01/08-2168, paragraph 49.

in the trial record.¹⁵⁸ In relation to the medical reports the prosecution submits that they contain sufficient indicia of reliability, such as their authors, information regarding their methodology and analysis as well as their sources of information and that one of the documents is supported by the testimony of Witness 87, which was tested in Court by the defence.¹⁵⁹ In relation to the Thuraya telephone records, the prosecution alleges that at least one of the numbers on the telephone records was authenticated during the testimony of its witnesses.¹⁶⁰ Lastly, in relation to the flight logbooks, the prosecution alleges that it has provided the Chamber with the sources of these logbooks and the rationale underpinning their probative value; further, it alleges that the document is self-explanatory and that calling an air traffic controller as a witness would add little, if anything, to understanding the information contained therein.¹⁶¹

132. On of the items for which the prosecution seeks admission, is in fact comprised of 210 documents, **CAR-OTP-0001-0139** to **CAR-OTP-0002-0137**, which the prosecution states comprise a *memoire* submitted by the CAR government through Mr Goungaye Wanfiuyo Nganatouwa, former legal counsel to the CAR government, in support of the referral of the situation in the CAR to the Court on 22 December 2004. The prosecution states that these documents were submitted pursuant to Articles 13 and 14 of the Statute and concern the 2002-2003 conflict in the CAR. The prosecution submits that the documents are relevant to the

¹⁵⁸ ICC-01/05-01/08-2184, paragraph 24.

¹⁵⁹ ICC-01/05-01/08-2184, paragraph 25.

¹⁶⁰ ICC-01/05-01/08-2184, paragraph 26.

¹⁶¹ ICC-01/05-01/08-2184, paragraph 27.

chapeau elements of Articles 7 and 8 of the Statute, the command responsibility of the accused, as well as counts 6 and 7 of murder. The prosecution submits that the report elaborates on the facts and elements supporting the referral, providing information on the historical and geographical background of the country, setting out relevant facts related to the case and analysing criminal responsibility. The document also refers to dossiers related to the Bangui Court proceedings regarding the crimes committed in 2002-2003.¹⁶²

133. The defence objects to the admission of the documents and submits that documents containing such untested facts should not be part of the case file considered by the Chamber without the author having been called to testify as to the truth of their contents, or the proper procedure for the admission of statements of deceased witnesses having been complied with. The defence also objects on the basis that the sources of information are not identified in sufficient detail, nor is there any detail given on the methodology used to compile and analyse the information received. The partiality of the author is also in question, given his direct employment by the CAR State, a party to the conflict in question, and which has a direct interest in the proceedings.¹⁶³

134. The Chamber notes that of the 210 documents for which the prosecution seeks admission (CAR-OTP-0001-0139 to CAR-OTP-0002-0137), more than two-hundred pages are other documents that formed part of the Bangui Court proceedings in the CAR (CAR-OTP-0001-0159 to

¹⁶² ICC-01/05-01/08-2147-Conf-AnxA, page 12.

¹⁶³ ICC-01/05-01/08-2168-Conf-AnxA, page 11.

CAR-OTP-0002-0137). These documents, which are annexed to document CAR-OTP-0001-0139 (but which are separate documents with their own ERN numbers), include non-ICC witness statements as well as press articles. The Chamber notes that these documents have already been admitted into evidence in this trial by the Chamber's decision of 15 December 2011, which has not been the subject of appeal.¹⁶⁴ The Chamber will therefore deal exclusively with document CAR-OTP-0001-0139, which has not yet been admitted into evidence.

135. The document is a 19-page "*Memoire*" submitted by Mr Goungaye Wanfiuyo Nganatouwa on behalf of the CAR State. The document is divided into three parts: geography of the CAR, historical background and events and international criminal responsibility. The Chamber considers that the document is relevant to the present case, as it relates to the events taking place in the CAR during the time period relevant to the charges and it deals particularly with the crimes allegedly attributable to the accused. As regards the document's probative value, the Chamber observes that the document is not signed or stamped. However, the prosecution submits that the document emanates from the government of the CAR and this submission is not disputed by the defence. The Chamber notes that although the document was prepared in relation to the referral of the situation in the CAR to the Prosecutor of the ICC, it particularly emphasises the individual criminal responsibility of three individuals: Mr Patassé, Mr Miskine and the accused. The Chamber considers that this document, which was not created in the ordinary course of operations of

¹⁶⁴ ICC-01/05-01/08-2012-Red, paragraphs 71 and 163.

the CAR government, but particularly to refer the situation of the CAR to the ICC, may lack objectivity and thus be unfairly prejudicial to the accused. Indeed, the Chamber considers that the document merely reflects the opinion of the deceased Mr Goungaye Wanfyio and notes that the defence did not have the opportunity to test his views. Furthermore, the author of the document, who was at the time a CAR government representative, also acted on behalf of a number of victims who applied to participate in this case.¹⁶⁵ Consequently, the Chamber considers that the prejudicial effect the admission of this document may have on a fair trial outweighs its relevance and limited probative value. The Chamber therefore rejects the admission of document CAR-OTP-0001-0139.

