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**TRIAL CHAMBER III**

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

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

**Public with annexes I, II, and A to F**

**Judgment pursuant to Article 74 of the Statute**

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

**The Office of the Prosecutor**
Ms Fatou Bensouda
Mr Jean-Jacques Badibanga

**Counsel for the Defence**
Mr Peter Haynes
Ms Kate Gibson
Ms Melinda Taylor

**Legal Representatives of the Victims**
Ms Marie-Edith Douzima Lawson

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**
Ms Paolina Massidda

**The Office of Public Counsel for the Defence**
Mr Xavier-Jean Keïta

**States Representatives**

**Amicus Curiae**

**REGISTRY**

**Registrar**
Mr Herman von Hebel

**Counsel Support Section**
Mr Esteban Peralta-Losilla

**Victims and Witnesses Unit**
Mr Nigel Verrill

**Detention Section**
Mr Patrick Craig

**Victims Participation and Reparations Section**
Ms Isabelle Guibal

**Other**

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**MAP OF THE CENTRAL AFRICAN REPUBLIC ……...ANNEX A**

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Trial Chamber III ("Chamber") of the International Criminal Court ("Court" or "ICC") hereby issues its Judgment pursuant to Article 74 of the Rome Statute ("Statute") in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("*Bemba* case").

# I. OVERVIEW

## A. THE ACCUSED

1. Mr Jean-Pierre Bemba Gombo ("Mr Bemba" or "Accused"), a national of the Democratic Republic of the Congo ("DRC"), was born on 4 November 1962 in Bokada, Équateur Province, DRC.[1] During the temporal period relevant to the charges, it is undisputed[2] that Mr Bemba was President of the *Mouvement de libération du Congo* ("MLC"), a political party founded by him, and Commander-in-Chief of its military branch, the *Armée de libération du Congo* ("ALC").[3] At the time of his arrest on 24 May 2008, he was a member of the Senate of the DRC.[4]

## B. THE CHARGES

2. On 15 June 2009, Pre-Trial Chamber II ("Pre-Trial Chamber") confirmed that there was sufficient evidence to establish substantial grounds to believe that Mr Bemba is responsible as a person effectively acting as a military commander within the meaning of Article 28(a)[5] for the crimes against humanity of murder, Article 7(1)(a), and rape, Article 7(1)(g), and the war crimes of murder, Article 8(2)(c)(i), rape, Article 8(2)(e)(vi), and pillaging, Article 8(2)(e)(v), allegedly

[1] Confirmation Decision, para. 1. The complete citations for authorities and submissions referenced in this Judgment are set out in Annexes C, E, and F.
[2] Prosecution Closing Brief, para. 510; and Defence Closing Brief, para. 676. Public versions of the closing submissions filed by the parties and Legal Representative will be available in due course.
[3] *See* Section V(A). The Chamber notes that, as used in this Judgment and unless stated otherwise, the MLC incorporates the ALC. However, the Chamber also uses "ALC" at various points when specifically referring to the military wing of the MLC.
[4] Confirmation Decision, para. 1.
[5] References to "Article" or "Articles" throughout this Judgment refer to the Articles of the Statute.

committed on the territory of the Central African Republic ("CAR") from on or about 26 October 2002 to 15 March 2003.[6]

3. Pursuant to Article 74(2), the Chamber has ensured that the present Judgment does not exceed the facts and circumstances described in the charges as confirmed by the Pre-Trial Chamber.

## C. JURISDICTION AND ADMISSIBILITY

4. Pursuant to Article 19(1), "[t]he Court shall satisfy itself that it has jurisdiction in any case brought before it". The Pre-Trial Chamber satisfied itself that the Court had jurisdiction to prosecute Mr Bemba and that the *Bemba* case was admissible.[7] The Chamber notes, in particular, that the personal, temporal, territorial, and material criteria that established the Court's jurisdiction remain unchanged. The Chamber therefore adopts the relevant reasoning and findings of the Pre-Trial Chamber and affirms that the Court has jurisdiction over the charges and the Accused. Further, on 24 June 2010, the Chamber rejected the challenge by the Defence for Mr Bemba ("Defence") to the admissibility of the case and held that the *Bemba* case was admissible.[8] The Appeals Chamber confirmed that decision.[9] The Chamber finds no reason to depart from these previous findings and affirms that the *Bemba* case is admissible.

## D. PROCEDURAL BACKGROUND

5. On 23 May 2008, the Pre-Trial Chamber issued a warrant for the arrest of Mr Bemba.[10] Mr Bemba was arrested in the Kingdom of Belgium on 24 May 2008.[11] Following the submission of additional information by the Office of the

[6] Confirmation Decision, pages 184 to 185; and Corrected Revised Second Amended DCC, pages 32 to 35.
[7] ICC-01/05-01/08-15, paras 11 to 24; and Confirmation Decision, paras 22 to 26.
[8] ICC-01/05-01/08-802, paras 261 to 262.
[9] ICC-01/05-01/08-962, para. 136.
[10] ICC-01/05-01/08-1.
[11] ICC-01/05-01/08-6-Conf.

Prosecutor ("Prosecution"), the Pre-Trial Chamber issued a new warrant of arrest on 10 June 2008.[12] On 3 July 2008, Mr Bemba was surrendered and transferred to the seat of the Court.[13] He made his first appearance before the Court on 4 July 2008.[14]

6. On 1 October 2008, the Prosecution filed before the Pre-Trial Chamber the document containing the charges ("DCC"),[15] followed by an amended version on 17 October 2008,[16] charging Mr Bemba with criminal responsibility under Article 25(3)(a) for crimes against humanity and war crimes. From 12 to 15 January 2009, the Pre-Trial Chamber held the confirmation of charges hearing.[17] On 3 March 2009, the Pre-Trial Chamber, noting that the evidence appeared to establish a mode of liability other than co-perpetration under Article 25(3)(a), adjourned the hearing and invited the Prosecution to consider amending the charges to address Article 28 as a possible mode of criminal liability.[18]

7. On 30 March 2009, the Prosecution filed the Amended DCC charging Mr Bemba with criminal responsibility as a "co-perpetrator" under Article 25(3)(a) or, in the alternative, as a military commander or person effectively acting as a military commander or superior under Article 28(a) or (b), for crimes against humanity and war crimes.[19] On 15 June 2009, the Pre-Trial Chamber issued its Confirmation Decision, confirming charges against Mr Bemba, on the basis of command responsibility under Article 28(a), for the crimes against humanity of murder and rape, and the war crimes of murder, rape, and pillaging.[20]

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[12] ICC-01/05-01/08-14; and ICC-01/05-01/08-1.
[13] ICC-01/05-01/08-35, para. 3.
[14] T-3. Unless indicated otherwise, transcript references in this Judgment are to the English version and are cited as "T-[transcript number]". When the Chamber refers to the French version of a transcript, it is cited as "T-[transcript number]-FRA".
[15] ICC-01/05-01/08-129-Conf-Exp-Anx2.A.
[16] ICC-01/05-01/08-169-Conf-Anx2A. *See also* ICC-01/05-01/08-264-Conf-AnxA.
[17] Confirmation Decision, paras 12 to 14.
[18] ICC-01/05-01/08-388, para. 19 and page 19.
[19] ICC-01/05-01/08-395-Anx3.
[20] Confirmation Decision. *See also* Section II.

8. The Presidency constituted the Chamber on 18 September 2009 and referred the *Bemba* case to it.[21] On 4 November 2009, upon the Chamber's order,[22] the Prosecution filed the Second Amended DCC to reflect the confirmed charges.[23] That same day, the Prosecution also filed a Summary of Presentation of Evidence.[24] On 15 January 2010, the Prosecution filed an Updated Summary of Presentation of Evidence.[25] On 1 March 2010, the Prosecution filed an updated In-Depth Analysis Chart of Incriminatory Evidence.[26]

9. On 20 July 2010, in Decision 836,[27] the Chamber disposed of Defence objections that some allegations in the Second Amended DCC exceeded the scope of the confirmed charges and ordered the Prosecution to file the Revised Second Amended DCC, which it did on 18 August 2010.[28] On 8 October 2010, the Chamber rejected, *in limine*, a Defence request for corrections to the Revised Second Amended DCC, ordering the Prosecution only to rectify a non-contentious factual error and emphasising the authoritative nature of the Confirmation Decision.[29] The Prosecution filed the Corrected Revised Second Amended DCC on 13 October 2010.[30]

10. The trial commenced with opening statements by the parties and Legal Representatives on 22 November 2010.[31] The Prosecution called its first witness on 23 November 2010.[32] The Defence called its first witness on 14 August 2012.[33]

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[21] ICC-01/05-01/08-534. On 20 July 2010, two judges of the Chamber were replaced, resulting in the Chamber's current composition. *See* ICC-01/05-01/08-837.
[22] T-14, page 13, lines 5 to 12.
[23] ICC-01/05-01/08-593-Anx-Red.
[24] ICC-01/05-01/08-595-AnxA-Red2.
[25] ICC-01/05-01/08-669-AnxE-Red.
[26] ICC-01/05-01/08-710-Conf-AnxA.
[27] Decision 836, para. 280.
[28] ICC-01/05-01/08-856-AnxA-Red.
[29] ICC-01/05-01/08-935, paras 9 to 12. *See* ICC-01/05-01/08-980, denying leave to appeal on 28 October 2010.
[30] ICC-01/05-01/08-950-Red-AnxA.
[31] T-32.
[32] **P38**: T-33. In this Judgment, witnesses are referred to by witness number, with the prefix "P" for witnesses called by the Prosecution, "D" for witnesses called by the Defence, "V" for the two witnesses called by the Legal Representatives, and "CHM" for the witness called by the Chamber.
[33] **D53**: T-229.

11. On 21 September 2012, the Chamber issued its Regulation 55 Notification, notifying the parties and Legal Representatives of the possibility that, after having heard all the evidence, it may consider the alternate form of "knowledge" under Article 28(a)(i), namely, whether "owing to the circumstances at the time", the Accused "'should have known' that the forces under his effective command and control or under his effective authority and control, as the case may be" were committing or about to commit the crimes charged.[34] On 13 December 2012, the Chamber temporarily suspended the proceedings in order to permit the Defence to prepare its case in light of the Regulation 55 Notification.[35] On 28 January 2013, the Defence requested that the Chamber vacate its decision on the temporary suspension of the proceedings,[36] which the Chamber did on 6 February 2013.[37]

12. Hearings resumed on 25 February 2013.[38] The last witness called by the Defence testified between 12 and 14 November 2013.[39] The Chamber called a witness, CHM1, who testified between 18 and 22 November 2013.[40]

13. On 7 April 2014, the Chamber declared the presentation of evidence closed pursuant to Rule 141(1), and set the deadline for the filing of closing briefs by the Prosecution and the Legal Representative.[41] On 26 May 2014, the Chamber set the schedule relating to the remaining closing written and oral submissions and decided that, in the event of a conviction it would hold a separate sentencing hearing after issuing its decision pursuant to Article 74.[42]

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[34] Regulation 55 Notification, para. 5.
[35] ICC-01/05-01/08-2480.
[36] ICC-01/05-01/08-2490-Red.
[37] ICC-01/05-01/08-2500, para. 34(i) and (ii).
[38] **D19**: T-284.
[39] **D13**: T-350; T-351; and T-352.
[40] **CHM1**: T-353; T-354; T-355; T-356; and T-357.
[41] ICC-01/05-01/08-3035.
[42] ICC-01/05-01/08-3071.

14. The Prosecution Closing Brief was filed on 2 June 2014 and, pursuant to the Chamber's order,[43] a corrected version was filed on 20 June 2014.[44] The Legal Representative Closing Brief was filed on 2 June 2014.[45] The Defence Closing Brief was filed on 25 August 2014.[46] On 15 September 2014, the Prosecution Response Brief[47] and the Legal Representative Response Brief[48] were filed. On 29 September 2014, the Defence filed its Defence Reply Brief.[49]

15. On 2 October 2014, upon the request of the Defence,[50] the Chamber, *inter alia*, (i) recalled P169 and reopened the presentation of evidence for the limited purpose of hearing his testimony on "issues arising out of his various allegations and issues of witness credibility"; (ii) rescheduled closing oral statements for the week of 10 November 2014; and (iii) authorised the parties and Legal Representative to file submissions additional to their closing briefs, exclusively relating to P169's testimony and any related evidence admitted by the Chamber.[51] On 22, 23, and 24 October 2014, the Chamber heard the further testimony of P169.[52] The Prosecution Additional Submissions[53] and the Legal Representative Additional Submissions[54] were filed on 31 October 2014. The Defence Additional Submissions were filed on 7 November 2014.[55]

16. The Prosecution, the Defence, and the Legal Representative made their closing oral statements on 12 and 13 November 2014.[56]

17. Over the course of the trial, the Chamber heard a total of 77 witnesses, including 40 witnesses called by the Prosecution, 34 witnesses called by the

[43] ICC-01/05-01/08-3091.
[44] ICC-01/05-01/08-3079-Conf-Corr.
[45] ICC-01/05-01/08-3078-Conf.
[46] ICC-01/05-01/08-3121-Conf.
[47] ICC-01/05-01/08-3141-Conf.
[48] ICC-01/05-01/08-3140-Conf.
[49] ICC-01/05-01/08-3153-Conf.
[50] ICC-01/05-01/08-3139-Conf.
[51] Decision 3154.
[52] **P169**: T-361; T-362; and T-363.
[53] ICC-01/05-01/08-3182-Conf-Corr.
[54] ICC-01/05-01/08-3181-Conf.
[55] ICC-01/05-01/08-3200-Conf.
[56] T-364; and T-365. *See also* ICC-01/05-01/08-3191.

Defence, two witnesses called by the Legal Representatives of Victims ("Legal Representatives"), and one witness called by the Chamber. The Chamber also permitted three victims to present their views and concerns.[57] The Chamber admitted a total of 733 items of evidence. Throughout the proceedings, the Chamber issued 1,219 written decisions, orders, notifications, and cooperation requests, and 277 oral decisions and orders.[58]

## E. PARTICIPATION OF VICTIMS

18. Pursuant to Article 68(3), 5,229 victims were authorised to participate in the *Bemba* case according to the procedure and modalities outlined below.

### 1. Application procedure

19. On 22 February 2010, the Chamber decided that victims authorised to participate at the confirmation stage of the proceedings should, in principle, continue to participate in the trial proceedings,[59] and set out the procedure for the submission of future applications.[60] Subsequently, in light of the volume of pending applications and the progress in the proceedings, and with a view to managing the application process in a way that ensured meaningful participation by victims, the Chamber set 16 September 2011 as the final deadline for the submission of any new victims' applications for participation.[61]

20. In accordance with the Chamber's instructions, and on a rolling basis, the Victims Participation and Reparations Section ("VPRS") submitted to the Chamber 24 transmissions with a total of 5,708 individual applications,[62]

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[57] ICC-01/05-01/08-2220. *See also* ICC-01/05-01/08-1935; ICC-01/05-01/08-2027; ICC-01/05-01/08-2091; ICC-01/05-01/08-2138; and ICC-01/05-01/08-2158.
[58] *See* Annex C.
[59] ICC-01/05-01/08-699, paras 17 to 22, and 39(i).
[60] ICC-01/05-01/08-699, paras 35 to 38.
[61] ICC-01/05-01/08-1590, paras 25 and 38(h).
[62] Between 10 December 2009 and 5 April 2012, the VPRS filed 24 transmissions of applications to participate in the proceedings: ICC-01/05-01/08-653-Conf-Exp; ICC-01/05-01/08-796-Conf-Exp; ICC-01/05-01/08-900-Conf-Exp; ICC-01/05-01/08-913-Conf-Exp; ICC-01/05-01/08-932-Conf-Exp; ICC-01/05-01/08-936-Conf-Exp;

together with reports under Regulation 86(5) of the Regulations of the Court,[63] and provided redacted versions of the applications to the parties and the Legal Representatives.[64] Having considered the parties' observations, the Chamber examined the individual applications in order to determine, on a case-by-case basis and according to a *prima facie* evidentiary standard,[65] whether each of the applicants fulfilled the requirements to be authorised to participate as a victim in the proceedings. For that purpose, the Chamber had to satisfy itself that (i) the applicant was a natural or legal person; (ii) the applicant suffered harm,[66] as a result of a crime within the jurisdiction of the Court; (iii) the events described by the applicant constituted a crime charged against the Accused; and (iv) there was a link between the harm suffered and the crimes charged.[67]

21. The Chamber issued eleven decisions on applications by victims to participate in the proceedings.[68] While most of the victims were natural persons as defined in Rule 85(a), the Chamber also admitted 14 organizations or institutions under

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ICC-01/05-01/08-954; ICC-01/05-01/08-981; ICC-01/05-01/08-1381; ICC-01/05-01/08-1559; ICC-01/05-01/08-1604; ICC-01/05-01/08-1723; ICC-01/05-01/08-1806; ICC-01/05-01/08-1854; ICC-01/05-01/08-1884; ICC-01/05-01/08-1922; ICC-01/05-01/08-1957; ICC-01/05-01/08-1978; ICC-01/05-01/08-2017; ICC-01/05-01/08-2041; ICC-01/05-01/08-2073; ICC-01/05-01/08-2130; ICC-01/05-01/08-2155; and ICC-01/05-01/08-2185.

[63] Between 10 December 2009 and 5 April 2012, the VPRS filed 24 reports on applications to participate in the proceedings: ICC-01/05-01/08-653-Conf-Exp; ICC-01/05-01/08-796-Conf-Exp; ICC-01/05-01/08-904-Conf-Exp; ICC-01/05-01/08-915-Conf-Exp; ICC-01/05-01/08-934-Conf-Exp; ICC-01/05-01/08-942-Conf-Exp; ICC-01/05-01/08-956-Conf-Exp; ICC-01/05-01/08-983-Conf-Exp; ICC-01/05-01/08-1381; ICC-01/05-01/08-1561-Conf-Exp; ICC-01/05-01/08-1606-Conf-Exp; ICC-01/05-01/08-1725-Conf-Exp; ICC-01/05-01/08-1808-Conf-Exp; ICC-01/05-01/08-1856-Conf-Exp; ICC-01/05-01/08-1886-Conf-Exp; ICC-01/05-01/08-1925-Conf-Exp; ICC-01/05-01/08-1959-Conf-Exp; ICC-01/05-01/08-1980-Conf-Exp; ICC-01/05-01/08-2019-Conf-Exp; ICC-01/05-01/08-2044-Conf-Exp; ICC-01/05-01/08-2075-Conf-Exp; ICC-01/05-01/08-2132-Conf-Exp; ICC-01/05-01/08-2157-Conf-Exp; and ICC-01/05-01/08-2185.