136. Document **CAR-OTP-0004-0977** is a report from the United States Department of State. The prosecution submits that the report was issued by the Bureau of Democracy, Human Rights and Labor and deals with the human rights situation in the CAR during the 2002-2003 conflict. The prosecution states that this document reports on the various serious crimes allegedly committed during the time period relevant to the charges and is dated 31 March 2003, and is thus contemporaneous with the events in this case.¹⁶⁶ The defence objects to the admission of this document alleging that it does not have sufficient probative value.¹⁶⁷ In its reply the

¹⁶⁵ Corrigendum - Information à la Chambre du décès de Maître Goungaye Wanfyio, représentant légal des victimes a/0277/08, a/0283/08, a/0284/08, a/0285/08, a/0286/08, a/0287/08, a/0288/08, a/0289/08, a/0290/08, a/0390/08, a/0391/08, a/0393/08, a/0394/08, a/0395/08, a/0396/08, a/0468/08, a/0469/08, a/0470/08, a/0471/08, a/0472/08, a/0473/08, a/0474/08, a/0475/08, a/0476/08, a/0477/08, a/0478/08, a/0479/08, a/0480/08 et a/0481/08, 5 January 2009, reclassified as public on 19 September 2009, ICC-01/05-01/08-338-Corr.

¹⁶⁶ ICC-01/05-01/08-2147-Conf-AnxA, page 12.

¹⁶⁷ ICC-01/05-01/08-2168, paragraphs 43-44. The defence refers to the practice of the International Criminal Tribunal for the former Yugoslavia ("ICTY"), in which a Chamber refused to admit a document from the embassy of a foreign State. Although the document came from a State that was involved in the

prosecution argues that this document emanates from a country “with no biased interest in the events in the CAR” and that it is “sufficiently reliable whilst issues of credibility and will be assessed by the Chamber in due course against the totality of the evidence in the trial record.”¹⁶⁸

137. The Chamber considers that the 22-page copy of a report on the CAR is relevant to the charges against the accused, as it refers to the events taking place in the CAR during the time period relevant to the charges. As regards the probative value of this report, the Majority is of the view that the document offers sufficient *indicia* of reliability. Although the Majority of the Chamber is not persuaded by the defence’s argument that US Government Reports are in general not reliable, it will approach the admissibility of such reports with caution. Indeed, the Majority considers that such reports may be admitted for limited purposes, to be determined on a case-by-case basis. For this particular report, the Majority considers that the information contained therein may serve to corroborate other pieces of evidence. In light of the envisioned limited usage of the information contained in this report, the Majority is of the view that there is no reason to believe that its admission will have a prejudicial effect on a fair trial. Consequently, the Majority admits into evidence document CAR-OTP-0004-0977.

region, its creator and source were unknown and thus the Chamber concluded it was not sufficient reliable to be admitted. The defence further submits that there has been widespread criticism of the use of United States Government reports in judicial proceedings, even within United States courts. The defence refers to the case of *Chen v INS*, in which an American court noted that a report produced by a government entity inherently could not be completely objective and accurate. The defence also refers to a report by the Lawyers’ Committee on Human Rights which notes that such reports have “serious omissions and distortions” that appear “to reflect political pressures”. The defence refers to *ICTY, Prosecutor v. Bloskoski*, transcript of hearing on 14 November 2007, pages 7793-7795; *Chen v. INS*, 359.F.3d, 121, 130 (2d Cir.2004); and Lawyers’ Committee for Human Rights, *Holding the Line: A Critique of the Department of State’s Annual Country Report on Human Rights Practices*, p.ii-iii (2003)..

¹⁶⁸ ICC-01/05-01/08-2184, paragraph 24.

138. Document **CAR-OTP-0009-0014** is another report on the CAR from the US State Department on the CAR, dated 1 March 2008. The prosecution submits that the report, which is publicly available, was issued by the Bureau of African Affairs and provides background information on the CAR, including information on the 2002-2003 conflict. The prosecution submits that the document is relevant and probative as it provides detailed background information on the CAR and the 2002-2003 conflict.¹⁶⁹ The defence objects to the admission of this document for the same reasons analysed above in relation to documents emanating from a State and particularly the US State Department. Furthermore, the defence argues that the author(s) of the document are unknown and that no sources are revealed. The defence also refers to the political nature of the United States Department of State publications as well as to the irrelevance of the document vis-à-vis the charges against the accused.¹⁷⁰

139. The Chamber considers that the 6-page copy of a "Background Note" on the CAR is not relevant to the matters in this case since it refers only in very general terms to the events relevant to the charges against the accused. Indeed, the document does not give significant detail of the events that form the subject matter of this case and is therefore unlikely to make the existence of a fact at issue in this case more or less probable if admitted. The Chamber therefore rejects the admission of document **CAR-OTP-0009-0014**.

¹⁶⁹ ICC-01/05-01/08-2147-Conf-AnxA, page 12 ; ICC-01/05-01/08-2184, paragraph 24.

¹⁷⁰ ICC-01/05-01/08-2168-Conf-AnxA, page 12, paragraphs 43-44.

140. Document **CAR-OTP-0006-0424** is a Report from the US Institute of Peace, dated 1 February 2008. The prosecution submits that this report, which is publicly available, examines the 2006 election results and the state of democracy in the DRC, by tracing the history of the MLC and its transition from a rebel movement to a political party. The prosecution alleges that the analysis is based on extensive fieldwork in the region and interviews with MLC members and DRC observers. The prosecution submits that the source is Ms Tatiana Carayannis, who is the Associate Director at the Social Science Research Council's Conflict Prevention and Peace Forum in New York. The prosecution submits that the author has written extensively on non-state actors and has followed the MLC since its creation in 1998. Finally, the prosecution submits that the document is reliable and provides relevant and probative background on the formation and rise of the MLC.¹⁷¹ The defence objects to the admission of this document alleging that it is irrelevant to the charges against the accused.¹⁷²

141. The Chamber notes that the document focuses on the election results in the DRC in 2006. Although the report gives background information on the MLC and the accused, the Chamber considers that the report does not contain information that would have the capacity to make the existence of a fact at issue more or less probable that it would be without this document. Furthermore, the document is not contemporaneous with the time period relevant to the charges in this case. On the contrary, it was created in 2008 and refers to the ICC Prosecutor's investigations into the events in the CAR and how this could relate to the

¹⁷¹ ICC-01/05-01/08-2147-Conf-AnxA, page 12.

¹⁷² ICC-01/05-01/08-2168-Conf-AnxA, page 12.

accused. The Chamber therefore rejects the prosecution's request for the admission of document CAR-OTP-0006-0424.

142. Document **CAR-OTP-0005-0231** is a report from the *Centre d'information geopolitique*. The prosecution submits that this document is a geopolitical study of the zones controlled by different rebel groups, which provides an overview of the various rebel groups and their positions in the DRC, including the MLC. The prosecution submits that the document is thus relevant to and probative of the background of the MLC and its leadership structure in 2002. The prosecution alleges that the document is publicly available and is dated 18 October 2002, and is thus contemporaneous with the time period relevant to the charges in the present case.¹⁷³

143. The defence objects to the admission of this document since it was published on 18 October 2002, before the 2002-2003 conflict in the CAR commenced. Moreover, the defence contends that the author is not provided, the sources listed are internet websites and other reports, and as such, all the information relied upon is at least second hand and untested, and there is no explanation of the methodology used to compile and analyse the information relied upon. The defence submits that the partiality of this organisation is unknown.¹⁷⁴

144. The Chamber notes that the 28-page report focuses on the DRC and the various armed groups active at the time when this document was

¹⁷³ ICC-01/05-01/08-2147-Conf-AnxA, page 12.

¹⁷⁴ ICC-01/05-01/08-2168-Conf-AnxA, page 12.

issued, 18 October 2002. The Chamber considers that the document was issued sometime before the events under examination and the information is irrelevant as regards the structure of the MLC and the accused's position. As regards the probative value of the document the Chamber observes that the document is not signed or stamped. The prosecution submits that the document emanates from the *Centre d'information geopolitique* and this allegation is not disputed by the defence. The Chamber notes that the document appears to be a document from the French government. Furthermore, the sources identified in the report are internet sites and other NGO reports. Thus the information provided in the report does not appear to be first-hand information and there is no reference as to how the information in the report was compiled by its author. In the view of the Chamber, the document has very limited probative value to outweigh the prejudice its admission could cause to the accused. The Chamber therefore rejects the admission of document CAR-OTP-0005-0231.

145. Document **CAR-OTP-0011-0002** is a report with the title "*Biographies des acteurs de la transition*". The prosecution submits that the report is the result of collective research carried out by the *Centre d'Etudes Politiques (CEP) of Kinshasa*, the *Centre d'Etudes de Recherches Documentaires sur l'Afrique Centrale (CERDAC)* and the *Musée Royale de l'Afrique Centrale (MRAC)* from June 2003 to June 2006. The prosecution submits that this is a biographical dictionary which provides an overview of the Congolese political class, including a detailed biography of the accused and his leadership in the MLC. The prosecution states that this document is based on previously published biographical works as well as on interviews of

relevant witnesses.¹⁷⁵ The defence objects to the admission of this document on the basis that the author(s)'s identit(ies) and sources are not provided in sufficient detail and the document is irrelevant to the charges against the accused.¹⁷⁶