[64] Between 10 December 2009 and 5 April 2012, the VPRS filed 24 transmissions to the parties and Legal Representatives of redacted versions of applications to participate in the proceedings: ICC-01/05-01/08-707-Conf-Exp-Corr; ICC-01/05-01/08-824-Conf-Exp; ICC-01/05-01/08-903; ICC-01/05-01/08-914; ICC-01/05-01/08-933; ICC-01/05-01/08-937; ICC-01/05-01/08-955; ICC-01/05-01/08-982; ICC-01/05-01/08-1382; ICC-01/05-01/08-1560; ICC-01/05-01/08-1605; ICC-01/05-01/08-1724; ICC-01/05-01/08-1807; ICC-01/05-01/08-1855; ICC-01/05-01/08-1885; ICC-01/05-01/08-1923; ICC-01/05-01/08-1958; ICC-01/05-01-08-1979; ICC-01/05-01/08-2018; ICC-01/05-01/08-2042; ICC-01/05-01/08-2074; ICC-01/05-01/08-2131; ICC-01/05-01/08-2156; and ICC-01/05-01/08-2186.

[65] ICC-01/05-01/08-807, paras 92 to 94; and ICC-01/05-01/08-1017, para. 48.

[66] *See* ICC-01/05-01/08-807, para. 22, endorsing the Appeals Chamber's finding that, while the harm needs to be personal to the individual, "it can attach to both direct and indirect victims", *citing with approval* ICC-01/04-01/06-1432, paras 32 to 39.

[67] ICC-01/05-01/08-807, paras 21 to 24; and ICC-01/05-01/08-1017, para. 38. *See also* ICC-01/04-01/06-1432, paras 32 to 39, and 58 to 65.

[68] ICC-01/05-01/08-699; ICC-01/05-01/08-807; ICC-01/05-01/08-1017; ICC-01/05-01/08-1091; ICC-01/05-01/08-1590; ICC-01/05-01/08-1862; ICC-01/05-01/08-2011; ICC-01/05-01/08-2162; ICC-01/05-01/08-2219; ICC-01/05-01/08-2247; and ICC-01/05-01/08-2401.

Rule 85(b). Among the natural persons authorised to participate in the proceedings, 18 individuals had dual status as they also appeared as witnesses before the Chamber.[69]

### 2. Involvement of certain intermediaries

22. The Chamber has "recognise[d] the role that intermediaries might play during the application process, notably in assisting in the filling in of the forms, even writing down the answers given by applicants – some of them being illiterate or not speaking the language in which the form was filled in."[70] However, following the notification of three reports concerning issues arising out of the involvement of a very limited number of intermediaries in the completion of victims' applications for participation, the Chamber (i) deferred its decision on pending applications completed with the assistance of the intermediaries concerned; (ii) ordered the VPRS to re-interview the applicants concerned in order to verify the accuracy of the information contained in their applications; and (iii) instructed the VPRS to re-file the original applications together with any supplementary information collected, as well as a consolidated individual assessment report.[71] After having reviewed the relevant documents received from the VPRS, the Chamber issued a decision on the applications by victims that were initially assisted by the relevant intermediaries and subsequently re-interviewed by the VPRS.[72]

### 3. Modalities of participation

23. With a view to ensuring meaningful participation by victims and in line with the imperative that the participation of victims not be prejudicial to or

[69] Sixteen individuals were called by the Prosecution and two individuals were called by the Legal Representatives.
[70] ICC-01/05-01/08-1017, paras 50 to 51.
[71] ICC-01/05-01/08-1593-Conf.
[72] ICC-01/05-01/08-2247, granting 331 applications out of the 380 applications transmitted to the Chamber, and rejecting 49 applications.

inconsistent with the rights of the Accused and a fair and impartial trial,[73] two Legal Representatives, Maître Assingambi Zarambaud and Maître Marie-Edith Douzima-Lawson ("Legal Representative"), were designated to represent the interests of victims allowed to participate in this case.[74] For that purpose, participating victims were divided into five groups depending on the location of the harm allegedly suffered, as well as the victims' status.[75] In addition, the Office of Public Counsel for Victims ("OPCV") was appointed to represent victims whose applications were pending a decision by the Chamber.[76] Following the passing of Me Zarambaud in January 2014, the Chamber authorised the Registry to assign the victims previously represented by Me Zaramabaud to Me Douzima.[77]

24. In accordance with the common legal representation scheme described above and through their Legal Representatives, victims were authorised to participate at hearings and status conferences, to make opening and closing statements, to file written submissions, to introduce evidence, to question witnesses subject to a discrete written application decided upon in advance by the Chamber,[78] and to have access to confidential documents in the record.[79] In addition, the Chamber authorised the Legal Representative to call two victims to give evidence as witnesses during the trial and invited three further victims to present their views and concerns in person.[80]

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[73] ICC-01/05-01/08-1005, para. 9. *See also* ICC-01/04-01/06-1119, para. 85; ICC-01/04-01/06-1432, para. 97; ICC-01/04-01/07-1328, para. 10(a); and ICC-01/04-01/07-1788, para. 57.
[74] ICC-01/05-01/08-1012.
[75] Me Zarambaud was appointed to represent victims of alleged crimes committed in or around Bangui and PK12 ("Group A"), as well as dual status individuals who also appeared as witnesses in the case ("Group E"). Me Douzima was appointed to represent victims of alleged crimes committed in or around Damara and Sibut ("Group B"); in or around Boali, Bossembélé, Bossangoa, and Bozoum ("Group C"); and in or around Mongoumba ("Group D").
[76] ICC-01/05-01/08-1020, para. 27.
[77] ICC-01/05-01/08-2964.
[78] ICC-01/05-01/08-807, para. 102(d)(h); ICC-01/05-01/08-1005, para. 39; and ICC-01/05-01/08-1023, paras 17 to 20.
[79] ICC-01/05-01/08-807, paras 26 to 49.
[80] ICC-01/05-01/08-2138 and ICC-01/05-01/08-2140. Presiding Judge Steiner partly dissented from the Majority's decision with regard to the requirements for the presentation of evidence by victims and would have allowed more victims to give evidence and to present their views and concerns. In the view of the Presiding

25. Concerning the distinction between the presentation of evidence and of views and concerns in person, the Chamber found Trial Chamber I's approach instructive:[81]

> […] the process of victims 'expressing their views and concerns' is not the same as 'giving evidence'. The former is, in essence, the equivalent of presenting submissions, and although any views and concerns of the victims may assist the Chamber in its approach to the evidence in the case, these statements by victims (made personally or advanced by their legal representatives) will not form part of the trial evidence. In order for participating victims to contribute to the evidence in the trial, it is necessary for them to give evidence under oath from the witness box. There is, therefore, a critical distinction between these two possible means of placing material before the Chamber.

26. In line with this approach, the Chamber found that "the threshold to grant applications by victims to give evidence is significantly higher than the threshold applicable to applications by victims to express their views and concerns in person" and "victims who fail to reach the threshold to be authorised to give evidence may still be permitted to express their views and concerns in person".[82]

27. The two victims authorised to give evidence appeared before the Chamber between 1 and 8 May 2012 and were questioned by the Legal Representatives, the Prosecution, the Defence, and the Chamber.[83] Both witnesses testified without protective measures.[84]

28. The three victims authorised to present their views and concerns in person were heard by means of video-link technology[85] on 25 and 26 June 2012.[86] As they did

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Judge, "the strict limitations imposed by the Majority to the presentation of evidence by victims and the 'case-by-case' analysis of the victims' right to present their views and concerns reflect a utilitarian approach towards the role of victims before the Court, which has no legal basis and appears to unreasonably restrict the rights recognised for victims by the drafters of the Statute".

[81] ICC-01/05-01/08-2138, para. 19, *quoting* ICC-01/04-01/06-2032-Anx, para. 25.

[82] ICC-01/05-01/08-2138, para. 20.

[83] V1 gave evidence on 1, 2, and 3 May 2012: T-220; T-221; and T-222. V2 gave evidence on 3, 4, 7, and 8 May 2012: T-222; T-223; T-224; and T-225.

[84] **V1**: T-220, page 4, lines 3 to 5; and **V2**: T-222, page 40, lines 12 to 22.

[85] ICC-01/05-01/08-2220, paras 7 and 13(a). Judge Steiner, in line with the views expressed in her partly dissenting opinion to the decision, would have called the victims to present their views and concerns by way of

not appear as witnesses, their submissions were not presented under oath, they were not questioned by the parties, and their views and concerns do not form part of the evidence of the case.[87]

their appearance in person in the courtroom in The Hague, rather than by way of video-link. *See* ICC-01/05-01/08-2220, footnote 14.
[86] T-227; and T-228.
[87] ICC-01/05-01/08-2220.

# II. SCOPE AND NOTICE OF THE CHARGES

29. The Chamber addresses below the following issues raised by the Defence concerning the scope and notice of the charges: (i) sufficiency of notice as a result of the change in the charged mode of liability from co-perpetration under Article 25(3)(a) to command responsibility under Article 28(a); (ii) the scope of the charges relating to underlying acts of murder, rape, and pillaging; (iii) the scope of the charges relating to the "should have known" mental element; and (iv) the scope of the charges relating to the Accused's alleged criminal responsibility. As a related matter, the Chamber also addresses below the scope of the charges relating to the "widespread" or "systematic" nature of the attack for purposes of the contextual elements of crimes against humanity.

30. At the outset, the Chamber notes that, over the course of the trial, the Defence has already raised objections concerning (i) the Chamber's legal re-characterisation of the mode of liability to include the "should have known" mental element; (ii) specific acts of murder, rape, and pillaging not relied upon in the Confirmation Decision; and (iii) facts and legal characterisations relating to the Accused's alleged command responsibility. The Chamber has already considered and rejected these objections.[88] The Defence is effectively seeking reconsideration of these prior decisions, but fails to specify any change in circumstances or new and compelling reasons justifying reconsideration.[89] It is therefore open to the Chamber to summarily dismiss these objections. Nevertheless, the Chamber has opted to address them.

31. Article 67(1)(a) entitles the Accused to be informed of the "nature, cause and content" of the charges. Article 67(1)(b) entitles the Accused "[t]o have adequate time and facilities for the preparation of the defence". The Accused can only be considered to be adequately informed of the charges, and thus able to prepare

[88] *See*, *inter alia*, Decision 836; ICC-01/05-01/08-935; ICC-01/05-01/08-1017; Regulation 55 Notification; ICC-01/05-01/08-2419, para. 7; Decision 2480, para. 10; ICC-01/05-01/08-3089; and ICC-01/05-01/08-2500.
[89] ICC-01/05-01/08-3204, paras 14 and 19; and ICC-01/05-01/08-3089, para. 17.

his or her defence, if he or she has been provided, in a timely manner, "sufficiently detailed information" concerning the charges against him or her.[90] The affirmative duty to inform the Accused rests with the Prosecution.[91] The information of which the Accused must be notified is to be distinguished from the evidence by which the facts and circumstances described in the charges are to be proven; evidence need not be pleaded in order to adequately inform the Accused of the charges.[92] Detail of the nature, cause, and content of the charges must be notified as soon as possible and before the start of the trial.[93] Further information provided in the course of the trial is only relevant in assessing whether prejudice caused by the lack of detail in the pre-trial phase was cured.[94]

32. The Confirmation Decision, taken as a whole, defines the scope of the charges.[95] The provision of additional information by the Prosecution relating to the charges should not exceed the scope of, and thereby result in any amendment

[90] *Lubanga* Appeal Judgment, paras 121 to 123, *citing with approval* ICC-01/04-01/06-2205, footnote 163, and ICTY, *Blaškić* Appeal Judgment, paras 210 to 211, and 213. *See also* ICTY, *Kupreškić et al.* Appeal Judgment, paras 88 to 95, and 114; ICTR, *Nzabonimana* Appeal Judgment, paras 29, 261, and 437; ICTY, *Đorđević* Appeal Judgment, paras 574 and 576; SCSL, *Taylor* Appeal Judgment, para. 40; SCSL, *Fofana and Kondewa* Appeal Judgment, para. 443; and ECtHR, *Pélissier and Sassi v. France*, para. 54.

[91] ICTY, *Kupreškić et al.* Appeal Judgment, para. 88; SCSL, *Fofana and Kondewa* Appeal Judgment, para. 363; ICC-02/11-01/11-572, para. 47; and Confirmation Decision, para. 208. *See also* ECtHR, *Mattoccia v. Italy* Judgment, para. 65, holding that the duty to inform the Accused rests entirely on the Prosecution and cannot be discharged passively.

[92] ICTY, *Furundžija* Appeal Judgment, para. 147; ICTY, *Kupreškić et al.* Appeal Judgment, para. 88; ICTY, *Kvočka et al.* Appeal Judgment, para. 65; ICTY, *Popović et al.* Appeal Judgment, para. 47; ICTR, *Nzabonimana* Appeal Judgment, paras 29 and 254; and SCSL, *Sesay et al.* Appeal Judgment, para. 143. *See also* ICC-01/04-01/06-2205, footnote 163, holding that the facts and circumstances described in the charges, as distinguished from the evidence supporting the charges, must be identified with sufficient detail to meet the standard in Article 67(1)(a) of the Statute.

[93] ICTY, *Kupreškić et al.* Appeal Judgment, paras 88, 92, and 114; *Lubanga* Appeal Judgment, paras 127 and 129, *citing with approval* ICTY, *Blaškić* Appeal Judgment, paras 220 to 221; ICC-01/04-02/06-450, para. 69; ICC-01/09-02/11-584, para. 78, requiring the Prosecution to provide further facts "if possible"; ICC-01/09-01/11-522, para. 35, requiring the Prosecution to provide further information, if known; ICC-01/04-01/10-465, para. 82; and ICC-01/04-01/07-1547, para. 23. *See also* ICTR, *Nzabonimana* Appeal Judgment, paras 29 and 261; ICTY, *Đorđević* Appeal Judgment, paras 574 to 576; SCSL, *Fofana and Kondewa* Appeal Judgment, paras 363 and 443; ICTY, *Simić* Appeal Judgment, paras 56 and 67; ICTR, *Ntagerura et al.* Appeal Judgment, para. 44; and IACHR, *Petruzzi et al. v. Peru* Judgment, paras 138 and 141 to 142.

[94] *Lubanga* Appeal Judgment, para. 129.

[95] *Lubanga* Trial Judgment, para. 8, noting that the Chamber considered the facts and circumstances set out throughout the confirmation decision to ensure that the judgment did not exceed the facts and circumstances established by the Pre-Trial Chamber; and ICC-01/04-02/06-450, para. 73. *See also* ICTY, *Popović et al.* Appeal Judgment, paras 37 and 68; ICTR, *Nzabonimana* Appeal Judgment, paras 254 and 437; SCSL, *Sesay et al.* Appeal Judgment, para. 86; SCSL, *Brima et al.* Appeal Judgment, para. 81; and ICTR, *Gacumbitsi* Appeal Judgment, para. 123.

to, the facts and circumstances described in the charges as confirmed.[96] In determining whether various facts exceeded that scope, the Chamber adopted the following approach:

a. When the Pre-Trial Chamber excluded any facts, circumstances, or their legal characterisation, the Chamber found that they exceeded the scope of the confirmed charges;[97] and

b. In relation to factual, evidential details, when the Pre-Trial Chamber excluded or did not pronounce upon them, the Chamber did not rule out the possibility that, at trial, the information could qualify as evidential detail supporting the facts and circumstances described in the charges.[98]

33. Having determined the scope of the charges, a Chamber must then assess whether the Accused received adequate notice. In doing so, the Chamber may consider all documents designed to provide information about the charges, including the Confirmation Decision and ''auxiliary documents''.[99] The question is not whether a particular word or expression has been used; rather, it is whether the Accused has been meaningfully informed of the nature, cause, and content of the charges so as to prepare an effective defence.[100] Relevant factors include the timing of the information's notification, the importance of the information to the ability of the Accused to prepare his defence and its impact

[96] Articles 61(9) and 74(2) of the Statute; and *Lubanga* Appeal Judgment, para. 129. *See also* ICTY, *Kupreškić et al.* Appeal Judgment, para. 114; ICTY, *Đorđević* Appeal Judgment, paras 576, 604 to 605, and 643; and ICTR, *Ntabakuze* Appeal Judgment, para. 30.
[97] *See* Decision 836, paras 49, 73, 80, 82, 98, 111 to 112, 114, 117 to 118, 121, 132, 140, 152, 155, 163, 165 to 169, 172, 178 to 179, 184, 198, 200, 202, 207, 216, 228, 234, 243, 247, and 270 to 271.
[98] *See* Decision 836, paras 43, 47, 53, 60 to 61, 66 to 67, 70, 89, 92, 94, 100, 101, 103, 107 to 108, 110, 113, 119, 125, 134, 136, 138, 141, 143, 145 to 146, 148, 150, 155, 158, 161, 171, 177, 180, 186 to 188, 190 to 191, 196, 206, 209, 212 to 213, 215, 217 to 218, 221, 226, 245, 255, 259 to 260, and 265.
[99] *Lubanga* Appeal Judgment, paras 124, 128, 132, and 135. Documents which may serve as notice include the (original, updated, or amended) document containing the charges, in-depth analysis chart, pre-trial brief, opening statements, list of witnesses, witness statements, and/or witness summaries. *See* ICC-01/09-01/11-373, para. 98; ICC-01/04-01/10-465, para. 84; ICC-01/04-01/07-648, para. 25; and ICC-01/04-01/06-803, para. 150. *See also* ICTR, *Nzabonimana* Appeal Judgment, para. 261; ICTY, *Đorđević* Appeal Judgment, paras 574, 577, and 682; and SCSL, *Sesay et al.* Appeal Judgment, paras 126 and 167.
[100] ICTY, *Simić* Appeal Judgment, para. 32. *See also* ICTY, *Popović et al.* Appeal Judgment, para. 65; ICTR, *Karemera and Ngirumpatse* Appeal Judgment, para. 105; ECtHR, *Pélissier and Sassi v. France* Judgment, para. 53; and ECtHR, *Giosakis v. Greece (no 3)* Judgment, para. 29.

on the charges,[101] and indications of the Accused's knowledge of the charges, such as his submissions, presentation of evidence, or examination of witnesses.[102]

34. The level of detail in the information that must be provided to the Accused depends on the nature of the charges, including the characterisation of the alleged criminal conduct, the proximity of the Accused to the events for which he is alleged to be criminally responsible, and the scale of the alleged crimes.[103]