146. The Chamber notes that the 265-page document compiles a list of names and general biographical data of Congolese persons. The document is publicly available and there are sufficient *indicia* as to its authenticity (including ISBN number). However, the Chamber observes that of the more than two-hundred pages, only one paragraph summarises very briefly the biography of the accused (at CAR-OTP-011-0026 to CAR-OTP-011-0027). In addition, the information is very general and does not provide any details relevant to the issues of this case. The biographical note does not provide any detail on the role of the accused within the MLC. Although the prosecution submits that the document is relevant to prove the accused's command responsibility, the Chamber considers that given the very general terms of the document, it is unlikely to have any capacity to prove this or any other contested issue in this case. The Chamber therefore rejects the admission of document CAR-OTP-0011-0002.

147. The Chamber notes that together with document **CAR-OTP-0019-0588**, the prosecution includes in its request a number of victims' statements (CAR-OTP-0019-0385 to CAR-OTP-0019-0586). However, the prosecution has not referred to any of these other documents in its

¹⁷⁵ ICC-01/05-01/08-2147-Conf-AnxA, page 13.

¹⁷⁶ ICC-01/05-01/08-2168-Conf-AnxA, page 12.

submissions and has provided no information to the Chamber on how these statements satisfy the three-pronged admissibility test. The Chamber will therefore only consider the admissibility of document CAR-OTP-0019-0588.

148. Document CAR-OTP-0019-0588 is a "*Synthèse des fiches d'identification des victimes de violences sexuelles au cours des événements du 25 au 31 Octobre 2002*". The prosecution submits that this document emanated from the CAR authorities and contains the official stamp and heading of the CAR Social Services Ministry. The prosecution states that this document lists the names of Central African victims of sexual violence committed by MLC troops as well as the circumstances of the crimes they suffered. The prosecution submits that the list was created contemporaneously with the events it records, following interviews conducted with the victims referred to in the list and in accordance with the law of the CAR. The prosecution submits that the document is relevant and probative as it provides background information in relation to the widespread or systematic commission by MLC troops of crimes against the CAR civilian population.¹⁷⁷ The defence objects to the admission of this document. The defence argues that had the prosecution wished to tender statements from these alleged victims, they should have been called to give evidence in accordance with the principle of the primacy of orality. Otherwise, the defence submits that the prosecution should have sought the introduction of these statements through Rule 68 of the Rules, the requirements of which they do not meet.¹⁷⁸

¹⁷⁷ ICC-01/05-01/08-2147-Conf-AnxA, page 13.

¹⁷⁸ ICC-01/05-01/08-2168-Conf-AnxA, page 13.

149. The Chamber notes that this is a 6-page document. As regards the relevance of the document, the Chamber considers that the information contained therein relates to the charges in this case, as the document lists general information on testimony allegedly taken by the CAR authorities regarding crimes of sexual violence, including rape, allegedly committed during the time period relevant to the charges. The document appears to emanate from the CAR government, although, contrary to the prosecution's submission, it is not stamped or signed. Taking into account that the defence does not contest its authenticity, the Majority sees no reasons to doubt that the document is what it purports to be, *i.e.* a report summarising information on alleged victims of sexual violence in the CAR from 25 to 31 October 2002. In view of the foregoing, the Majority of the Chamber is of the view that any possible prejudicial effect that could result from the admission of this document does not outweigh its relevance and probative value. Consequently, the Majority admits into evidence document CAR-OTP-0019-0588.

150. Document **CAR-OTP-0019-0594** is a doctoral thesis written by Dr. Peggy Raymonde Conjugo Lakosso, entitled "*Les aspects médicaux des violences consécutives aux troubles socio-politiques survenues en RCA en 2002-2003*", dated 21 October 2003. The prosecution submits that the purpose of this study was to evaluate the scope of violence perpetrated against the CAR civilians during the armed conflict from 2002-2003 and the consequences of these crimes on the CAR population. The prosecution states that this is the result of a thorough investigation conducted with the cooperation of victims who were interviewed and a humanitarian

assistance team. The prosecution further notes that this thesis was drafted contemporaneously with the events.¹⁷⁹ The defence objects to the admission of this document and contends that had the prosecution wished to introduce the results of this person's research, it should have properly sought authorisation to present her as an expert witness. The defence contends that an unpublished doctoral thesis (with no indication if it was accepted by the examiners) does not have sufficient probative value to warrant its admission. The defence also argues that the victims interviewed in this study are anonymous and as such, there are no means of independently verifying the information that they provided.¹⁸⁰

151. The Chamber notes that this document is purportedly a thesis authored by Ms Lakosso in order to obtain the diploma of "*Doctorat en Médecine, Diplôme d'Etat*", which was apparently presented and defended by the author on 21 October 2003. As regards the relevance of the information contained therein, the Chamber notes that the thesis of Ms Lakosso refers to the medical and sociological effects of sexual violence on victims and that her thesis is based exclusively on alleged victims of crimes allegedly committed by MLC forces in 2002 in the CAR. Consequently, the document is relevant to the issues at stake in this case. Turning to the probative value of the document, the Chamber notes that the defence is not challenging the authenticity of the document and therefore accepts that this document is what it purports to be. The Chamber notes that this document was created for educational purposes, namely to obtain a university degree in medicine. Furthermore, although

¹⁷⁹ ICC-01/05-01/08-2147-Conf-AnxA, page 13.

¹⁸⁰ ICC-01/05-01/08-2168-Conf-AnxA, page 13.

the author includes in her thesis a brief summary of the methodology used and the organisations involved in the process, the Chamber has no means to verify the way in which this information was gathered or analysed. In addition, the Chamber has no means to verify the expertise of the author or accuracy of the data contained in her thesis. The Chamber concludes that this document merely contains an opinion that cannot be tested, and that, as such, admitting it would risk causing prejudice to the defence. The Chamber therefore considers that the limited probative value of this document is outweighed by the potential prejudice its admission could cause to the rights of the accused. Consequently, the Chamber rejects the admission of document CAR-OTP-0019-0594.

152. Document **CAR-OTP-0030-0002** is a report entitled "*Projet CAF/02/004 assistance humanitaire aux femmes et filles victimes des viols et de violences inhérents aux conflits armés du 25 octobre 2002*". The prosecution submits that the document is the result of a project implemented through the UN system with the collaboration of various UN organisations, such as the UNDP and the United Nations Children's Fund ("UNICEF"), in conjunction with the CAR authorities. The prosecution states that the purpose of the project was to identify victims of rape and other forms of sexual violence during the 2002-2003 conflict in order to provide them with medical, psychological and social assistance. The prosecution submits that the document comprises interviews of victims who had first-hand experience and is relevant to and probative of the charges.¹⁸¹ The defence objects to the admission of this document on the basis that the

¹⁸¹ ICC-01/05-01/08-2147-Conf-AnxA, page 13.

author(s) and sources of information are not identified and that it was produced under the auspices of a party to the relevant conflict.¹⁸²

153. The Chamber notes that this 97-page document purportedly emanates from the CAR government, in particular the “*Ministère de la Famille, des Affaires Sociales et de la Solidarité Nationale*”. As regards the relevance of the document, the Chamber considers that the information therein relates to the charges in this case, as the document lists information on the effects of sexual violence, including rape, on alleged victims during the time period relevant to the charges.

154. The Chamber notes that the document is not signed. However, the defence has not contested its authenticity and the Chamber therefore accepts that the document is what it purports to be; that is, a document summarising information on alleged victims of sexual violence, including rape, in the CAR during the armed conflict of 2002-2003 which compiles information gathered between 25 November 2002 and 31 December 2003. The Chamber further observes that the document appears to have been prepared during the normal course of activities of the CAR government in a project to provide assistance to victims of sexual violence. The Majority considers that the document contains detailed information as to how the records contained therein were gathered and the process followed to analyse the collected data. There are no *indicia* that this document is biased or that the data it contains has been altered to favour any party in these proceedings. The Majority of the Chamber is of the view that the

¹⁸² ICC-01/05-01/08-2168-Conf-AnxA, page 13.

document contains information that, when analysed within the context of the overall evidence admitted in the case, might serve to corroborate other pieces of evidence. Therefore, the Majority sees no reason to believe that its admission will have a prejudicial effect on a fair trial. The Majority therefore admits document CAR-OTP-0030-0002 into evidence.

155. Documents **CAR-OTP-0045-0002** and **CAR-OTP-0045-0228** are logbooks from Bangui Airport, including entries dated, respectively, from 3 August 2002 to 27 March 2003 and 2 January 2002 to 12 May 2003. The prosecution submits that these logbooks record arrivals and departures of registered aircrafts, including those of the MLC, during the period of 2 January 2002 to 17 May 2003. The prosecution submits that this document was provided by a representative of the "*Agence pour la Sécurité de la Navigation aérienne en Afrique et à Madagascar*" and was created contemporaneously with the events it records, during the normal course of business.¹⁸³ The defence objects to the admission of these logbooks since no information or evidence has been provided to support their authenticity. The defence argues that such documents should properly be introduced through witnesses who have knowledge of the document or who can provide a basis for the Chamber to accept that they are in fact logbooks.¹⁸⁴ In its reply the prosecution submits that such a document is self-explanatory and that calling an air traffic controller as a witness would add very little, if anything at all, to understanding the information contained therein.¹⁸⁵

¹⁸³ ICC-01/05-01/08-2147-Conf-AnxA, pages 13-14.

¹⁸⁴ ICC-01/05-01/08-2168, paragraph 49.

¹⁸⁵ ICC-01/05-01/08-2184, paragraph 27.