## A. AMENDMENT OF THE CHARGED MODE OF LIABILITY

35. The Defence submits that the Prosecution's "case theory" was radically altered when the alleged mode of liability changed from Article 25(3)(a) to Article 28(a),[104] citing, in particular, changes to the alleged date of the intervention,[105] the alleged role of President Ange-Félix Patassé,[106] and the allegation that the pro-Patassé forces were coordinated as a single unified force.[107] It indicates that such alteration violates the rights of the Accused to be informed of the charges because "it is obviously improper for the Prosecution to later advance a case that seeks to rebut […] facts" it alleged before.[108] The Defence further submits that it would be "unsafe" for the Chamber to reach a verdict when the record establishes that the Prosecution and Pre-Trial Chamber considered that "there

[101] ICTY, *Kupreškić et al.* Appeal Judgment, paras 92 to 95, and 114; ICTR, *Ntabakuze* Appeal Judgment, paras 35 to 38; SCSL, *Fofana and Kondewa* Appeal Judgment, para. 443; ICTY, *Simić* Appeal Judgment, para. 24; and ICTR, *Ntakirutimana and Ntakirutimana* Appeal Judgment, para. 25.
[102] *Lubanga* Appeal Judgment, para. 135, considering whether the accused suffered any prejudice from an alleged defect in notice, the Appeals Chamber took into account that the accused did not raise similar objections at trial and addressed the sufficiency of the entirety of the evidence in his closing submissions. *See also* ICTR, *Nzabonimana* Appeal Judgment, para. 36; and ICTY, *Gotovina and Markač* Appeal Judgment, para. 47.
[103] ICTY, *Kupreškić et al.* Appeal Judgment, paras 89 to 91; ICTY, *Kvočka et al.* Appeal Judgment, para. 65; *Lubanga* Appeal Judgment, paras 122 to 123, *citing with approval* ICTY, *Blaškić* Appeal Judgment, paras 210 to 213; and ICC-01/11-01/11-547, paras 61 to 62. *See also* ICTY, *Popović et al.* Appeal Judgment, para. 65; ICTR, *Bagosora and Nsengiyumva* Appeal Judgment, paras 63 and 150; and SCSL, *Sesay et al.* Appeal Judgment, paras 52, 830, and 833.
[104] Defence Closing Brief, paras 4 to 5, and 69 to 77.
[105] Defence Closing Brief, para. 72.
[106] Defence Closing Brief, paras 73 to 75.
[107] Defence Closing Brief, paras 76 to 77.
[108] Defence Closing Brief, paras 69 to 70.

were, at the very least, reasonable grounds to doubt the current Prosecution version of the 'facts'".[109]

36. The Prosecution responds that the facts originally pleaded in support of a co-perpetration mode of liability are "in no way" inconsistent with the current charges under Article 28(a).[110]

37. In light of the procedural history set out above,[111] the Chamber sees no merit in the Defence submissions on this point. Although the charged mode of liability, at the Pre-Trial Chamber's invitation, was amended to include Article 28(a), the Defence had adequate notice of this charged mode of liability and supporting narrative well before the Confirmation Decision, and consistently thereafter. The Chamber additionally notes that the Defence submissions are untimely, as the Defence did not challenge the sufficiency of notice of the charged mode of liability before its final submissions despite repeated opportunities.[112]

## B. UNDERLYING ACTS NOT SPECIFIED IN THE CONFIRMATION DECISION

38. The Defence submits that consideration of acts not specifically confirmed by the Pre-Trial Chamber would infringe the Accused's right to be informed "in specific detail" of the charges.[113] It submits that the Pre-Trial Chamber did not confirm any acts of rape of unidentified victims,[114] or any charge of murder, rape, and/or pillage in Damara, PK22, Sibut, Bossangoa, Bossembélé, Bozoum, or Mongoumba.[115]

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[109] Defence Closing Brief, para. 71.
[110] Prosecution Response Brief, paras 3 to 4, and 6 to 7.
[111] *See* Section I(D).
[112] *See*, *for example*, ICC-01/05-01/08-413, failing to include any relevant objection in its response to the Amended DCC; ICC-01/05-01/08-506, declining to appeal the Confirmation Decision; and ICC-01/05-01/08-694, failing to raise this objection when challenging the Second Amended DCC.
[113] Defence Closing Brief, paras 230, 234, 425 to 428, 430 to 431, 445 to 447, and 674; and Defence Reply Brief, paras 41 to 44.
[114] Defence Closing Brief, para. 427.
[115] Defence Closing Brief, paras 475, 491, 501, 505, 508, and 511.

39. The Prosecution responds that the Chamber "can use trial evidence on any incidents of rape, murder or pillaging, not specifically referenced in the charges, as long as they are committed within the territorial and temporal scope of the confirmed charges".[116] It submits that the specific acts listed in the Corrected Revised Second Amended DCC constitute representative examples within each of the counts Mr Bemba is charged with, rather than an exhaustive list.[117] Overall, the Prosecution submits that Mr Bemba was provided with sufficient notice of all specific acts and the Defence had the opportunity to question the relevant witnesses.[118]

40. According to the Legal Representative, the Chamber has already found that it is not limited to those specific acts relied upon by the Pre-Trial Chamber, and it notes that the challenged acts fall within the temporal and geographic scope of the confirmed charges.[119]

41. In the Confirmation Decision, the Pre-Trial Chamber emphasised the evidentiary threshold applicable at the confirmation stage and that the Prosecution "needs to provide not all but only *sufficient* evidence".[120] Accordingly, the Pre-Trial Chamber rejected the Defence's challenges to the Prosecution's use of inclusive language, such as the phrase "include, but […] not limited to" certain acts, in pleading the charges of rape, murder, and pillage.[121] The Pre-Trial Chamber also found that "in case of mass crimes, it may be impractical to insist on a high degree of specificity", and it was therefore entitled to consider evidence which did not identify each of the victims or direct perpetrators.[122]

[116] Prosecution Response Brief, paras 8 to 10.
[117] Prosecution Response Brief, para. 9.
[118] Prosecution Response Brief, paras 10 to 11.
[119] Legal Representative Response Brief, paras 63 to 70, 73 to 74, 81 to 82, and 84 to 86.
[120] Confirmation Decision, para. 66 (emphasis in original).
[121] Confirmation Decision, paras 65 to 66.
[122] Confirmation Decision, para. 134.

42. Further, in determining whether the applicable threshold was satisfied, the Pre-Trial Chamber "in particular, [drew] attention to" certain events and evidence, but did not limit the charges to those particular events or that particular evidence.[123] Rather, the Pre-Trial Chamber broadly defined the temporal and geographical scope of the alleged attack on the civilian population and the alleged armed conflict on CAR territory from on or about 26 October 2002 to 15 March 2003.[124] In Decision 836, the Chamber affirmed that the charges as drafted in the Second Amended DCC conformed to the Confirmation Decision, insofar as they used inclusive language, for example, the phrases "include" and "include, but are not limited to".[125] Further, the Chamber affirmed that the confirmed charges included acts of murder, rape, and pillaging committed on CAR territory, including in Bangui, PK12, Mongoumba, Bossangoa, Damara, Sibut, and PK22, from on or about 26 October 2002 to 15 March 2003.[126]

43. In assessing whether the Defence received sufficiently detailed information relating to the underlying criminal acts, the Chamber notes that, in cases of command responsibility where the Accused is geographically remote, it may not be possible to plead evidential details concerning the identity or number of victims, precise dates, or specific locations.[127] Further, in cases of mass crimes, it may also be impracticable to provide a high degree of specificity in relation to

[123] Confirmation Decision, paras 145, 170, and 323.
[124] Confirmation Decision, paras 129, 140, 160, 188, 272, 282, 315, 322, and 486.
[125] Decision 836, paras 85 to 87 and 257 to 279. *See also* ICC-01/05-01/08-1017, paras 55 and 58. *See* Revised Second Amended DCC, pages 33 to 36, maintaining the inclusive language in the Revised Second Amended DCC. *See*, *similarly*, ICTR, *Nzabonimana* Appeal Judgment, paras 32 to 33, observing that, although a paragraph of the indictment concerning genocide listed specific victims killed at a given location, it was clear that these victims were merely examples of the material fact that Tutsis were killed, i.e. the list was not intended to be exhaustive, and emphasising that the material fact for Nzabonimana's conviction for instigating these murders was that his conduct led to the killing of Tutsis in general, not the killing of any specific Tutsis; and ICTR, *Gacumbitsi* Appeal Judgment, paras 89 to 90, finding that victims were specifically named in the indictment by way of example; considering that the appellant was not charged or convicted for personal commission; and concluding that the material fact was that many refugees were killed as a consequence of the appellant's orders or instructions, not that specific victims were killed.
[126] Decision 836, paras 88 to 89, 102 to 103, 159, and 249.
[127] ICTY, *Kupreškić et al*. Appeal Judgment, paras 89 to 90; ICTY, *Kvočka et al.* Appeal Judgment, para. 65; and ICTR, *Ntakirutimana and Ntakirutimana* Appeal Judgment, para. 75. For a similar approach, *see* *Lubanga* Appeal Judgment, paras 122 to 123, *citing with approval* ICTY, *Blaškić* Appeal Judgment, paras 210 to 213.

those matters.[128] Rather, the emphasis in such circumstances is placed on the conduct of the Accused upon which the Prosecution relies to establish his responsibility.[129] Nonetheless, the Prosecution must provide, to the greatest degree of specificity possible in the circumstances, details as to the date, victims, and location of the underlying acts.[130] As noted above, this information may be contained not only in the Confirmation Decision, but also in relevant auxiliary documents. The Chamber considers the extent of such notice in the following paragraphs.

44. In the Confirmation Decision, the Pre-Trial Chamber relied on the following underlying acts, as alleged in the Amended DCC, in confirming the charges of murder, rape, and pillaging:[131]

a. the murder of P22's cousin by MLC soldiers (the same person identified by the Prosecution in the Amended DCC as P22's nephew) in Bossangoa;[132]

b. the murder of P87's brother by MLC soldiers in Boy-Rabé on 30 October 2002;[133]

c. the rape of P23, his wife (P80), his daughter (P81), and at least one other of his daughters by MLC soldiers at P23's compound in PK12 on 8 November 2002;[134]

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[128] Confirmation Decision, para. 134. *See also* ICTY, *Kupreškić et al.* Appeal Judgment, paras 89 to 90, "[s]uch would be the case where the Prosecution alleges that an accused participated, as a member of an execution squad, in the killing of hundreds of men. The nature of such a case would not demand that each and every victim be identified in the indictment. Similarly, an accused may be charged with having participated as a member of a military force in an extensive number of attacks on civilians that took place over a prolonged period of time and resulted in large numbers of killings and forced removals. In such a case, the Prosecution need not specify every single victim that has been killed or expelled in order to meet its obligation of specifying the material facts of a case in the indictment"; SCSL, *Taylor* Appeal Judgment, para. 40; ICTR, *Muhimana* Appeal Judgment, paras 79 and 197; and ICTY, *Kvočka et al.* Appeal Judgment, para. 30, noting that the fallibility of witness recollection may also prevent the Prosecution from specifying in detail all facts.

[129] ICTY, *Kupreškić et al.* Appeal Judgment, para. 89; and ICTY, *Kvočka et al.* Appeal Judgment, para. 65. *See also* *Lubanga* Appeal Judgment, paras 122 to 123, *citing with approval* ICTY, *Blaškić* Appeal Judgment, paras 210 to 213; and ICTY, *Blaškić* Appeal Judgment, paras 216 to 218.

[130] *Lubanga* Appeal Judgment, para. 123. *See also* ICTR, *Ntabakuze* Appeal Judgment, footnote 88; and ICTR, *Renzaho* Appeal Judgment, para. 128.

[131] Confirmation Decision, paras 140, 144, 165, 277 to 279, 286 to 288, and 322.

[132] Confirmation Decision, paras 146 to 147 and 149 to 150.

[133] Confirmation Decision, paras 148 to 150.

d. the rape of P29 by MLC soldiers on 5 March 2003 in Mongoumba;[135]

e. the rape of P42's daughter by MLC soldiers at the end of November 2002 in PK12;[136]

f. the rapes of P68 and her sister-in-law by MLC soldiers on 27 October 2002 near Miskine High School in Fouh;[137]

g. the rape of P87 by MLC soldiers in Boy-Rabé on 30 October 2002;[138]

h. the rape of P22 by MLC soldiers at her uncle's house in PK12 at the end of October 2002;[139]

i. the pillaging of P22's uncle's house by MLC soldiers near PK12;[140]

j. the pillaging of P23's compound (including the belongings of P80 and P81) by MLC soldiers in PK12 on 8 November 2002;[141]

k. the pillaging of P42's house by MLC soldiers in PK12 in November 2002;[142] and

l. the pillaging of P87's house by MLC soldiers in Boy-Rabé on or around 30 October 2002.[143]

45. The Pre-Trial Chamber declined to rely upon the following underlying acts:

a. the killing of P80's baby on 8 November 2002 at PK12;[144]

b. the killing of unidentified victim 36;[145]

c. the rape of unidentified victims 1 to 35;[146]

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[134] Confirmation Decision, paras 171 to 172, and 177 to 180.
[135] Confirmation Decision, para. 173.
[136] Confirmation Decision, para. 174.
[137] Confirmation Decision, paras 175 to 176.
[138] Confirmation Decision, para. 181.
[139] Confirmation Decision, paras 182 to 185.
[140] Confirmation Decision, para. 324.
[141] Confirmation Decision, paras 325, and 327 to 328.
[142] Confirmation Decision, para. 326.
[143] Confirmation Decision, para. 329.
[144] Confirmation Decision, paras 152 to 154.
[145] Confirmation Decision, paras 155 to 158.

d. the pillaging of P29's parents' house;[147] and

e. the pillaging of the belongings of P68 and her sister-in-law.[148]

46. In the Second Amended DCC, the Prosecution relied upon all underlying acts included in the Amended DCC and addressed in the Confirmation Decision, both those upon which the Pre-Trial Chamber relied and declined to rely, except the alleged killing of P80's baby.[149] The Defence objected to the inclusion in the Second Amended DCC of all underlying acts not relied upon by the Pre-Trial Chamber in the Confirmation Decision.[150] In Decision 836, the Chamber found that the underlying acts identified in the Second Amended DCC fell within the scope of the confirmed charges,[151] except the killing of unidentified victim 36[152] and the pillaging of P29's parents' house.[153] When filing the Revised Second Amended DCC and then a Corrected Revised Second Amended DCC, the Prosecution relied upon the same underlying acts identified in the Second Amended DCC, with the exception of those that the Chamber found in Decision 836 to fall outside the scope of the charges.

47. By 15 January 2010, the Prosecution had provided notice of the following further underlying acts in its Summary of Presentation of Evidence[154] and Updated Summary of Presentation of Evidence:[155]

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[146] Confirmation Decision, para. 169.
[147] Confirmation Decision, para. 337.
[148] Confirmation Decision, para. 338.
[149] Second Amended DCC, paras 50, alleging the rape of P68 and her sister-in-law and pillaging of their possessions, 51, alleging the rape of P22 in and pillaging of her uncle's house, and the killing of P22's nephew in Bossangoa, 52, alleging the rape of P87 and murder of her brother in and pillaging of her house, 53, alleging the rape of P23, his wife P80, P81 and two of P23's other daughters in and pillaging of P23's compound, 54, alleging the rape of P42's daughter and pillaging of his home, 55, alleging the rape of unidentified victims 1 to 8 on a ferry near Bangui, 56, alleging the rape of unidentified victims 9 to 30 near Bangui and pillaging of their belongings, 57, alleging the rape of unidentified victims 31 to 35 near Bangui and murder of unidentified victim 36, and 58, alleging the rape of P29 in Mongoumba and pillaging of her parents' home.
[150] ICC-01/05-01/08-694, paras 87 to 88; and ICC-01/05-01/08-694-Conf-Exp-AnxA, paras 50 to 58.
[151] Decision 836, paras 107, 109 to 110, 113, and 257 to 279.
[152] Decision 836, paras 111 to 112.
[153] Decision 836, para. 114.
[154] ICC-01/05-01/08-595-AnxA-Red2.
[155] ICC-01/05-01/08-669-AnxE-Red.

a. the rape of P82 on the same day that P23, P80, P81, and two of P23's other daughters were raped at P23's compound in PK12; [156]

b. the killing of P68's uncle by MLC soldiers in Damara;[157]

c. the killing of P42's cousin by MLC soldiers in PK22;[158]

d. the rape of a woman and pillaging of her belongings by MLC soldiers in October 2002 in PK22;[159]

e. the rape of P69, rape of his wife, and murder of his sister in, and pillaging of, his house by MLC soldiers in PK12 on 8 November 2002;[160]

f. the rapes of P79 and her daughter in, and pillaging of, her compound (including her house and those of her brothers) by MLC soldiers in PK12 in November 2002;[161]

g. the pillaging of the houses of P108, P110, and P112 by MLC soldiers in PK13 in November 2002;[162] and

h. the murder of an unidentified woman by MLC soldiers in PK12 in November 2002.[163]

48. The Prosecution additionally relied in its final submissions on the following underlying acts,[164] upon which it originally indicated its intention to rely on 6 November 2009, when disclosing evidence collected during post-confirmation investigations,[165] and in the updated In-Depth Analysis Chart of Incriminatory Evidence,[166] filed on 1 March 2010:

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[156] ICC-01/05-01/08-669-AnxE-Red, paras 138 to 139; and ICC-01/05-01/08-595-AnxA-Red2, para. 145.
[157] ICC-01/05-01/08-669-AnxE-Red, para. 156; and ICC-01/05-01/08-595-AnxA-Red2, para. 162.
[158] ICC-01/05-01/08-669-AnxE-Red, para. 164; and ICC-01/05-01/08-595-AnxA-Red2, para. 170.
[159] ICC-01/05-01/08-669-AnxE-Red, paras 165 to 166; and ICC-01/05-01/08-595-AnxA-Red2, paras 171 to 172.
[160] ICC-01/05-01/08-669-AnxE-Red, paras 167 to 170; and ICC-01/05-01/08-595-AnxA-Red2, paras 173 to 176.
[161] ICC-01/05-01/08-669-AnxE-Red, paras 171 to 173; and ICC-01/05-01/08-595-AnxA-Red2, paras 177 to 179.
[162] ICC-01/05-01/08-669-AnxE-Red, paras 174 to 179; and ICC-01/05-01/08-595-AnxA-Red2, paras 180 to 185.
[163] ICC-01/05-01/08-669-AnxE-Red, para. 180; and ICC-01/05-01/08-595-AnxA-Red2, para. 186.
[164] Prosecution Closing Brief, paras 310 to 314, 380 to 385, 436 to 442, and 494 to 497.
[165] ICC-01/05-01/08-599-Conf-Exp-AnxA. The relevant written statements were disclosed on 10 November 2009 (P73 and P119) and 4 November 2009 (P169): ICC-01/05-01/08-605 and ICC-01/05-01/08-606.
[166] ICC-01/05-01/08-710-Conf-AnxA.