156. The Chamber is of the view that such documents, if considered sufficiently reliable, would only prove that MLC planes may have landed in Bangui, and for the most part at times outside the period relevant to the charges. The Chamber finds therefore that this document is only of limited relevance and might only assist the Chamber's determination of the facts relevant to the case in a limited manner. In relation to its probative value, the Chamber notes that, contrary to its submissions, the prosecution has provided no information regarding the origin and reliability of these documents. Indeed, according to the record, these documents were provided to the prosecution by a witness who was not called to testify. Further, there is nothing in the logbooks indicating that the records actually originate from Bangui Airport or that they were created by operators or officials of that airport. Contrary to what the prosecution submits, the documents are not self-explanatory, particularly not with regard to their origin and whether they in fact originate from Bangui Airport. Without a proper explanation as to the meaning of the information in the logbooks or their origin, the Chamber finds no probative value in their contents. Considering the insufficient relevance and probative value of these documents, the Chamber is of the view that admitting them would cause unfair prejudice to the accused. The Chamber therefore rejects the admission of documents CAR-OTP-0045-0002 and CAR-OTP-0045-0228.

157. Items CAR-OTP-0046-0198, CAR-OTP-0046-0203, CAR-OTP-0046-0215 and CAR-OTP-0046-0217 are photographs. The prosecution submits that these photographs show the MLC in Sibut and prove, *inter alia*, the

alleged authority and control of the accused over the MLC in the CAR.¹⁸⁶ The defence objects to the admission of these photographs, arguing that they should have been introduced through their author, who is a prosecution witness. The defence further argues that the photos have no context, cannot be authenticated, and that neither the Chamber nor the defence can ascertain what or who they are purported to represent.¹⁸⁷

158. The Chamber notes that photographs CAR-OTP-0046-0203 and CAR-OTP-0046-0215 were discussed in Court and tendered into evidence both by the prosecution and the defence during the testimony of CAR-V20-PPPP-0002.¹⁸⁸ As such, the Chamber is satisfied that both photographs are relevant to matters that are properly to be considered by the Chamber. In relation to their probative value, the Chamber is satisfied that the photographs provide sufficient *indicia* of reliability. Against this background, the Chamber finds that the admission of these photographs will not unfairly prejudice the defence. The Chamber therefore admits into evidence photographs CAR-OTP-0046-0203 and CAR-OTP-0046-0215.

159. The remaining two photographs, CAR-OTP-0046-0198 and CAR-OTP-0046-0217, have not been discussed in court so far. As stated above, there is no strict requirement establishing that every piece of evidence must be authenticated officially or by a witness in court in order for it to be considered authentic, reliable and holding probative value. However, in relation to these photographs, the prosecution has not provided any

¹⁸⁶ ICC-01/05-01/08-2147-Conf-AnxA, page 14.

¹⁸⁷ ICC-01/05-01/08-2168, paragraph 45.

¹⁸⁸ Transcript of 7 May 2012, ICC-01/05-01/08-T-224-CONF-ENG, page 33, line 14 *et seq.*; Transcript of 8 May 2012, ICC-01/05-01/08-T-225-CONF-ENG, page 24, line 11 *et seq.*

information or evidence to support their authenticity and reliability. In light of the absence of this information, although the photographs appear in principle to be relevant to matters that are properly to be considered by the Chamber, their alleged probative value is outweighed by their potential unfair prejudice to a fair trial. The Chamber therefore rejects the admission of photographs CAR-OTP-0046-0198 and CAR-OTP-0046-0217.

160. Documents **CAR-OTP-0048-0492_R01**, **CAR-OTP-0051-0263_R02** and **CAR-OTP-0048-0431** are three expert reports authored respectively by [REDACTED], of the *Direction de la Police Judiciaire*, [REDACTED] and [REDACTED], from the *Laboratoire de police scientifique de Paris*. The prosecution submits that these documents are relevant to and probative of, *inter alia*, the elements of murder under Articles 7(1)(a) and 8(2)(c)(i) of the Statute.¹⁸⁹ The defence objects to the admission of these documents, arguing that the prosecution should have sought to have the authors properly qualified as experts, admitted to the ICC register of experts and then called to give evidence enabling the defence and the Chamber to examine and test their alleged expertise. The defence refers to the decision of Trial Chamber I in which the admission of an expert report was rejected on the basis that, *inter alia*, the authors of the report had not been called, and as such, counsel would have been unable through questioning to investigate criticisms which had been made of its content. The defence further refers to another decision of Trial Chamber I in which it admitted a forensic report on fingerprints through a “bar table motion”, but held that in so doing it needed to consider, *inter alia*, whether it was fair to

¹⁸⁹ ICC-01/05-01/08-2147-Conf-AnxA, pages 14-15.

admit the material without calling the relevant witness to give oral evidence. The defence submits that, unlike in the present circumstances, the defence in that case had not objected to the documents being admitted.¹⁹⁰ The prosecution in its reply stated that two of the reports (forensic reports CAR-OTP-0048-0492_R01 and CAR-OTP-0051-0263_R02), include sufficient *indicia* of reliability, such as their authors, information regarding their methodology as well as their sources of information. Furthermore, the prosecution submits that CAR-OTP-0051-0263_R02 is supported by the testimony of Witness 87, which was tested in court by the defence.

161. The Chamber considers that these three reports are relevant to the charges in this case, since they all refer to the alleged murder of the brother of Witness 87. As to the probative value of the three reports, the Chamber notes that the defence does not question the authenticity of these documents. Since the three reports provide relevant information regarding the identities of their authors, the materials used and the methodology employed, and given that all three reports only relate to the specific issue of the alleged murder of Witness 87's brother, the Majority of the Chamber is of the view that there is no reason to believe that their admission would cause unfair prejudice to the accused. The Majority therefore admits documents CAR-OTP-0048-0492_R01 and CAR-OTP-0048-0431 into evidence and the Chamber admits CAR-OTP-0051-0263_R02 into evidence.

¹⁹⁰ ICC-01/05-01/08-2168, paragraphs 46-47, refers to ICC-01/04-01/06-2135 and to ICC-01/04-01/06-2662.

162. Document **CAR-OTP-0055-0893** is a telephone record. The prosecution submits that this document emanates from the Thuraya Telecommunications Company and was provided by non-trial prosecution Witness 161. The prosecution submits that the accused's own phone line at the time was registered under the name of Witness 161, who could request the report of calls made during the period from February to July 2003 from the company. The prosecution states that this record includes information pertaining to the accused's alleged knowledge and his command responsibility, as it shows his contact with the MLC commanders in the field during the time period relevant to the charges.¹⁹¹ The defence objects to the admission of this document since the records fall predominantly outside the time period relevant to the charges. The defence also contends that the prosecution has offered absolutely no basis for their provenance or authenticity or even any foundation for its assertion that the telephone number cited belonged to the accused. The defence submits that this document should have been introduced through a witness who has knowledge of these records and who could have provided the Chamber with a basis for their admission.¹⁹² In its reply the prosecution submits that during the testimony of its witnesses it authenticated at least one of the numbers in the telephone records and that this provides sufficient basis to warrant their admission. The prosecution further states that "if the record at the close of the case cannot link the telephone number with the accused, and that failure properly

¹⁹¹ ICC-01/05-01/08-2147-Conf-AnxA, page 15.

¹⁹² ICC-01/05-01/08-2168, paragraph 48.

diminishes the weight of the evidence, the Chamber can be trusted to make the appropriate assessment".¹⁹³

163. The Chamber notes, as pointed out by the prosecution, that during the testimony of witness 178 the numbers of some Thuraya and mobile telephones used by the MLC during the time period relevant to the charges were discussed and identified by the witness, including at least one of the numbers in the telephone records.¹⁹⁴ For this reason, the Majority of the Chamber is of the view that the telephone records are relevant to matters that are properly to be considered by the Chamber. In particular, they may help the Chamber to contextualise and understand the testimony of witness 178. Against this background, the Majority, Judge Kuniko Ozaki dissenting, finds that the admission of this document will not unfairly prejudice the defence. The Majority therefore admits into evidence document CAR-OTP-0055-0893.

¹⁹³ ICC-01/05-01/08-2184, paragraph 26.

¹⁹⁴ Transcript of hearing of 30 August 2011, ICC-01/05-01/08-T-150-CONF-ENG ET, from page 43 line 6 to page 45 line 7; and Transcript of Hearing of 1 September 2011, ICC-01/05-01/08-T-151-CONF-ENG ET, page 56 from line 2 to line 20.

III. Orders

164. In view of the foregoing, the Chamber:

- (i) **PARTIALLY GRANTS** the prosecution's Application and **admits** into evidence items: CAR-OTP-0017-0349; CAR-OTP-0017-0351; CAR-OTP-0017-0355; CAR-OTP-0017-0363; CAR-OTP-0033-0209; DRC-OTP-0098-0003; CAR-DEF-0001-0152; CAR-DEF-0001-0154; CAR-DEF-0001-0155; CAR-DEF-0002-0001; CAR-D04-0002-1513; CAR-D04-0002-1508; CAR-D04-0002-1399; CAR-D04-0002-1481; CAR-D04-0002-1499; CAR-D04-0002-1500; CAR-DEF-0002-0580; CAR-D04-0002-2004; CAR-D04-0002-1413; CAR-DEF-0001-0161; CAR-D04-0002-1511; CAR-D04-0002-1514; CAR-D04-0002-1641; CAR-D04-0002-1455; CAR-D04-0002-1462; CAR-DEF-0001-0127; CAR-D04-0002-1382; ERN pages numbers CAR-OTP-0004-0336, CAR-OTP-0004-0337, CAR-OTP-0004-0339, CAR-OTP-0004-0338 and CAR-OTP-0004-0342 of item CAR-OTP-0004-0336; CAR-OTP-0032-0167; CAR-OTP-0046-0203; CAR-OTP-0046-0215 and CAR-OTP-0051-0263_R02;
- (ii) **PARTIALLY DENIES** the prosecution's request and **rejects** the admission into evidence of items: ERN pages numbers DRC-OTP-0100-0349 to DRC-OTP-0100-0356 of item DRC-OTP-0110-0314; CAR-OTP-0004-0645; CAR-OTP-0004-0654; CAR-DEF-0001-0830; ERN pages numbers CAR-OTP-0004-0340 and CAR-OTP-0004-0341 of item CAR-OTP-0004-0336; CAR-OTP-0008-0426; CAR-OTP-0010-0326; CAR-OTP-0010-