a. the pillaging of P73's belongings by MLC soldiers in PK12;[167]

b. the rape of two girls by MLC soldiers witnessed by P119 near, and the pillaging of, her house in Boy-Rabé;[168] and

c. the killing of a boy by MLC soldiers after he resisted a soldier taking his bread in Bangui (witnessed by P169).[169]

49. Considering the nature of the information outlined above, and the timing of its provision, the Chamber is satisfied (i) that the Defence had adequate notice of the following underlying acts, and (ii) as they were allegedly committed in the CAR between 26 October 2002 and 15 March 2003, that they fall within the scope of the charges:

a. the rape of P68 and her sister-in-law, and the pillaging of their belongings, by a group of MLC soldiers in adjacent compounds in the Fouh District of Bangui in October 2002;

b. the rape of P22 by three MLC soldiers, and the pillaging by MLC soldiers of her uncle's home near PK12 in October 2002;

c. the murder of P22's cousin by MLC soldiers in Bossangoa;

d. the rape of P87, the murder of her brother, and the pillaging of their house by MLC soldiers in the Boy-Rabé neighbourhood of Bangui on or about 30 October 2002;

e. the rape of P23, P80, and three of P23's daughters, including P81 and P82, and the pillaging of P23's compound by MLC soldiers at PK12 on or about 8 November 2002;

[167] ICC-01/05-01/08-599-Conf-Exp-AnxA, page 4; and ICC-01/05-01/08-710-Conf-AnxA, pages 254 to 256, and 284.
[168] ICC-01/05-01/08-599-Conf-Exp-AnxA, page 6; and ICC-01/05-01/08-710-Conf-AnxA, pages 96 to 97, 108 to 109, 197 to 198, 210 to 211, 247 to 248, and 281 to 282.
[169] ICC-01/05-01/08-599-Conf-Exp-AnxA, pages 7 to 8; and ICC-01/05-01/08-710-Conf-AnxA, pages 123 and 225.

f. the rape of P42's daughter, and pillaging of P42's compound by MLC soldiers at PK12 on or about 8 November 2002;

g. the rape of eight unidentified CAR civilian women, by 22 MLC soldiers on a ferry boat near Bangui between 26 October and 31 December 2002;

h. the rape of 22 unidentified CAR civilian women from PK12, PK22, and PK26 by MLC soldiers near Bangui between October 2002 and 31 December 2002;

i. the rape of five unidentified CAR civilian women, by MLC soldiers near Bangui between October 2002 and 31 December 2002;

j. the rape of P29 by MLC soldiers in her home at or near Mongoumba on or about 5 March 2003;

k. the killing of P68's uncle by MLC soldiers in Damara;

l. the killing of P42's cousin by MLC soldiers in PK22;

m. the rape of a woman and pillaging of her belongings by MLC soldiers in October 2002 in PK22;

n. the rape of P69, the rape of his wife, the murder of his sister, and the pillaging of his house in PK12 in November 2002;

o. the rapes of P79 and her daughter, and pillaging of her compound in PK12 in November 2002;

p. the pillaging of the houses of P108, P110, and P112 in PK12 in November 2002;

q. the murder of an unidentified woman in PK12 in November 2002, as witnessed by P110;

r. the pillaging of P73's belongings by MLC soldiers in PK12;

s. the rape of two girls by MLC soldiers witnessed by P119 and the pillaging of her house in Bangui; and

t. the killing of a boy by MLC soldiers after he resisted a soldier taking his bread in Bangui, as witnessed by P169.

50. Finally, on 1 February 2012, the Legal Representative provided to the parties the statements of V1 (detailing her alleged rapes and the pillaging of her property by MLC soldiers, as well as instances of murder and pillaging she witnessed, in Mongoumba on 5 March 2003)[170] and V2 (detailing the alleged pillaging of his property by MLC soldiers in Sibut at the end of February 2003).[171] The Chamber observes that the Defence challenged the proposed testimony of V1 and V2 not on the basis that the recounted underlying acts of murder, rape, and pillaging exceeded the scope of the charges, but rather that such evidence was ''cumulative'' of the Prosecution evidence of ''crimes relevant to the DCC'',[172] and that the proposed testimonies included reference to crimes not charged, such as wounding.[173] In light of the above, the Chamber finds that it can also rely on the underlying acts described by V1 and V2, as they provide evidential detail as to the facts set out in the charges.

## C. THE "SHOULD HAVE KNOWN" MENTAL ELEMENT

51. The Defence submits that a re-characterisation in the circumstances of the present case, where the Chamber had previously held that the "should have known" standard exceeded the scope of the confirmed charges, is incompatible with the rights of the Accused to a fair trial.[174] It argues that the Chamber's previous ruling precludes a re-characterisation of the charges, as the law

[170] ICC-01/05-01/08-2061-Conf-Anx1-Red2.
[171] ICC-01/05-01/08-2066-Conf-Anx5-Red2.
[172] ICC-01/05-01/08-2125-Conf, paras 26 to 30.
[173] ICC-01/05-01/08-2125-Conf, paras 20 to 25; and ICC-01/05-01/08-2138, paras 33, 45, and 55, authorising V1 and V2 to testify. The Defence questioned V1 (T-221) and V2 (T-224; and T-225), including on the alleged underlying criminal acts.
[174] Defence Closing Brief, paras 897 to 904.

relating to re-characterisation is "unsettled" and Regulation 55(1) "only permits a re-characterisation which does not 'exceed […] the facts and circumstances described in the charges'".[175]

52. The Prosecution responds that the Pre-Trial Chamber held that the same factors used to determine actual knowledge are relevant to the "should have known" standard and thus "[n]either the facts nor the legal elements are mutually exclusive".[176]

53. In its Regulation 55 Notification, the Chamber gave notice that "after having heard all the evidence the Chamber may modify the legal characterisation of the facts so as to consider in the same mode of responsibility the alternate form of knowledge contained in Article 28(a)(i), namely that owing to the circumstances at the time, the Accused 'should have known' that the forces under his effective command and control or under his effective authority and control, as the case may be, were committing or about to commit the crimes included in the charges confirmed".[177]

54. The Chamber repeatedly emphasised that, as required under Regulation 55, such re-characterisation would not exceed the facts and circumstances described in the charges and any amendment thereto.[178] The Chamber clarified that the facts underlying the potential alternate form of knowledge envisaged did not differ from the facts underlying the allegation that the Accused knew of the alleged commission of the relevant crimes.[179] This accords with the findings of the Pre-Trial Chamber that the criteria or indicia of actual knowledge are also relevant to the "should have known" mental element.[180] In turn, the Chamber also identified the precise paragraphs of the Confirmation Decision and Revised

[175] Defence Closing Brief, paras 905 to 910.
[176] Prosecution Response Brief, para. 62, *referring to* Confirmation Decision, para. 434.
[177] Regulation 55 Notification, para. 5.
[178] Decision 2480, para. 10; ICC-01/05-01/08-3089, para. 16; ICC-01/05-01/08-2487, para. 19; and ICC-01/05-01/08-2419, para. 7.
[179] Decision 2480, para. 11; and ICC-01/05-01/08-2487, paras 19, 20, and 33.
[180] Confirmation Decision, para. 434.

Second Amended DCC which set out the facts underlying the allegation that the Accused "knew" of the alleged commission of the relevant crimes.[181]

55. The Prosecution also submitted that this potential change had no impact on its presentation of the evidence and that it would not seek the admission of any further evidence, as the evidence it had already presented was relevant as proof of both actual knowledge and a "should have known" mental element.[182]

56. Nevertheless, as already noted above,[183] the Chamber, on 13 December 2012, suspended proceedings in order to permit the Defence time to conduct investigations and prepare in light of the possible re-characterisation.[184] The Defence ultimately requested that the Chamber vacate its decision on the temporary suspension of the proceedings,[185] which the Chamber did on 6 February 2013.[186] The Chamber considered that the Defence waived the opportunity to conduct further investigations, recall witnesses, or submit additional evidence relevant to the potential legal re-characterisation of the facts.[187]

57. Although, as found below, the Chamber decides not to recharacterise the facts to include a "should have known" mental element,[188] the Chamber emphasises that the related procedure accorded with the requirements of Regulation 55. In order to be adequately informed of the *mens rea* element under Article 28(a), the Accused must be notified of either the specific state of mind, or the evidentiary facts from which the state of mind is to be inferred.[189] The charges and the Regulation 55 Notification specified the alleged state of mind under Article

[181] Decision 2480, para. 11; ICC-01/05-01/08-3089, para. 16; and ICC-01/05-01/08-2487, para. 19.
[182] ICC-01/05-01/08-2334, para. 13. *See also* Decision 2480, paras 12 and 15; ICC-01/05-01/08-2487, paras 19 and 33; and ICC-01/05-01/08-2419, paras 2 and 7.
[183] *See* Section I(D).
[184] Decision 2480, para. 15. *See* ICC-01/05-01/08-2487, rejecting leave to appeal on 16 January 2013.
[185] ICC-01/05-01/08-2490-Red.
[186] ICC-01/05-01/08-2500, para. 34(i) and (ii).
[187] ICC-01/05-01/08-2500, para. 21.
[188] *See* Section VI(F)(3).
[189] ICTY, *Blaškić* Appeal Judgment, para. 219. *See also* SCSL, *Sesay et al.* Appeal Judgment, paras 70 to 71; and ICTR, *Nahimana et al.* Appeal Judgment, para. 347.

28(a) and the evidentiary facts from which the state of mind was to be inferred. The Chamber is therefore satisfied that Mr Bemba had sufficiently detailed information concerning his alleged *mens rea*.

## D. FACTS RELATING TO THE ACCUSED'S CRIMINAL RESPONSIBILITY

58. The Defence argues that the Prosecution has "demonstrated its willingness to depart from the confirmed case, deliberately attempting to rely on allegations which have been explicitly dismissed" and that "it is perhaps in relation to 'measures' that it strays most dramatically from the case as delineated by the Pre-Trial Chamber".[190] The Defence specifically identifies the following allegations as falling outside the scope of the charges relating to the Accused's responsibility under Article 28:

a. information of crimes that Mr Bemba received from President Patassé during his visit to the CAR;[191]

b. evidence of more than one visit by Mr Bemba to the CAR;[192]

c. evidence concerning the MLC intervention in the CAR in 2001;[193]

d. allegations that "MLC troops were given licence to commit crimes by their hierarchy", operated in a permissive environment, and received relevant directives from the MLC hierarchy, including Mr Bemba;[194]

e. inadequacies in the Code of Conduct and training of MLC forces;[195]

f. the discussions between General Cissé and Mr Bemba on 2 November 2002;[196]

g. the events that allegedly took place in Mongoumba;[197]

[190] Defence Closing Brief, para. 997.
[191] Defence Closing Brief, para. 978.
[192] *See* Defence Closing Brief, para. 844.
[193] Defence Closing Brief, paras 910, and 978 to 980.
[194] Defence Closing Brief, paras 406 to 407, 410, 962, and 982.
[195] Defence Closing Brief, paras 952 to 953.
[196] Defence Closing Brief, para. 892.

h. the missions to Zongo and Sibut and the Gbadolite trials as proof of Mr Bemba's knowledge;[198] and

i. factors relating to the Accused's alleged authority and control, other than those relied upon in the Confirmation Decision, such as the Accused's use of communication devices to control troops, his alleged control over logistics,[199] and any theory of command other than direct operational command.[200]

59. The Pre-Trial Chamber found sufficient evidence to establish substantial grounds to believe that (i) Mr Bemba was a person effectively acting as military commander ("first element"); (ii) forces under his effective command and control committed crimes within the jurisdiction of the Court ("second element"); (iii) crimes were committed as a result of his failure to exercise control properly over such forces ("third element); (iv) he knew the forces were committing or about to commit such crimes ("fourth element"); and (v) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution ("fifth element").[201]

60. In relation to the first, third, and fifth elements, the Chamber finds that the Accused was informed of these accusations, as well as abundant evidential detail in support thereof. On this basis, emphasising that the Defence has not substantiated its generalised claim of insufficient notice, the Chamber finds that the Accused had adequate notice of these elements.

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[197] Defence Closing Brief, para. 802.
[198] Defence Closing Brief, paras 811 to 813.
[199] Defence Closing Brief, paras 672 to 675, and 777; and Defence Reply Brief, para. 85.
[200] The Defence further argues that the case, as confirmed, is that the Accused maintained operational command and failed to prevent or repress the crimes committed by MLC troops on the ground. It claims that this contradicts the Prosecution's current position, in particular, that Colonel Moustapha commanded the MLC troops *in situ*. According to the Defence, the Prosecution has "missed its chance to charge, plead and prove" that Mr Bemba is liable on any basis other than operational command. It submits that considering alternative modes of control would violate principles of fairness. *See* Defence Closing Brief, paras 601 and 603 to 604; and Defence Reply Brief, paras 85 and 95.
[201] Confirmation Decision, paras 444 to 501.

61. In relation to the second element, the Pre-Trial Chamber emphasised that it concurred "with the view adopted by the *ad hoc* tribunals that *indicia* for the existence of effective control are 'more a matter of evidence than of substantive law', depending on the circumstances of each case" and proceeded to identify a non-exhaustive list of factors which may be relevant.[202] The Pre-Trial Chamber relied on five factors in confirming that the Accused had effective authority and control: (i) Mr Bemba's official position within the MLC structure; (ii) Mr Bemba's power to issue orders, which were complied with; (iii) Mr Bemba's power to appoint, promote, demote, and dismiss, as well as arrest, detain, and release MLC commanders; (iv) Mr Bemba's power to prevent and repress the commission of crimes; and (v) Mr Bemba's retention of effective authority and control over the MLC troops.[203] On this basis, the Chamber is satisfied that Mr Bemba had adequate notice of the accusation that he had effective authority and control over the MLC troops.

62. Finally, in relation to the fourth element, the Chamber recalls its findings above that the Accused received adequate notice of both actual knowledge and a "should have known" mental element. As to the specific allegations that the Defence claims fall outside the confirmed charges, the Chamber notes, in particular, that the Pre-Trial Chamber based its conclusions as to Mr Bemba's knowledge on, *inter alia*, the fact that he travelled to the CAR during the time relevant to the charges "at least once".[204] In confirming the charges, the Pre-Trial Chamber therefore did not exclude the possibility that Mr Bemba may have visited the CAR on more than one occasion during the relevant period. In the Chamber's view, whether Mr Bemba visited the CAR more than once, and any information he may have obtained during such visits, are questions of evidence and not of confirmed facts.

[202] Confirmation Decision, paras 416 to 417 (emphasis in original).
[203] Confirmation Decision, paras 446 to 477.
[204] Confirmation Decision, para. 485.

63. As to the Gbadolite trials and the missions to Zongo and Sibut, evidence of which were disclosed by the Defence at the confirmation stage of the case,[205] the Chamber notes that the Pre-Trial Chamber did consider – within the measures taken by Mr Bemba to prevent or repress the commission of crimes by the MLC troops – the fact that Mr Bemba had established a commission of inquiry to verify facts related to alleged crimes committed by MLC soldiers and that some soldiers were prosecuted as a consequence of that inquiry.[206] Similarly, the report of the commission of inquiry in Zongo, was also analysed by the Pre-Trial Chamber in its assessment of the means available to Mr Bemba to initiate investigations and prosecutions within the MLC structure.[207] Further, the reliability of the evidence related to the Sibut mission was also discussed by the Pre-Trial Chamber when analysing the contextual elements of crimes against humanity, for the purposes of determining whether the attack was conducted by the MLC troops.[208] The Chamber considers that such allegations constitute evidential detail, not confirmed facts, and recalls that nothing precludes it from relying on any evidence to determine the truth of the charges. Similarly, the Chamber is not limited in its analysis of the facts and evidence of the case by the Pre-Trial Chamber's assessment of their relevance to some – and not other – elements of the crimes charged.

64. Accordingly, the Chamber finds that the allegations the Defence claims to fall outside the scope of the charges, as identified above, constitute evidential detail submitted to prove the facts and circumstances described in the charges, namely the elements of command responsibility as specified in the Confirmation Decision. As such, they fall within the scope of the confirmed charges of which Mr Bemba had adequate notice.

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[205] *See* **EVD-T-OTP-00393/CAR-DEF-0002-0001**; **EVD-T-OTP-00392/CAR-DEF-0001-0155**; and **EVD-T-D04-00008/CAR-DEF-0001-0832**. At the confirmation stage of the case, the items were assigned numbers EVD-D01-00043, EVD-D01-00022, and EVD-D01-00042.
[206] Confirmation Decision, para. 494.
[207] Confirmation Decision, para. 494 and footnote 709.
[208] Confirmation Decision, paras 102 to 104.

## E. "WIDESPREAD" OR "SYSTEMATIC" NATURE OF THE ATTACK

65. The Pre-Trial Chamber only confirmed that the attack was "widespread" and did not make any findings as to the "systematic" nature of the attack, considering that these elements are presented in the alternative in Article 7.[209] In Decision 836, the Chamber found that the "introduction […] of the 'systematic' element in the Second Amended DCC exceeds the scope of the charges".[210] The Prosecution accordingly removed any reference to "systematic" in the Corrected Revised Second Amended DCC[211] and makes no final submissions in respect of this element. The Chamber therefore makes no findings in this Judgment as to whether the attack was "systematic".

[209] Confirmation Decision, paras 82 to 83.
[210] Decision 836, para. 80.
[211] *Compare* Second Amended DCC, para. 40 *with* Corrected Revised Second Amended DCC, para. 36.

# III. APPLICABLE LAW

66. The sources of applicable law are set out in Article 21. This provision establishes a hierarchy of sources, obliging the Chamber to apply, first, the relevant provisions of the Statute, Elements of Crimes, and Rules of Procedure and Evidence ("Rules") listed in Article 21(1)(a).[212] Although Article 21(1)(a) does not expressly establish a hierarchy for the application of the three relevant sources, it follows from Articles 9(3)[213] and 51(5)[214] that the Statute always prevails over the Elements of Crimes and the Rules.

67. Concerning the role of the Elements of Crimes, Article 9(1)[215] and paragraph 1 of the General Introduction to the Elements of Crimes[216] both clarify that the Elements of Crimes shall assist the Chamber in applying the relevant statutory provisions.[217]

68. The Chamber is of the view that the Elements of Crimes form an integral part of the primary sources of applicable law provided for in Article 21(1)(a) and, as such, in accordance with the principle of strict legality provided for in Article 22, should be applied subject to any conflict with the provisions of the Statute.[218]

69. Articles 21(1)(b) and 21(1)(c) provide for "subsidiary sources of law",[219] which may be resorted to when there is a *lacuna* in the written law contained in the sources included in Article 21(1)(a).[220] In line with Article 21(1)(b), where appropriate, the Chamber may apply "applicable treaties and the principles and

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[212] *See* *Katanga* Trial Judgment, para. 39.
[213] Article 9(3) provides: "The Elements of Crimes and amendments thereto shall be consistent with this Statute".
[214] Article 51(5) provides: "In the event of conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail".
[215] Article 9(1) provides, in relevant part: "Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7, 8 and 8 *bis*".
[216] Paragraph 1 of the General introduction to the Elements of Crimes provides, in relevant part: "Pursuant to article 9, the following Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8, consistent with the Statute".
[217] *Katanga* Trial Judgment, para. 41.
[218] *Katanga* Trial Judgment, para. 41.
[219] *Katanga* Trial Judgment, para. 39. In the French original "*sources de droit subsidiaires*".
[220] *Katanga* Trial Judgment, paras 39; ICC-01/04-01/06-772, para. 34; ICC-01/04-168, para. 39; ICC-02/05-01/09-3, para. 44; and ICC-01/04-01/07-717, para. 508.

rules of international law, including the established principles of the international law of armed conflict".

70. For the category of "applicable treaties", the Court may apply all relevant treaties. For example, the Court has previously applied the Vienna Convention on the Law of Treaties ("VCLT"),[221] the Convention on the Rights of the Child,[222] and the Genocide Convention.[223] The Court also applied the Geneva Conventions of 12 August 1949 and the two Additional Protocols.[224] In this regard, the Chamber notes that the Geneva Conventions are explicitly referred to in Articles 8(2)(a) and 8(2)(c).

71. "[P]rinciples and rules of international law" are generally accepted to refer to customary international law. Where relevant and appropriate, the Chamber has found assistance, for instance, in the case law of other international courts and tribunals, in particular the International Court of Justice ("ICJ"),[225] in order to identify such principles and rules.

72. At the same time, it is important to stress that Chambers generally treated the case law of other international courts and tribunals with caution and underlined that it is not binding on this Court.[226] In the *Lubanga* case, with regard to the defence's reliance on case law from the International Criminal Tribunal for Rwanda ("ICTR"),[227] Trial Chamber I found that "whilst relevant jurisprudence from the *ad hoc* tribunals may assist the Chamber in its interpretation of the Statute, the Chamber is bound, in the first place, to apply

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[221] *Katanga* Trial Judgment, paras 43 to 45; *Lubanga* Trial Judgment, para. 601; Confirmation Decision, para. 361; ICC-01/04-01/07-522, para. 38; ICC-01/04-01/07-384, page 6; ICC-01/04-168, para. 33 (internal citations omitted), *citing* the Vienna Convention on the Law of Treaties 1969.
[222] *Lubanga* Appeal Judgment, para. 277, *citing* the Convention on the Rights of the Child 1989.
[223] ICC-02/05-01/09-3, para. 117, *citing* the Convention on the Prevention and Punishment of the Crime of Genocide 1948.
[224] *Lubanga* Trial Judgment, para. 607.
[225] The particular role of the ICJ in this respect is supported by the fact that Article 38(1)(b) of the ICJ Statute recognises "international custom, as evidence of a general practice accepted as law" as one of the primary sources of applicable law.
[226] *See*, *for example*, ICC-01/09-01/11-414, para. 31; ICC-01/09-02/11-425, para. 37; ICC-01/05-01/08-1386, para. 56; ICC-01/04-01/06-1049, para. 44; and ICC-02/04-01/05-60, para. 19.
[227] When referring collectively to two or more of the other international or hybrid criminal courts (for example, the ICTY, ICTR, SCSL, and ECCC), the Chamber occasionally uses the term "*ad hoc* tribunals".

the Statute, the Elements of Crimes, and the Rules of Procedure and Evidence, pursuant to Article 21(1)(a)".[228] The Chamber agrees with this approach.

73. Failing the availability of primary sources of law listed in Article 21(1)(a) or subsidiary sources listed in Article 21(1)(b), Article 21(1)(c) empowers the Chamber to apply "general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime".

74. Moreover, where appropriate and in accordance with Article 21(2), the Chamber may apply principles and rules of law as outlined in previous decisions of this Court.[229] This provision permits the Chamber to base its decisions on its previous jurisprudence, or on the jurisprudence of other Chambers of this Court. Yet, the use of the modal "may" indicates that the Chamber is not obliged to apply previous decisions, affording the Chamber a considerable degree of discretion concerning the use of the Court's case law. While mindful of its discretion, the Chamber considers that, where appropriate, following the Court's previous jurisprudence – and in particular the findings of the Appeals Chamber – is desirable in the interests of expeditiousness, procedural economy, and legal certainty.

## A. METHOD AND CONFINES OF INTERPRETATION

75. The Appeals Chamber clarified that the interpretation of the Statute is governed, first and foremost, by the VCLT, specifically Articles 31 and 32:[230]

> The interpretation of treaties, and the Rome Statute is no exception, is governed by the [VCLT], specifically the provisions of articles 31 and

[228] ICC-01/04-01/06-2595, para. 54.
[229] *Katanga* Trial Judgment, para. 42. *See also* Confirmation Decision, para. 39.
[230] ICC-01/04-168, para. 33 (internal citations omitted); and ICC-01/04-01/07-522, para. 38. *See also* *Katanga* Trial Judgment, paras 43 to 45; *Lubanga* Trial Judgment, para. 601; and Confirmation Decision, para. 361.

> 32. The principal rule of interpretation is set out in article 31(1) that reads:
>
> > A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
>
> The Appeals Chamber shall not advert to the definition of "good faith", save to mention that it is linked to what follows and that is the wording of the Statute. The rule governing the interpretation of a section of the law is its wording read in context and in light of its object and purpose. The context of a given legislative provision is defined by the particular sub-section of the law read as a whole in conjunction with the section of an enactment in its entirety. Its objects may be gathered from the chapter of the law in which the particular section is included and its purposes from the wider aims of the law as may be gathered from its preamble and general tenor of the treaty.

76. Noting further the repeated acknowledgement by the ICJ that these rules are part of customary international law,[231] the Chamber follows this approach.

77. As stressed by the Appeals Chamber, Article 31(1) of the VCLT sets out the principal rule of interpretation,[232] or, as determined by Trial Chamber II, "*one* general rule of interpretation".[233] In that sense, Trial Chamber II considered that the various elements referred to in this provision – i.e., ordinary meaning, context, object, and purpose – must be applied together and simultaneously, rather than individually and in a hierarchical or chronological order.[234] It further stressed that, on the basis of the principle of good faith provided for in this provision, the general rule also comprises the principle of effectiveness,[235] requiring the Chamber to dismiss any interpretation of the applicable law that would result in disregarding or rendering any other of its provisions void.[236] The Chamber agrees with this approach.

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[231] *See, inter alia*, ICJ, *The Wall*, para. 94; ICJ, *Mexico v. United States of America*, para. 83; ICJ, *El Salvador/Honduras: Nicaragua intervening*, para. 373; and ICJ, *Guinea-Bissau v. Senegal*, para. 48.
[232] ICC-01/04-168, para. 33.
[233] *Katanga* Trial Judgment, para. 44 (emphasis in original). In the French original : "*une règle générale d'interprétation*".
[234] *Katanga* Trial Judgment, para. 45. *See also* ICJ, *Islamic Republic of Iran v. United States of America*, para. 23; ICJ, *Nuclear Weapons in Armed Conflict*, para. 19; ICJ, *Libyan Arab Jamahiriya/Chad*, para. 41; and ICJ, *Denmark v. Norway*, paras 22 to 40.
[235] *Katanga* Trial Judgment, para. 46. In the French original: "*effet utile*".
[236] *Katanga* Trial Judgment, para. 46. *See also* ICJ, *Libyan Arab Jamahiriya/Chad*, para. 41; and ICJ, *Continued Presence of South Africa in Namibia*, para. 66.

78. Article 31(3)(c) of the VCLT provides that "[t]here shall be taken into account, together with the context […] [a]ny relevant rules of international law applicable in the relations between the parties". In this respect, Trial Chamber II found that, where the statutory provisions do not resolve a particular issue, the Chamber may resort to treaty or customary law, as well as to general principles of law. [237] In this context, Trial Chamber II considered that it could refer to the relevant jurisprudence of other international courts and tribunals.[238]

79. The Chamber agrees with Trial Chamber II insofar as Article 31(3)(c) of the VCLT empowers the Chamber to consider the case law of other international courts and tribunals as a means of interpretation of the applicable law. In the view of the Chamber, this approach complements such use of the case law envisaged above, that is to assist the Judges in identifying rules of customary law in order to fill a *lacuna* with a "subsidiary source of law" provided for in Article 21(1)(b). Under the approach contemplated by Trial Chamber II, the pertinent case law may be used to assist the Chamber in interpreting the applicable law referred to in Article 21(1)(a). In the view of the Chamber, both usages are possible, and the approach to be followed needs to be determined on a case-by-case basis, depending on the circumstances. While the boundaries between the two approaches may be fluid, the Chamber considers that it must not use the concept of treaty interpretation to replace the applicable law.

80. The Chamber also notes Article 32 of the VCLT, which provides:

> Article 32. SUPPLEMENTARY MEANS OF INTERPRETATION
>
> Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
>
> (a) Leaves the meaning ambiguous or obscure; or
>
> (b) Leads to a result which is manifestly absurd or unreasonable.

[237] *Katanga* Trial Judgment, para. 47.
[238] *Katanga* Trial Judgment, para. 47.

81. Further to this provision, the Chamber, after an analysis of the relevant provisions in accordance with the general rule of interpretation under Article 31(1)(a) of the VCLT, may resort to such supplementary means of interpretation, either in order to confirm the meaning resulting from the application of Article 31, or, in order to determine the meaning when the interpretation according to Article 31 "[l]eaves the meaning ambiguous or obscure" or "[l]eads to a result which is manifestly absurd or unreasonable".[239]

82. Any interpretation needs to respect the conditions imposed by Articles 21(3) and 22. As stressed by the Appeals Chamber, Article 21(3) "makes the interpretation as well as the application of the law applicable under the Statute subject to internationally recognised human rights. It requires the exercise of the jurisdiction of the Court in accordance with internationally recognised human rights norms."[240] This provision has been frequently cited in the Court's jurisprudence.[241]

83. Moreover, Article 22 obliges the Chamber to respect the principle of strict legality, or *nullum crimen, nulla poena sine lege*.[242] Under the principle of strict legality, the substantive provisions on the definition of a crime under Articles 6 to 8, and the relevant Elements of Crimes, may not be extended by analogy or applied in situations not envisaged by the statutory provisions. The Chamber therefore cannot adopt an interpretation method that would broaden the definition of crimes, and it is bound to adhere to the letter of the provisions aimed at reprimanding only conduct the drafters expressly intended to criminalise.[243] However, it needs to be stressed that the bar on the use of analogy does not prevent the Chamber from resorting to other sources of law

[239] *Katanga* Trial Judgment, para. 49.
[240] ICC-01/04-01/06-772, para. 36. *See also* *Lubanga* Trial Judgment, para. 602; and *Katanga* Trial Judgment, para. 50.
[241] *See*, *for example*, ICC-01/05-01/08-323, para. 28; ICC-01/04-01/06-1487, para. 12; and Confirmation Decision, para. 39.
[242] *See* Articles 22 and 23 of the Statute.
[243] *Katanga* Trial Judgment, para. 52.

whenever necessary to determine the precise content of the definition of a specific criminal conduct.

84. The second sentence of Article 22(2) makes it clear that any ambiguity in relation to the interpretation of the definition of a crime must be resolved in a manner that is in favour of the investigated, prosecuted, or convicted person.

85. The Chamber further notes that the Statute itself, in many of its provisions, entrusts the judges with the judicial task of identifying, in other primary or even secondary sources of law, the required elements for the definition of a specific conduct. Classical examples include the absence of a definition of the concept of "international armed conflict" or "armed conflict not of an international character", or the inclusion in Article 7(1)(k) of the crime against humanity of "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health".

86. Therefore, for the purpose of this Judgment, the Chamber applies Article 21 of the Statute, in combination with Articles 31 and 32 of the VCLT. In this context, the Chamber bases its findings on the applicable law set out in Article 21(1)(a) to (c), in accordance with the principles outlined above, and in full respect of the limitations provided for in Articles 21(3) and 22(2).

## B. MURDER AS A CRIME AGAINST HUMANITY (ARTICLE 7(1)(A) OF THE STATUTE)

### 1. Material elements (*actus reus*)

87. The Prosecution must prove beyond reasonable doubt that a perpetrator killed or caused the death of one or more persons.[244] The Chamber notes that footnote

[244] Confirmation Decision, para. 132; and *Katanga* Trial Judgment, para. 767.

7 of the Elements of Crimes states that "the term 'killed' is interchangeable with the term 'caused death'".[245]

88. The elements of murder may be satisfied whether or not a victim's body has been recovered.[246] Indeed, a victim's killing may be proven by circumstantial evidence so long as the victim's death is the only reasonable inference that can be drawn therefrom.[247] Further, it is not necessary for the Prosecution to prove the specific identity of the victim[248] or the perpetrator.[249]

### 2. Mental elements (*mens rea*)

89. As the Statute and the Elements of Crimes do not provide a particular mental element for murder constituting a crime against humanity, the Article 30 requirements of intent and knowledge apply.

90. Thus, the Prosecution must prove beyond reasonable doubt that the perpetrators (i) meant to kill or to cause the death of one or more persons or (ii) were aware that the death(s) would occur in the ordinary course of events.

## C. MURDER AS A WAR CRIME (ARTICLE 8(2)(C)(I) OF THE STATUTE)

### 1. Material elements (*actus reus*)

91. The Chamber considers that, like the *actus reus* for the crime against humanity of murder, the *actus reus* of the war crime of murder requires that a perpetrator killed or caused the death of one or more persons.[250] Accordingly, the Chamber incorporates Section III(B)(1), *mutatis mutandis*.

92. However, the definition of the war crime of murder contains a materially distinct element from the corresponding crime against humanity in that,

[245] Elements of Crimes, Article 7(1)(a)(1), footnote 7.
[246] Confirmation Decision, para. 133.
[247] *Katanga* Trial Judgment, para. 768; and ICTY, *Kvočka et al.* Appeal Judgment, para. 260.
[248] Confirmation Decision, paras 133 and 134.
[249] ICTY, *Orić* Appeal Judgment, paras 33 to 35; and ICTY, *Blaškić* Appeal Judgment, para. 217.
[250] Elements of Crimes, Article 8(2)(c)(1) and footnote 7.

pursuant to Article 8(2)(c)(i), the murder must be committed against "persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause". Similarly, Article 8(2)(c)(i)-1 of the Elements of Crimes requires that the person or persons killed by the perpetrator "were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities".[251]

93. In light of the confirmed charges, the Chamber confines its consideration here to the law applicable to the murder of civilians. The Chamber notes that the Third Geneva Convention and Additional Protocols I and II assist in the definition of civilians.[252]

94. Article 50(1) of Additional Protocol I provides, in relation to the expected conduct of a member of the military,[253] that "[i]n case of doubt whether a person is a civilian, that person shall be considered to be a civilian". However, in establishing criminal responsibility under the Statute, the burden is on the Prosecution to establish the status of the victim as a civilian taking no active

[251] Elements of Crimes, Article 8(2)(c)(i)-1, para. 2.

[252] Article 50(1) of Additional Protocol I defines civilians as persons who do not belong to one of the categories of persons referred to in Article 4(A)(1), (2), (3), and (6) of the Third Geneva Convention. *See also* Additional Protocol I, Article 43. Article 4(A) of the Third Geneva Convention enumerates: "1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces. 2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions: a) that of being commanded by a person responsible for his subordinates; b) that of having a fixed distinctive sign recognisable at a distance; c) that of carrying arms openly; d) that of conducting their operations in accordance with the laws and customs of war. 3) Members of regular armed forces who profess allegiance to a government or an authority not recognised by the Detaining Power. […] 6) Inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war." Article 43 of Additional Protocol I, in turn, provides as follows: "1) The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognised by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, *inter alia*, shall enforce compliance with the rules of international law applicable in armed conflict. 2) Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities. 3) Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict."

[253] ICTY, *Blaškić* Appeal Judgment, para. 111.

part in the hostilities.[254] In determining whether victims were taking an active part in hostilities, the Chamber shall consider the relevant facts and specific situation of the victims at the relevant time, including the location of the murders, whether the victims were carrying weapons, and the clothing, age, and gender of the victims.[255]

### 2. Mental elements (*mens rea*)

95. As the Statute and Elements of Crimes do not provide a particular mental element for murder constituting a war crime, the Article 30 requirements of intent and knowledge apply.

96. The Chamber considers that, like the mental element applicable to the crime against humanity of murder,[256] the mental element of murder as a war crime requires proof beyond reasonable doubt that the perpetrator (i) meant to kill or to cause the death of one or more persons or (ii) was aware that the death(s) would occur in the ordinary course of events.

97. In addition, under paragraph 3, Article 8(2)(c)(i)-1 of the Elements of Crimes, the perpetrators must have been aware of the factual circumstances that established the protected status of the victims.[257]

## D. RAPE AS A CRIME AGAINST HUMANITY AND A WAR CRIME (ARTICLES 7(1)(G) AND 8(2)(E)(VI) OF THE STATUTE)

98. The Chamber addresses both rape as a war crime and rape as a crime against humanity in the same section, as only the contextual elements differ.

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[254] ICTY, *Blaškić* Appeal Judgment, para. 111; and ICTY, *Strugar* Appeal Judgment, para. 178 and footnote 457.
[255] ICTY, *Halilović* Trial Judgment, paras 33 and 34. *See also* ICTY, *Tadić* Trial Judgment, paras 615 to 616; and ICTY, *Strugar* Appeal Judgment, paras 176 to 178.
[256] *See* Section III(B)(2).
[257] Confirmation Decision, para. 275. *See also* *Katanga* Trial Judgment, para. 793 and footnote 1831, noting that "it is not necessary for the perpetrator to have assessed the situation and concluded that the victim is *hors de combat*, a civilian, medical personnel or religious personnel taking no active part in the hostilities".

### 1. Material elements (*actus reus*)

#### a) Invasion of the body of a person

99. Rape requires "invasion" of a person's body by "conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body".[258]

100. The Chamber emphasises that, according to the Elements of Crimes, "the concept of 'invasion' is intended to be broad enough to be gender-neutral".[259] Accordingly, "invasion", in the Court's legal framework, includes same-sex penetration, and encompasses both male and/or female perpetrators and victims.