0346; CAR-OTP-0005-0198; CAR-OTP-0005-0204; CAR-OTP-0005-0212; CAR-OTP-0011-0405; CAR-OTP-0013-0082; CAR-OTP-0005-0159; CAR-OTP-0001-0139; CAR-OTP-0009-0014; CAR-OTP-0006-0424; CAR-OTP-0005-0231; CAR-OTP-0011-0002; CAR-OTP-0019-0594; CAR-OTP-0045-0002; CAR-OTP-0045-0228; CAR-OTP-0046-0198 and CAR-OTP-0046-0217;

(iii) POSTPONES the decision on the admission into evidence of items: ERN pages DRC-OTP-0100-0315 to DRC-OTP-0100-0348 of item DRC-OTP-0100-0314; CAR-OTP-0029-0499; CAR-OTP-0011-0422; CAR-OTP-0004-0577; CAR-OTP-0008-0409 and CAR-OTP-0017-0366;

(iv) CONSIDERS MOOT the request to admit item CAR-DEF-0001-0826;

(v) ORDERS that the EVD-T numbers previously assigned to items in accordance with the November 2010 Decision shall remain unchanged; and

(vi) INSTRUCTS the Registry to assign new EVD-T numbers to those items which currently do not have an EVD-T reference.

165. Further, the Majority of the Chamber, Judge Kuniko Ozaki dissenting, PARTIALLY GRANTS the prosecution's Application and **admits** into evidence items: CAR-OTP-0001-0034; CAR-OTP-0004-0409; CAR-OTP-0004-0881; CAR-OTP-0004-1096; CAR-OTP-0011-0503; CAR-OTP-0004-0343; CAR-OTP-0004-0345; CAR-OTP-0004-0667; CAR-OTP-

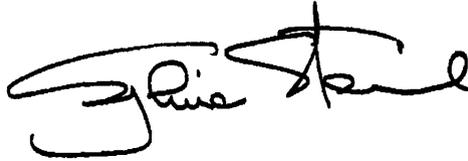
0008-0413; CAR-OTP-0005-0133; CAR-OTP-0005-0135; CAR-OTP-0005-0141; CAR-OTP-0005-0147; CAR-OTP-0005-0194; CAR-OTP-0005-0333; CAR-OTP-0011-0293; CAR-OTP-0013-0005; CAR-OTP-0013-0053; CAR-OTP-0013-0065; CAR-OTP-0013-0151; CAR-OTP-0013-0161; CAR-OTP-0031-0099; CAR-OTP-0031-0104; CAR-OTP-0031-0093; CAR-OTP-0031-0106; CAR-OTP-0031-0116; CAR-OTP-0031-0120; CAR-OTP-0031-0122; CAR-OTP-0031-0124; CAR-OTP-0031-0136; CAR-OTP-0004-0977; CAR-OTP-0019-0588; CAR-OTP-0030-0002; CAR-OTP-0048-0492_R01; CAR-OTP-0048-0431 and CAR-OTP-0055-0893.

166. Lastly, in the Chamber's view, certain information contained in the corresponding annexes to the parties' filings ¹⁹⁵ does not warrant confidential treatment. Thus, consistent with the presumption in favour of public proceedings enshrined in Articles 64(7) and 67(1) of the Rome Statute ("Statute") and pursuant to Article 64(6)(f) of the Statute, the Chamber ORDERS the parties to file public redacted versions of the correspondent annexes their filings and; and/or reclassify them, pursuant to Regulation 23bis(3) of the of the Regulations of the Court, if they believe that no redactions are necessary, no later than 21 September 2012.

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

¹⁹⁵ ICC-01/05-01/08-2147-Conf-AnxA, ICC-01/05-01/08-Cond-AnxB, ICC-01/05-01/08-2168-Conf-AnxA and ICC-01/05-01/08-2168-Conf-AnxB.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this Monday 08 October 2012

At The Hague, the Netherlands