101. The Chamber notes that the definition of rape encompasses acts of "invasion" of any part of a victim's body, including the victim's mouth, by a sexual organ. Indeed, as supported by the jurisprudence of the International Criminal Tribunal for the former Yugoslavia ("ICTY"),[260] oral penetration, by a sexual organ, can amount to rape and is a degrading fundamental attack on human dignity which can be as humiliating and traumatic as vaginal or anal penetration.

#### b) Circumstances in which rape occurs

102. The second material element of rape details the circumstances and conditions which give the invasion of the victim's or perpetrator's body a criminal character.[261] It provides that, for the invasion of the body of a person to constitute rape, it has to be committed under one or more of four possible

[258] Elements of Crimes, Articles 7(1)(g)-1, para. 1, and 8(2)(e)(vi)-1, para. 1.
[259] Elements of Crimes, Articles 7(1)(g)-1, footnote 15, 8(2)(b)(xxii)-1, footnote 50, and 8(2)(e)(vi)-1. For the term "invasion", the French version of the Elements of Crimes reads: "*prendre possession*".
[260] *See* ICTY, *Furundžija* Trial Judgment, paras 183 to 185; and ICTY, *Delalić et al.* Trial Judgment, para. 1066.
[261] *Katanga* Trial Judgment, para. 964.

circumstances: (i) by force; (ii) by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person; (iii) by taking advantage of a coercive environment; or (iv) against a person incapable of giving genuine consent.[262]

103. As noted, one of the possible circumstances for rape, as set out in the Elements of Crimes, is that a perpetrator "tak[es] advantage of a coercive environment". In interpreting the concept of a "coercive environment", the Chamber, in line with the Confirmation Decision,[263] is guided by the *Akayesu* Trial Judgment's discussion of "coercive circumstances":[264]

> [C]oercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or the military presence of Interahamwe among refugee Tutsi women at the bureau communal.

104. The Chamber does not exclude the possibility that, in addition to the military presence of hostile forces among the civilian population, there are other coercive environments of which a perpetrator may take advantage to commit rape. Further, the Chamber considers that several factors may contribute to create a coercive environment. It may include, for instance, the number of people involved in the commission of the crime, or whether the rape is committed during or immediately following a combat situation, or is committed together with other crimes. In addition, the Chamber emphasises that, in relation to the requirement of the existence of a "coercive environment",

[262] Elements of Crimes, Articles 7(1)(g)-1, para. 2, and 8(2)(e)(vi)-1, para. 2. The French version reads: "*l'acte a été commis par la force ou en usant à l'encontre de ladite ou desdites ou de tierces personnes de la menace de la force ou de la coercition, telle que celle causée par la menace de violences, contrainte, détention, pressions psychologiques, abus de pouvoir, ou bien à la faveur d'un environnement coercitif, ou encore en profitant de l'incapacité de ladite personne de donner son libre consentement*".
[263] Confirmation Decision, para. 162.
[264] *See* ICTR, *Akayesu* Trial Judgment, para. 688.

it must be proven that the perpetrator's conduct involved "taking advantage" of such a coercive environment.

105. The Chamber notes that the victim's lack of consent is not a legal element of the crime of rape under the Statute. The preparatory works of the Statute demonstrate that the drafters chose not to require that the Prosecution prove the non-consent of the victim beyond reasonable doubt, on the basis that such a requirement would, in most cases, undermine efforts to bring perpetrators to justice.[265]

106. Therefore, where "force", "threat of force or coercion", or "taking advantage of coercive environment" is proven, the Chamber considers that the Prosecution does not need to prove the victim's lack of consent.

107. Finally, the fourth possible circumstance to be considered under the Statute is that an invasion of the body of the victim or the perpetrator may also constitute rape when committed "against a person incapable of giving genuine consent". Footnotes 16 and 64 of the Elements of Crimes clarify that "a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity". In such cases, the Prosecution will only have to prove that the victim's capacity to give genuine consent was affected by natural, induced, or age-related incapacity.

108. The Chamber further notes that neither the Statute nor the Elements of Crimes sets out a specific age under which a person would be considered as "incapable of giving genuine consent". However, for the purpose of the present Judgment, and based on the factual findings below, the Chamber notes that it is only

[265] *See* Michael Cottier/Sabine Mzee, "(xxii) Rape and other forms of sexual violence" in Otto Triffterer and Kai Ambos (eds), *Commentary on the Rome Statute of the International Criminal Court* (2014), page 489. *See also* Darryl Robinson, "Article 7(1)(g)-Crime Against Humanity of Rape, Sexual Slavery, Enforced Prostitution, Forced Pregnancy, Enforced Sterilization, or Any Other Form of Sexual Violence of Comparable Gravity" in Roy S. Lee (ed), *The International Criminal Court. Elements of Crimes and Rules of Procedure and Evidence* (2001), page 93; and Herman von Hebel and Darryl Robinson, "Crimes within the Jurisdiction of the Court" in Roy S. Lee (ed), *The International Criminal Court. The Making of the Rome Statute. Issues, Negotiations, Results* (1999), page 100, footnote 66.

necessary for any one of the four alternative possible circumstances identified in Articles 7(1)(g)-1, paragraph 2, and 8(2)(e)(vi)-1, paragraph 2, to be proven.

109. In addition to the Chamber's analysis of the legal elements constituting rape, the Chamber, when analysing evidence, is guided by Rules 70 and 71, which set out several principles of evidence in cases of sexual violence.

### 2. Mental elements (*mens rea)*

110. As the Statute and the Elements of Crimes do not provide a particular mental element for the crime of rape, the Article 30 requirements of intent and knowledge apply.

111. As to the requirement of "intent", it must be proven that the perpetrator intentionally committed the act of rape. Intent will be established where it is proven that the perpetrator meant to engage in the conduct in order for the penetration to take place.

112. As to the requirement of "knowledge", it must be proven that the perpetrator was aware that the act was committed by force, by the threat of force or coercion, by taking advantage of a coercive environment, or against a person incapable of giving genuine consent.[266]

## E. PILLAGING AS A WAR CRIME (ARTICLE 8(2)(E)(V) OF THE STATUTE)

113. The Chamber notes that Article 8(2)(e)(v) mirrors the provision in Article 8(2)(b)(xvi) on pillaging[267] as a war crime in international armed conflict.

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[266] *Katanga* Trial Judgment, para. 970.

[267] The precise wording of this provision derives from The Hague Regulations 1907 which prohibit "pillage of a town or place, even when taken by assault" (Article 28) and further state that "[p]illage is formally forbidden" (Article 47). Article 33(2) of the Fourth Geneva Convention, which applies in international armed conflicts, also prohibits pillaging. *See also* ICRC Commentary on the Fourth Geneva Convention, page 226. Article 4(2)(g) of Additional Protocol II which applies to non-international armed conflicts also prohibits pillaging, and Article 4(1) of Additional Protocol II strictly protects those not directly participating in hostilities. *See also* ICRC Commentary on Additional Protocol II, para. 4542.

114. The prohibition of pillaging is considered part of customary international law,[268] and is criminalised in the Statutes of the ICTR and Special Court for Sierra Leone ("SCSL").[269] Although the Nuremberg Charter and the ICTY Statute criminalised "plunder of public or private property",[270] the *Delalić et al.* and *Simić et al.* Trial Chambers considered that the term "plunder" encompassed "pillage".[271] In so finding, these Chambers noted that the terms "plunder", "pillage", and "spoliation" had all been used to describe the unlawful appropriation of property in an armed conflict.[272] The ICTY and SCSL Appeals Chambers confirmed this approach.[273] The Chamber treats the terms "plunder" and "pillage" as legally synonymous insofar as they both refer to the unlawful appropriation of property in an armed conflict.

### 1. Material elements (*actus reus*)

115. Pursuant to Article 8(2)(e)(v), paragraph 1 of the Elements of Crimes, pillaging as a war crime requires the appropriation of certain property by an individual. The act of "appropriation" has been held to imply that "property has come under the control of the perpetrator".[274] The Chamber concurs with other chambers of the Court that pillaging extends to the appropriation of all types of property, private or public, movable or immovable.[275]

116. Article 8(2)(e)(v), paragraph 3 of the Elements of Crimes requires that the appropriation occur without the consent of the owner.[276] The Chamber notes that the Court's legal framework does not include any requirement of violence

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[268] *See, inter alia*, ICTY, *Blaškić* Appeal Judgment, para. 148; ICTY, *Delalić et al.* Trial Judgment, para. 315.
[269] ICTR Statute, Article 4(f); and SCSL Statute, Article 3(f).
[270] Nuremberg Charter, Article 6(b); and ICTY Statute, Article 3(e).
[271] ICTY, *Delalić et al.* Trial Judgment, para. 591; and ICTY, *Simić et al.* Trial Judgment, para. 98.
[272] ICTY, *Delalić et al.* Trial Judgment, para. 591; and ICTY, *Simić et al.* Trial Judgment, para. 98.
[273] ICTY, *Kordić and Čerkez* Appeal Judgment, para. 79; ICTY, *Blaškić* Appeal Judgment, para. 147; and SCSL, *Fofana and Kondewa* Appeal Judgment, para. 402. *See also* SCSL, *Brima et al.* Trial Judgment, para. 751.
[274] ICC-01/04-01/07-717, para. 330. *See also* Black's Law Dictionary (8th edition, 2004), defining "appropriation" as "exercise of control over property; a taking of possession".
[275] Confirmation Decision, para. 317; and *Katanga* Trial Judgment, para. 904. *See also* ICTY, *Martić* Trial Judgment, para. 101; ICTY, *Kordić and Čerkez* Appeal Judgment, para. 79; and ICRC Commentary on the Fourth Geneva Convention, pages 226 to 227.
[276] Elements of Crimes, Article 8(2)(e)(v), para. 3.

as an element of the appropriation. In this respect, the Chamber is of the view that in certain circumstances lack of consent can be inferred from the absence of the rightful owner from the place from where property was taken.[277] Lack of consent may be further inferred by the existence of coercion.[278]

117. In line with the Pre-Trial Chamber, the Chamber considers that pillaging, pursuant to Article 8(2)(e)(v), goes beyond ''mere sporadic acts of violation of property rights'' and involves the appropriation of property on a "large scale". Article 8(2)(e)(v) relates to ''pillaging a town or place'', and therefore the pillaging of a single house would not suffice. In the Chamber's view, this is, however, compatible with the stance that the prohibition of pillaging covers both individual acts of pillage and organized pillage.[279] The Chamber adopts the Pre-Trial Chamber's approach that determination of the seriousness of the violation is to be made in light of the particular circumstances of the case.[280] For instance, a Chamber may consider whether the acts of pillaging involved grave consequences for the victims, even if these consequences are not of the same seriousness for all victims involved;[281] if a large number of persons have been deprived of their property;[282] and/or the context in which the pillaging occurred.

[277] *Katanga* Trial Judgment, para. 954; and ICC-01/04-01/07-717, para. 337, where Pre-Trial Chamber I held that looting was committed without the owners' consent when civilians were in hiding.
[278] ICTY, *Krajišnik* Trial Judgment, para. 821, finding that the Serb authorities' actions in implementing decisions forcing Muslims to surrender all their property to the municipality in order to be allowed to leave the area amounted to plunder; and *I.G. Farben* Judgment, pages 1135 to 1136, holding that consent is often vitiated through coercion in times of war "when action by the owner is not voluntary because his consent is obtained by threats, intimidation, pressure, or by exploiting the position and power of the military occupant under circumstances indicating that the owner is being induced to part with his property against his will".
[279] ICTY, *Delalić et al.* Trial Judgment, para. 590.
[280] Confirmation Decision, para. 317. *See also* ICTY, *Kordić and Čerkez* Appeal Judgment, para. 82.
[281] *Katanga* Trial Judgment, para. 909. *See also* ICTY, *Martić* Trial Judgment, para. 103; ICTY, *Kordić and Čerkez* Appeal Judgment, paras 80, 82 and 83; ICTY, *Simić et al.* Trial Judgment, para. 101; ICTY, *Naletilić and Martinović* Trial Judgment, para. 614; and ICTY, *Delalić et al.* Trial Judgment, para. 1154.
[282] *Katanga* Trial Judgment, para. 909; and ICTY, *Kordić and Čerkez* Appeal Judgment, para. 83.

### 2. Mental elements (*mens rea*)

118. Article 8(2)(e)(v), paragraph 2 of the Elements of Crimes requires, in addition to the mental elements set out in Article 30, a special intent or *dolus specialis* in the sense that "[t]he perpetrator [must have] intended to deprive the owner of the property and to appropriate it for private or personal use".

119. While the term "deprive" is not defined in the Statute or Elements of Crimes, it means "prevent (a person or place) from having or using something".[283] Accordingly, the Chamber considers that, in order for the war crime of pillaging to be established, it must be demonstrated that the perpetrator intended to prevent the owner from having or using their property.

120. In relation to the concept of the appropriation of property for private or personal use, the Chamber notes that this requirement is not explicitly expressed in customary or conventional international humanitarian law and has not been established, as such, in the jurisprudence of other international criminal tribunals.[284] However, given the explicit inclusion of this concept in the Elements of Crimes, the Chamber considers that this requirement must be met for the appropriation of property to amount to pillaging as a war crime under Article 8(2)(e)(v).[285] In this respect, the Chamber considers that the use of the conjunction "or" indicates that it is intended to include situations where the perpetrator did not intend to use the pillaged items himself or herself. The Chamber therefore finds that the "special intent" requirement, resulting from the "private or personal use" element, allows it to better distinguish pillage

[283] Concise Oxford English Dictionary (11th edition, 2006).
[284] *See* SCSL, *Fofana and Kondewa* Trial Judgment, para. 160, considering that the requirement of private or personal use in the Elements of Crimes constituted an unwarranted restriction on the application of the offence of pillage; and SCSL, *Brima et al.* Trial Judgment, para. 753, considering that the requirement of private or personal use in the Elements of Crimes' definition of pillage "is framed to apply to a broad range of situations". *See contra* SCSL, *Fofana and Kondewa* Appeal Judgment, paras 403 to 404, finding that the finalised text of the Elements of Crimes was a useful indication of the *opinio juris* of states and that the ICRC Compendium on Customary International Humanitarian Law, published in 2005, surveyed state practice and concluded that pillage is the "specific application of the general principle of law prohibiting theft" thereby involving the "appropriation" of property "for private or personal use" (internal citations omitted).
[285] *See also* SCSL, *Fofana and Kondewa* Appeal Judgment, paras 403 to 404.

from seizure or booty, or any other type of appropriation of property which may in certain circumstances be carried out lawfully.

121. Furthermore, in accordance with Article 30(3), the perpetrator must have been "aware" of the fact that the property was appropriated without the consent of the owner. This is assessed in light of the general circumstances of the events and the entirety of the evidence presented. The Chamber considers that, in situations where the perpetrator appropriated property in the absence of the owner or in coercive circumstances, the perpetrator's knowledge of non-consent of the owners may be inferred.

### 3. Military necessity

122. The Defence argues that the property allegedly seized was not in fact "pillaged", but rather "required for military necessity",[286] with reference to The Hague Regulations 1907,[287] and that "[t]he Prosecution has […] failed to fulfil […] its obligation to establish, beyond reasonable doubt, that the allegedly seized items were not appropriated for military necessity."[288] According to the Defence, "[t]his burden falls on the Prosecution, given that 'international humanitarian law allows the taking of war booty without the need for justification'".[289]

123. The concept of military necessity is mentioned in footnote 62 of the Elements of Crimes, which specifies, with reference to the requirement that the perpetrator intended to appropriate the items for "private or personal use", that "[a]s indicated by the use of the term 'private or personal use', appropriations justified by military necessity cannot constitute the crime of pillaging." The Chamber notes, however, that the concept is not explicitly defined in the Statute

[286] Defence Closing Brief, paras 432 to 435; and Defence Reply Brief, paras 64 to 72.
[287] Defence Closing Brief, footnote 1039.
[288] Defence Closing Brief, para. 432.
[289] Defence Closing Brief, para. 432.

or Elements of Crimes.[290] Trial Chamber II endorsed the definition of military necessity set out in Article 14 of the Lieber Code, which provides that "[m]ilitary necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the *modern law and usages of war*".[291] Further, in the context of the war crime of destroying or seizing the enemy's property, Pre-Trial Chamber I, in light of the drafting history of the Elements of Crimes for Article 8(2)(b)(xiii), considered that military necessity "can only be invoked 'if the *laws of armed* conflict provide for it and only to the extent that these laws provide for it'".[292]

124. The Chamber agrees with the findings of Pre-Trial Chamber I and Trial Chamber II. In this regard, the Chamber considers that the reference to "military necessity" in footnote 62 of the Elements of Crimes does not provide

[290] It is listed as an exception to the war crime of destruction and appropriation of property under Article 8(2)(a)(iv) and the war crime of destroying or seizing the enemy's property under Articles 8(2)(b)(xiii) and 8(2)(e)(xii).

[291] *Katanga* Trial Judgment, para. 894, *quoting* the Lieber Code, Article 14 (emphasis added). As noted by Trial Chamber II, this corresponds to the approach taken in ICTY, *Kordić and Čerkez* Appeal Judgment, para. 686. *See also* The Hague Regulations 1907, Articles 51 to 53, which refer, respectively and in the relevant part, to (i) the collection of contributions: Article 51 of The Hague Regulations 1907 provides that "[n]o contribution shall be collected except under a written order, and on the responsibility of a commander-in-chief. The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force. For every contribution a receipt shall be given to the contributors"; (ii) "[r]equisitions in kind and services": Article 52 of The Hague Regulations 1907 provides that "[r]equisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country. Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied. Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible" and (iii) the seizure of "[a]ll appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of munitions of war": Article 53 of The Hague Regulations 1907 provides that "[a]n army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations. All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of munitions of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made."

[292] ICC-01/04-01/07-717, para. 318, *quoting* Hans Boddens Hosang, "Article 8(2)(b)(xiii) – Destroying or Seizing the Enemy's Property" in Roy S. Lee (ed.), *The International Criminal Court: Elements of the Crimes and Rules of Procedure and Evidence* (2001), page 171. *See also* *United States of America v. Wilhelm List et al.* (Hostage Case) Judgment, page 1256, noting that the principle of military necessity does not "justify a violation of positive rules".

for an exception to the absolute prohibition on pillaging, but rather, as submitted by the Prosecution,[293] clarifies that the concept of military necessity is incompatible with a requirement that the perpetrator intended the appropriation for private or personal use. Accordingly, situations in which the perpetrator appropriated items for personal use, by himself or herself, or for private use by another person or entity, assuming all other elements have been met, constitute pillaging under Article 8(2)(e)(v). The Chamber therefore finds that if the Prosecution proves that property was appropriated for private or personal use, it is not obliged to "disprove military necessity for the purpose of a charge under Article 8(2)(e)(v) of the Statute".[294]

125. In assessing whether items were appropriated for private or personal use, the Chamber will consider all relevant factors, including, for example, the nature, location and purpose of the items,[295] and the circumstances of their appropriation. Finally, considering the factual findings in this case, the Chamber does not consider it necessary to contemplate the other justifications for the appropriation of property under international humanitarian law.

## F. CONTEXTUAL ELEMENTS OF WAR CRIMES (ARTICLE 8 OF THE STATUTE)

126. At the outset, the Chamber notes Article 8(1) which provides that the Court "shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes". In relation to this provision, the Pre-Trial Chamber found that "the term 'in particular' makes it clear that the existence of a plan, policy or large-scale commission is not a prerequisite for the Court to exercise jurisdiction over

[293] Prosecution Response Brief, para. 81.
[294] Prosecution Response Brief, para. 82.
[295] *See*, similarly, in relation to the concept of "military objectives", Additional Protocol I, Article 52(2), providing that "military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage".

war crimes but rather serves as a practical guideline for the Court."[296] The Chamber endorses this approach.

### 1. Existence of an "armed conflict not of an international character"

127. The Accused is charged with criminal responsibility for the commission of war crimes in the context of an armed conflict not of an international character pursuant to Articles 8(2)(c)(i) (murder), 8(2)(e)(vi) (rape) and 8(2)(e)(v) (pillaging).

128. Neither the Statute nor the Elements of Crimes define the concept of "armed conflict".[297] However, the Introduction to Article 8 of the Elements of Crimes provides that "[t]he elements for war crimes under article 8, paragraph 2, of the Statute shall be interpreted within the established framework of the international law of armed conflict." In this regard, in line with the Pre-Trial Chamber's approach in the Confirmation Decision,[298] the Chamber notes that the *Tadić* Appeals Chamber, by reference to various provisions of the Geneva Conventions and Additional Protocols I and II, defined an armed conflict as follows ("*Tadić* definition"):[299]

> […] an armed conflict exists whenever there is a resort to armed force between States or protracted violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.

[296] Confirmation Decision, para. 211. This approach was endorsed by Pre-Trial Chamber I in the *Mbarushimana* case, ICC-01/04-01/10-465-Red, para. 94, and in the *Lubanga* Trial Judgment, para. 9 and footnote 6. *See also* *Katanga* Trial Judgment, para. 896.
[297] *Lubanga* Trial Judgment, para. 531; and *Katanga* Trial Judgment, para. 1172.
[298] Confirmation Decision, para. 229.
[299] ICTY, *Tadić*, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, para. 70.

Like the Pre-Trial Chamber and Trial Chambers I and II,[300] the Chamber adopts the *Tadić* definition.

129. The Chamber further notes that while it is possible for distinct conflicts to be taking place within one territory,[301] the mere fact of involvement of different armed groups does not mean that they are engaged in separate armed conflicts.

130. The Chamber considers that an armed conflict not of an international character, but involving the governmental authorities of one state, may become internationalised owing to a second state's participation on an opposing side of the conflict. In this regard, the Chamber notes that Trial Chambers I and II found that an armed conflict may be considered internationalised when it is established that armed groups are acting *on behalf of* a foreign government.[302] For determining whether an armed group is acting on behalf of a state, Trial Chambers I and II endorsed the "overall control" test, as set out by the ICTY Appeals Chamber in the *Tadić* case, which requires the state to "ha[ve] a role in organizing, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group".[303] The Chamber follows Trial Chambers I and II in endorsing this approach.

### 2. Governmental authorities and organized armed groups

131. The Accused is charged with bearing criminal responsibility for the commission of war crimes in the context of an armed conflict not of an international character between government authorities of the CAR, supported by the MLC,

[300] *Lubanga* Trial Judgment, para. 533; and *Katanga* Trial Judgment, para. 1173.
[301] *Lubanga* Trial Judgment, para. 540.
[302] *Lubanga* Trial Judgment, para. 541; and *Katanga* Trial Judgment, para. 1178.
[303] ICTY, *Tadić* Appeal Judgment, para. 137; *Lubanga* Trial Judgment, para. 541; and *Katanga* Trial Judgment, para. 1178.

amongst others, on the one hand, and the organized armed group lead by General Bozizé, on the other hand.[304]

132. Concerning the requirement of the presence of "organized armed groups", the Pre-Trial Chamber found that:[305]

> […] even though mention of opposing parties to the conflict is made *expressis verbis* in article 8(2)(f) of the Statute but not in article 8(2)(d) of the Statute, […] this characteristic element in the context of a [non international armed conflict] is a well established principle in the law of armed conflict underlying the 1949 Geneva Conventions [and] also applies to article 8(2)(c) of the Statute.

133. The Chamber agrees with the Pre-Trial Chamber's approach, and addresses the requirement of "organized armed groups" in the present case, irrespective of whether the specific crimes fall under Article 8(2)(c) or (e).

134. In the absence of a definition of the concept of "organized armed groups" in the Statute or the Elements of Crimes, other Chambers of this Court found that these groups must have a sufficient degree of organization in order to enable them to carry out protracted armed violence.[306] While mindful that Article 1(1) of Additional Protocol II requires the armed groups to exercise control over the territory and to be under responsible command,[307] Trial Chambers I and II

[304] Confirmation Decision, paras 246, 259, and 262.
[305] Confirmation Decision, para. 232. *See also* ICTR, *Akayesu* Trial Judgment, para. 620, holding that "the term 'armed conflict' in itself suggests the existence of hostilities between armed forces organized to a greater or lesser extent". *See* International Committee of the Red Cross Working Paper, Article 8, Paragraph 2(e) ICC Statute: Other serious violations of the Laws and Customs applicable in Armed Conflicts not of an International Character, (1999), page 9.
[306] *Lubanga* Trial Judgment, para. 536; *Katanga* Trial Judgment, para. 1185; and Confirmation Decision, para. 233.
[307] Additional Protocol II, Article 1(1) provides, as follows: "This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, *under responsible command*, *exercise such control over a part of its territory* as to enable them to carry out sustained and concerted military operations and to implement this Protocol" (emphasis added).

considered that the Statute does not include such requirements.[308] Instead, Trial Chambers I and II held that:[309]

> [w]hen deciding if a body was an organised armed group (for the purpose of determining whether an armed conflict was not of an international character), the following non-exhaustive list of factors is potentially relevant: the force or group's internal hierarchy; the command structure and rules; the extent to which military equipment, including firearms, are available; the force or group's ability to plan military operations and put them into effect; and the extent, seriousness, and intensity of any military involvement. None of these factors are individually determinative. The test, along with these criteria, should be applied flexibly when the Chamber is deciding whether a body was an organised armed group, given the limited requirement in Article 8(2)(f) of the Statute that the armed group was "organized".

135. The Pre-Trial Chamber considered that "[t]aking into consideration the principles and rules of international armed conflict reflected in [a number of] international instruments […] those 'organized armed groups' must be under responsible command".[310] In this regard, the Pre-Trial Chamber found that "responsible command entails some degree of organization of those armed groups, including the possibility to impose discipline and the ability to plan and carry out military operations".[311]

136. Regarding the issue of "responsible command", the Chamber notes that the definition of responsible command proposed by the Pre-Trial Chamber overlaps to a significant extent with the list of factors set forth by Trial Chambers I and II and only includes the additional indicator of the possibility to impose discipline. Noting further that the list set forth by Trial Chambers I and II is not exhaustive and that Trial Chambers I and II suggested applying this test with some flexibility, the Chamber finds no substantial contradiction between the two approaches. Accordingly, in determining whether the relevant groups qualify as "organized armed groups" for the purpose of Article 8(2)(f),

[308] *Lubanga* Trial Judgment, para. 536; *Katanga* Trial Judgment, paras 1185 to 1186; and Confirmation Decision, para. 236.
[309] *Lubanga* Trial Judgment, para. 537; and *Katanga* Trial Judgment, para. 1186.
[310] Confirmation Decision, para. 234, *referring to* Additional Protocol II, Article 1(1).
[311] Confirmation Decision, para. 234, *citing* ICC-01/04-01/06-803, para. 232.

the Chamber considers the full spectrum of factors set forth by Trial Chambers I and II, as well as the Pre-Trial Chamber.

### 3. Intensity threshold and protracted character of the conflict

137. The first sentence common to Article 8(2)(d) and 8(2)(f) requires the conflict to reach a level of intensity which exceeds "situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature". In order to assess the intensity of a conflict, Trial Chambers I and II endorsed the ICTY's finding[312] that relevant factors include "the seriousness of attacks and potential increase in armed clashes, their spread over territory and over a period of time, the increase in the number of government forces, the mobilisation and the distribution of weapons among both parties to the conflict, as well as whether the conflict has attracted the attention of the United Nations ("UN") Security Council, and, if so, whether any resolutions on the matter have been passed".[313] The Chamber follows the approach of Trial Chambers I and II in this respect.

138. Article 8(2)(f), which is stated to apply to Article 8(2)(e), contains a second sentence additionally requiring that there be a "protracted armed conflict". This is in contrast to Article 8(2)(d), stated to apply to Article 8(2)(c), which does not include such a requirement. The Pre-Trial Chamber, while noting that this difference "may be seen to require a higher or additional threshold of intensity to be met", did "not deem it necessary to address this argument, as the period in question covers approximately five months and is therefore to be regarded as 'protracted' in any event".[314] Given that crimes under both Articles 8(2)(c) and 8(2)(e) have been charged in this case, the Chamber notes that the potential distinction would only have significance if the Chamber were to reach a

[312] *Lubanga* Trial Judgment, para. 538; and *Katanga* Trial Judgment, para. 1187.
[313] ICTY, *Mrkšić et al.* Trial Judgment, para. 407; and ICTY, *Limaj et al.* Trial Judgment, para. 90. *See also* ICTY, *Boškoski & Tarčulovski* Appeal Judgment, paras 22 and 24.
[314] Confirmation Decision, para. 235.

conclusion that the conflict in question was not ''protracted'', and therefore finds it unnecessary to address the difference further at this point.

139. The Chamber notes that the concept of ''protracted conflict'' has not been explicitly defined in the jurisprudence of this Court, but has generally been addressed within the framework of assessing the intensity of the conflict. When assessing whether an armed conflict not of an international character was protracted, however, different chambers of this Court emphasised the duration of the violence as a relevant factor.[315] This corresponds to the approach taken by chambers of the ICTY.[316] The Chamber follows this jurisprudence.

140. The Chamber notes the Defence's submission that "if the conflict devolves to the level of riots, internal disturbances or tensions, or isolated or sporadic acts of violence, or if the conflict ceases to be between organized armed groups", the threshold for the existence of a "protracted armed conflict" would cease to be met.[317] The Chamber considers that the intensity and "protracted armed conflict" criteria do not require the violence to be continuous and uninterrupted. Rather, as set out in the first sentence common to Article 8(2)(d) and 8(2)(f), the essential criterion is that it go beyond "isolated or sporadic acts of violence". In the view of the Chamber, this conclusion is further supported by the drafting history of Article 8(2)(f).[318]

141. The Chamber additionally recalls that following the initiation of an armed conflict, international humanitarian law continues to apply to the whole

[315] *See* Confirmation Decision, para. 235; *Lubanga* Trial Judgment, paras 538, 545, 546, and 550; and *Katanga* Trial Judgment, paras 1217 to 1218.
[316] *See* ICTY, *Kordić and Čerkez* Appeal Judgment, para. 341; ICTY, *Limaj et al.* Trial Judgment, paras 171 to 173; ICTY, *Delalić et al.* Trial Judgment, para. 186; and ICTY, *Tadić* Trial Judgment, para. 562. *See also* ICTY, *Haradinaj et al.* Trial Judgment, para. 49, determining that the criterion of protracted armed violence has been interpreted in practice, including by the *Tadić* Trial Chamber itself, as referring more to the intensity of the armed violence than to its duration.
[317] Defence Closing Brief, para. 415.
[318] In this regard, the Chamber notes that at the Conference on the Establishment of the Court, the Bureau's initial proposal for the content of Article 8(2)(f) was taken from Article 1(1) of Additional Protocol II, which referred to "sustained and concerted military operations". Several delegates were concerned that the use of this provision would set too high a threshold for armed conflicts not of an international character. In the amended text, in addition to other changes, "sustained and concerted military operations" was replaced by the phrase that now constitutes part of Article 8(2)(f), "protracted armed conflict".

territory under the control of a party, until a ''peaceful settlement'' is achieved.[319] The Chamber finds that, contrary to the Defence's allegation,[320] the meaning of a "peaceful settlement" does not reflect only the mere existence of an agreement to withdraw or a declaration of an intention to cease fire.[321]

### 4. The "nexus" requirement

142. In order to qualify as war crimes, the alleged crimes must have been committed "in the context of and […] associated with an armed conflict not of an international character".[322] In this regard, the Chamber endorses the approach of Trial Chamber II, which held that:[323]

> [the conduct] must have been closely linked to the hostilities taking place in any part of the territories controlled by the parties to the conflict. The armed conflict alone need not be considered to be the root of the conduct and the conduct need not have taken place in the midst of battle. Nonetheless, the armed conflict must play a major part in the perpetrator's decision, in his or her ability to commit the crime or the manner in which the crime was ultimately committed.

143. In determining whether the crimes are sufficiently linked to the armed conflict, the Trial Chamber may take into account factors including: the status of the perpetrator and victim; whether the act may be said to serve the ultimate goal of a military campaign; and whether the crime is committed as part of, or in the context of, the perpetrator's official duties.[324] It is noted in this regard that, although there is likely to be some relationship between a perpetrator and a party to the conflict, it is not necessarily the case that a perpetrator must him/herself be a member of a party to the conflict; rather, the emphasis is on the nexus between the crime and the armed conflict.[325]

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[319] ICTY, *Tadić*, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, para. 70.
[320] Defence Reply, para. 63.
[321] ICTY, *Tadić*, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, para. 70.
[322] Element of Crimes, Articles 8(2)(c)(i), 8(2)(e)(v), and 8(2)(e)(vi).
[323] *Katanga* Trial Judgment, para. 1176.
[324] ICTY, *Kunarac et al.* Appeal Judgment, para. 59; and ICTR, *Rutaganda* Appeal Judgment, para. 569.
[325] ICTR, *Akayesu* Appeal Judgment, para. 444. *See also* ICTY, *Kunarac et al.* Trial Judgment, para. 407; and ICTY, *Kunarac et al.* Appeal Judgment, para. 58.

144. The Chamber additionally finds that the alleged crimes may be considered to have been committed "within the context" of an armed conflict irrespective of whether they took place contemporaneously with or proximate to intense fighting.[326]

### 5. Awareness of factual circumstances that established the existence of an armed conflict

145. According to the Elements of Crimes, a further common element of the war crimes of rape,[327] murder,[328] and pillaging[329] is that "the perpetrator was aware of factual circumstances that established the existence of an armed conflict".

146. In this respect, the Introduction to Article 8 of the Elements of Crimes provides the following clarification: (a) there is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international or non-international; (b) in that context there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict as international or non-international; (c) there is only a requirement for the awareness of the factual circumstances that established the existence of an armed conflict that is implicit in the terms "took place in the context of and was associated with".

147. As in the case of the contextual elements of crimes against humanity,[330] the relevant awareness for these purposes is that of the perpetrators of the crimes.

[326] ICTY, *Kunarac et al.* Appeal Judgment, para. 57; and ICTY, *Stakić* Appeal Judgment, para. 342.
[327] Element of Crimes, Articles 8(2)(e)(vi)-1, para. 4. *See also* *Katanga* Trial Judgment, para. 972.
[328] Element of Crimes, Articles 8(2)(c)(i)-1, para. 5. *See also* *Katanga* Trial Judgment, para. 794.
[329] Element of Crimes, Articles 8(2)(e)(v), para. 5.
[330] *See* Section III(G)(4).

## G. CONTEXTUAL ELEMENTS OF CRIMES AGAINST HUMANITY (ARTICLE 7 OF THE STATUTE)

### 1. Existence of an "attack directed against any civilian population"

148. As defined in Article 7(2)(a), an "attack directed against any civilian population" means: (a) a "course of conduct involving the multiple commission of acts referred to in [Article 7] paragraph 1"; (b) directed "against any civilian population"; and (c) "pursuant to or in furtherance of a State or organizational policy to commit such attack".

#### a) Course of conduct involving the multiple commission of acts referred to in Article 7(1)

149. An "attack" within the meaning of Article 7 requires "a course of conduct involving the multiple commission of acts".[331] The attack need not constitute a "military" attack.[332] Rather, an "attack" within the meaning of Article 7 refers to a "campaign or operation carried out against the civilian population".[333] The requirement that the acts form part of a "course of conduct" shows that the provision is not designed to capture single isolated acts,[334] but "describes a series or overall flow of events as opposed to a mere aggregate of random acts".[335]

150. Further, as specified in the Statute and the Elements of Crimes,[336] the "course of conduct" must involve the "multiple commission of acts" referred to in Article 7(1). In the Chamber's view, this indicates a quantitative threshold requiring

[331] Article 7(2)(a) of the Statute; and Elements of Crimes, Introduction to Article 7, para. 3.
[332] Elements of Crimes, Introduction to Article 7, para. 3. *See also* Confirmation Decision, para. 75; and *Katanga* Trial Judgment, para. 1101.
[333] Confirmation Decision, para. 75. *See also* *Katanga* Trial Judgment, para. 1101.
[334] *Katanga* Trial Judgment, para. 1101. *See also* ICTY, *Tadić* Trial Judgment, para. 644.
[335] ICC-02/11-01/11-656-Red, para. 209.
[336] Elements of Crimes, Introduction to Article 7, para. 3.

''more than a few'', ''several'' or ''many'' acts.[337] The number of the individual types of acts referred to in Article 7(1) is, however, irrelevant provided that each of the acts fall within the course of conduct and cumulatively satisfy the required quantitative threshold.[338]

151. The Prosecution cites jurisprudence alluding to a broad understanding of "attack", one that "encompasses any mistreatment of the civilian population".[339] In turn, the Defence submits that pillaging should not be considered in relation to the contextual elements of crimes against humanity.[340] The Chamber observes that the terms of the Statute and the Elements of Crimes are clear in providing that the multiple commission of acts can only include acts referred to in Article 7(1). Accordingly, only those acts enumerated in Article 7(1)(a) to (k) may be relied upon to demonstrate the "multiple commission of acts" for the purposes of Article 7. As considered further below, this is without prejudice to acts not listed in Article 7(1) being considered for other purposes, such as, for example, in determining whether the attack was directed against a civilian population or was pursuant to or in furtherance of a State or organizational policy.

**b) Directed against any civilian population**

152. The "course of conduct" must be directed against "any civilian population". The term "civilian population" denotes a collective, as opposed to individual "civilians".[341] Article 50 of Additional Protocol I provides a definition of a

[337] Confirmation Decision, para. 81, referring to "more than a few". *See also* Collins English Dictionary (9th Edition, 2007), defining "multiple" as "having or involving more than one part"; and Concise Oxford English Dictionary (11th Edition, 2006), defining "multiple", *inter alia*, as "[h]aving or involving several parts, elements, or members" or "[n]umerous and often varied".
[338] *See*, *similarly*, ICTY, *Kunarac et al.* Appeal Judgment, paras 96 and 100; and ICTY, *Kupreškić et al.* Trial Judgment, para. 550. *See also* Section III(G)(3).
[339] Prosecution Closing Brief, para. 32, *citing* ICTY, *Kordić and Čerkez* Appeal Judgment, para. 666.
[340] Defence Oral Closing Statements, page 43, line 17 to page 44, line 5.
[341] An early terminological differentiation of this kind, albeit without further implications, can be found in the Opinion and Judgment of the "Justice Case". *See* *United States of America v. Altstötter et al.* Judgment, page 973, "[i]t is not the isolated crime by a private German individual which is condemned, nor is it the isolated crime perpetrated by the German Reich through its officers against a private individual. It is significant that [Control Council Law No. 10] employs the words 'against any civilian population' instead of 'against any civilian individual'".

"civilian population", which the Chamber considers to be customary in nature and therefore relevant to the consideration of crimes against humanity.[342] The Chamber endorses that definition.

153. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.[343] Where an attack is carried out in an area containing both civilians and non-civilians, factors relevant to determining whether an attack was directed against a civilian population include the means and methods used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the form of resistance to the assailants at the time of the attack, and the extent to which the attacking force complied with the precautionary requirements of the laws of war.[344] For instance, as argued by the Prosecution,[345] where the acts committed in the course of the attack included the looting of assets from civilians, this factor may be taken into account in considering whether the attack was directed against a civilian population.[346]

154. The requirement that the attack be "directed against" the civilian population means that the civilian population must be the *primary*, as opposed to incidental, target of the attack.[347] That does not mean, however, that the Prosecution must prove that "the *entire* population of a geographic area" was

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[342] Additional Protocol I, Article 50. *See* Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules (2005), at Rule 5. *See also* *Katanga* Trial Judgment, para. 1102; ICTY, *Blaškić* Appeal Judgment, paras 110, and 113 to 114; ICTY, *Kordić and Čerkez* Appeal Judgment, para. 97; ICTY, *Mrkšić and Šljivančanin* Appeal Judgment, para. 35; and ECCC, *Nuon and Khieu* Trial Judgment, para. 185.

[343] Additional Protocol I, Article 50(3); and *Katanga* Trial Judgment, para. 1105. *See also* ICTY, *Blaškić* Appeal Judgment, paras 114 to 115; ICTY, *Galić* Appeal Judgment, para. 144; ICTY, *Kordić and Čerkez* Appeal Judgment, para. 50; and ECCC, *Nuon and Khieu* Trial Judgment, para. 183.

[344] ICTY, *Mrkšić and Šljivančanin* Appeal Judgment, para. 30, *citing* ICTY, *Kunarac et al.* Appeal Judgment, para. 91. *See also* ECCC, *Kaing Guek Eav alias Duch* Trial Judgment, para. 309; and ECCC, *Nuon and Khieu* Trial Judgment, para. 184.

[345] Prosecution Closing Brief, para. 32.

[346] *Katanga* Trial Judgment, para. 1138.

[347] Confirmation Decision, paras 76 to 77, and footnote 99, *citing* ICTY, *Stakić* Trial Judgment, para. 627; ICTY, *Kunarac et al.* Appeal Judgment, para. 90; and *Katanga* Trial Judgment, para. 1104. *See also* ECCC, *Nuon and Khieu* Trial Judgment, para. 182.

being targeted during the attack.[348] Rather, the Prosecution should establish that civilians were targeted during the "attack" in numbers or a manner sufficient to satisfy the Chamber that the "attack" was directed against the civilian population,[349] as opposed to just a limited number of specific individuals.[350]

155. The Chamber considers that the reference to "any" civilian population in Article 7(1) means that the provision is not limited to populations defined by common nationality, ethnicity or other similar distinguishing features.[351]

156. Finally, it is noted that, despite the requirement that the attack be directed against a civilian population, there is no requirement that the individual *victims* of crimes against humanity be "civilians".[352] Indeed, considering the purpose of Article 7, it is the Chamber's view that the notion must be construed in a manner which does not exclude other protected persons.[353]

**c) Pursuant to or in furtherance of a State or organizational policy to commit such attack**

157. The "course of conduct" involving a multiplicity of acts must be committed "pursuant to or in furtherance of a State or organizational policy to commit such attack", in accordance with Article 7(2)(a).

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[348] Confirmation Decision, para. 77; and *Katanga* Trial Judgment, para. 1105 and footnote 2630, citing, *inter alia*, ICTY, *Kunarac et al.* Appeal Judgment, para. 90.
[349] ICTY, *Kunarac et al.* Appeal Judgment, para. 90; ICTY, *Naletilić and Martinović* Trial Judgment, para. 235; and ECCC, *Nuon and Khieu* Trial Judgment, para. 182.
[350] Confirmation Decision, para. 77; and *Katanga* Trial Judgment, para. 1105.
[351] Confirmation Decision, para. 76; and *Katanga* Trial Judgment, para. 1103.
[352] ICTY, *Mrkšić and Šljivančanin* Appeal Judgment, para. 32, "whereas the civilian status of the victims, the number of civilians, and the proportion of civilians within a civilian population are factors relevant to the determination of whether the *chapeau* requirement of Article 5 of the Statute that an attack be directed against a 'civilian population' is fulfilled, there is no requirement nor is it an element of crimes against humanity that the victims of the underlying crimes be 'civilians'"; and ECCC, *Kaing Guek Eav alias Duch* Trial Judgment, para. 311.
[353] *See*, *inter alia*, Geneva Conventions of 1949, Common Article 3; First Geneva Convention, Articles 12 to 13, 19, and 24 to 26; Fourth Geneva Convention, Articles 16 and 63; Additional Protocol I, Articles 12, 15, 22, 23(5), 41(1), and 51; Additional Protocol II, Articles 9 and 13; Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules (2005), at Rules 3, 25, 27 to 31, 33 to 34, 47 to 48, 111, and 134 to 138; and Jean-Marie Henckaerts, "Study on Customary International Humanitarian Law: A contribution to the Understanding and Respect for the Rule of Law in Armed Conflict", 87 International Review of the Red Cross (2005), pages 198 to 212. For a similar approach, *see* ICTY, *Martić* Appeal Judgment, paras 307 to 313; and SCSL, *Sesay et al.* Trial Judgment, para. 82.

158. This requirement presupposes the existence of either a "State" or an "organization", only the latter of which is relevant for present purposes. An organization may be defined as "an organized body of people with a particular purpose".[354] The Chamber notes that Trial Chamber II found as follows:[355]

> Turning first to its plain meaning, the term "organisation" must be understood as an "[*a*]*ssociation, régie ou non par des institutions, qui se propose des buts déterminés*" [TRANSLATION: an association, whether or not governed by institutions, that sets itself specific objectives]. This very general definition does not, however, allow the contours of an organisation to be clearly circumscribed. To such end, the Chamber places the term in its context. The question then arises as to whether the normative connection of the organisation to the existence of an attack within the meaning of article 7(2)(a) may affect the definition of the characteristics of such organisation. In the Chamber's view, the connection of the term "organisation" to the very existence of the attack and not to its systematic or widespread nature presupposes that the organisation has sufficient resources, means and capacity to bring about the course of conduct or the operation involving the multiple commission of acts referred to in article 7(2)(a) of the Statute. It therefore suffices that the organisation have a set of structures or mechanisms, whatever those may be, that are sufficiently efficient to ensure the coordination necessary to carry out an attack directed against a civilian population. Accordingly, as aforementioned, the organisation concerned must have sufficient means to promote or encourage the attack, with no further requirement necessary. Indeed, by no means can it be ruled out, particularly in view of modern asymmetric warfare, that an attack against a civilian population may also be the doing of a private entity consisting of a group of persons pursuing the objective of attacking a civilian population; in other words, of a group not necessarily endowed with a well-developed structure that could be described as quasi-State.

In light of the above and the factual findings below, the Chamber does not consider it necessary to further elaborate on the definition of an organization for the purpose of Article 7(2)(a).[356]

159. Turning to the concept of "policy", the Elements of Crimes specify that the "policy" requires the active promotion or encouragement of an attack against a civilian population by a State or organization.[357] In exceptional circumstances,

[354] Concise Oxford English Dictionary (11th edition, 2006).
[355] *Katanga* Trial Judgment, para. 1119.
[356] Judge Ozaki appends a separate opinion on "organizational policy".
[357] Elements of Crimes, Introduction to Article 7, para. 3. *See also* *Katanga* Trial Judgment, para. 1108.

such a policy may be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack.[358] While it may be of evidential value, the Statute does not envisage any requirement of demonstrating a "motive" or "purpose" underlying the policy to attack the civilian population.[359]

160. The Chamber considers that the "policy" need not be formalised[360] and may be inferred from a variety of factors which, taken together, establish that a policy existed.[361] Such factors may include (i) that the attack was planned, directed or organized;[362] (ii) a recurrent pattern of violence; (iii) the use of public or private resources to further the policy; (iv) the involvement of the State or organizational forces in the commission of crimes; (v) statements, instructions or documentation attributable to the State or the organization condoning or encouraging the commission of crimes; and/or (vi) an underlying motivation.[363]

161. It must further be demonstrated that the course of conduct was committed pursuant to or in furtherance of the State or organizational policy. As such, the course of conduct must reflect a link to the State or organizational policy, in order to exclude those acts which are perpetrated by isolated and un-coordinated individuals acting randomly on their own.[364] This is satisfied where a perpetrator deliberately acts to further the policy, but may also be satisfied by

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[358] Elements of Crimes, Introduction to Article 7, footnote 6. *See* *Katanga* Trial Judgment, para. 1108.
[359] ICC-01/09-01/11-373, para. 213; and ICC-02/11-01/11-656-Red, para. 214.
[360] Confirmation Decision, para. 81. *See also* *Katanga* Trial Judgment, paras 1109 to 1110; ICC-02/11-01/11-656-Red, para. 215; and ICC-01/04-01/10-465, para. 263.
[361] The Chamber observes that during the drafting process of the Elements of Crimes, there was a proposal to include an explicit reference to the fact that a "policy may be inferred from the manner in which the acts occurred"; however, this was removed from the final version of the Elements of Crimes on the basis that it was considered unnecessary. Darryl Robinson, "The Elements of Crimes Against Humanity" in Roy S. Lee (ed), The International Criminal Court, Elements of Crimes and Rules of Procedure and Evidence (2001), page 77. Rodney Dixon, revised by Christopher Hall, "Article 7" in Otto Triffterer (ed), *Commentary on the Rome Statute of the International Criminal Court – Observers' Notes, Article by Article*, (2008), para. 91. *See also* *Katanga* Trial Judgment, para. 1109, "[i]n most cases, the existence of such a State or organisational policy can therefore be inferred by discernment of, *inter alia*, repeated actions occurring according to a same sequence, or the existence of preparations or collective mobilisation orchestrated and coordinated by that State or organisation".
[362] Confirmation Decision, para. 81; ICC-02/11-01/11-656-Red, para. 215. *See also* *Katanga* Trial Judgment, para. 1109.
[363] *See* Confirmation Decision, para. 81; *Katanga* Trial Judgment, para. 1109; ICC-01/04-02/06-309, paras 19 to 21; ICC-02/11-01/11-656-Red, para. 214; and ICC-01/09-19-Corr, paras 87 to 88, *referring to* ICTY, *Blaškić* Trial Judgment, para. 204.
[364] *See* Rodney Dixon, revised by Christopher Hall, "Article 7" in Otto Triffterer (ed), *Commentary on the Rome Statute of the International Criminal Court – Observers' Notes, Article by Article*, (2008), para. 91.

a perpetrator engaging in conduct envisaged by the policy, and with knowledge thereof.[365] The Chamber notes that there is no requirement that the perpetrators necessarily be motivated by the policy, or that they themselves be members of the State or organization.[366]

### 2. Widespread nature of the attack

162. As referred to above, Article 7(2)(a) provides that the "attack" must be either "widespread" or "systematic". These disjunctive additional conditions serve as qualifiers which characterise the nature of the "attack" itself.[367] Consistent with Decision 836, the Chamber addresses only the qualifying element of "widespread".[368]

163. The Chamber concurs with prior jurisprudence of this Court that the term ''widespread'' connotes the large-scale nature of the attack and the large number of targeted persons,[369] and that such attack may be "massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims".[370] The Chamber notes that the assessment of whether the "attack" is "widespread" is neither exclusively quantitative nor geographical, but must be carried out on the basis of the individual facts.[371] The temporal scope of the attack does not, as proposed by the Legal Representative,[372] have an impact on this specific analysis.

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[365] The requisite *mens rea* of the perpetrators as to the context of their conduct, as established by the Elements of Crimes, is considered further below.
[366] *Katanga* Trial Judgment, para. 1115.
[367] Confirmation Decision, para. 82; ICC-01/09-19-Corr, para. 94.
[368] *See* Section II(E).
[369] *Katanga* Trial Judgment, para. 1123. *See*, *similarly*, Oxford English Dictionary (2nd edition, 1989), defining widespread as "extended over or occupying a wide space" or "occurring in many places", primarily indicating geographic diffusion, but also "occurring […] among many persons".
[370] Confirmation Decision, para. 83.
[371] ICC-02/11-01/11-656-Red, para. 222. The Chamber notes that the purely quantitative requirement of "multiple commission of acts" above should not be conflated with the attack's "widespread" nature, either in scale or qualitatively. Otherwise, the disjunctive formulation of the "widespread or systematic" test - through which crimes against humanity can alternatively be committed - would be negated.
[372] Legal Representative Closing Brief, para. 29.

### 3. Acts committed as "part of" the attack (nexus)

164. The underlying acts charged under Article 7(1)(a) to (k) must be committed as part of the widespread or systematic attack directed against any civilian population.[373]

165. In determining whether the requisite nexus exists, the Chamber makes an objective assessment, considering, in particular, the characteristics, aims, nature and/or consequences of the act.[374] Isolated acts that clearly differ in their context and circumstances from other acts that occur during an attack fall outside the scope of Article 7(1).[375]

### 4. Knowledge of the attack

166. Article 7(1) requires that the underlying acts charged be committed "with knowledge of the attack". The Chamber notes that this requirement forms part of the Elements of Crimes.[376]

167. Accordingly, as specified by the Pre-Trial Chamber, "[t]he perpetrator must be aware that a widespread attack directed against a civilian population is taking place and that his action is part of the attack."[377] Paragraph 2 of the Introduction to Article 7 of the Elements of Crimes clarifies that the "knowledge" element "should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization". Rather, what is required is that "[t]he perpetrator knew that the conduct was part of or intended the conduct to be

[373] *See also* Elements of Crimes, Introduction to Article 7, para. 2, Article 7(1)(a), para. 2, and Article 7(1)(g)-1, para. 3.
[374] Confirmation Decision, para. 86, *citing* ICTR, *Kajelijeli* Trial Judgment, para. 866; and ICTR, *Semanza* Trial Judgment, para. 326. *See also* *Katanga* Trial Judgment, para. 1124.
[375] *Katanga* Trial Judgment, para. 1124. *See also* ICTY, *Kunarac et al.* Appeal Judgment, para. 100.
[376] Elements of Crimes, Article 7(1)(a), para. 3 and 7(1)(g)-1, para. 4. *See also* *Katanga* Trial Judgment, para. 971.
[377] Confirmation Decision, para. 88, *citing* ICTY, *Kunarac et al.* Appeal Judgment, para. 102. *See also* *Katanga* Trial Judgment, para. 1125.

part of a widespread or systematic attack against a civilian population." [378] The Elements of Crimes further state that "[i]n the case of an emerging widespread or systematic attack against a civilian population, the intent clause of the last element indicates that this mental element is satisfied if the perpetrator intended to further such an attack."[379]

168. The Defence submits that the "knowledge of the attack" requirement applies not only to the perpetrators of the crimes, but also to Mr Bemba such that the Prosecution would be required to prove that he knew that his conduct was part of a widespread attack on the civilian population.[380] In the view of the Chamber, knowledge of the contextual elements on the part of the commander is not a requirement to determine whether or not the alleged underlying crimes against humanity were committed.[381] What is relevant for this purpose is to analyse the *mens rea* of the perpetrators of the crimes.

169. However, the Chamber emphasises that, as discussed further below,[382] an assessment of the Accused's knowledge of the attack is dealt with when considering his individual criminal responsibility under Article 28.

## H. COMMAND RESPONSIBILITY (ARTICLE 28(A) OF THE STATUTE)

170. Article 28(a) codifies the responsibility of military commanders and persons effectively acting as military commanders. The Chamber finds that, for an accused to be found guilty and convicted as a military commander or person

[378] Elements of Crimes, Article 7(1)(a), para. 3 and Article 7(1)(g)-1, para. 4.
[379] Elements of Crimes, Introduction to Article 7, para. 2, Article 7(1)(a), para. 3, and Article 7(1)(g)-1, para. 4. The Chamber notes that the phrase "intended the conduct to be part of the attack", as an alternative to knowledge, was included in the provision to make clear that initial actors in an emerging crime against humanity which has not yet happened are also to be held responsible. *See* Darryl Robinson, "The Elements of Crimes Against Humanity" in Roy Lee (ed.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (2001), page 73.
[380] Defence Closing Brief, paras 400 to 404.
[381] ICTY, *Šainović et al.* Trial Judgment, paras 158 to 159.
[382] *See* Section III(H)(4).

effectively acting as a military commander under Article 28(a), the following elements must be fulfilled:

a. crimes within the jurisdiction of the Court must have been committed by forces;

b. the accused must have been either a military commander or a person effectively acting as a military commander;

c. the accused must have had effective command and control, or effective authority and control, over the forces that committed the crimes;

d. the accused either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes;

e. the accused must have failed to take all necessary and reasonable measures within his power to prevent or repress the commission of such crimes or to submit the matter to the competent authorities for investigation and prosecution; and

f. the crimes committed by the forces must have been a result of the failure of the accused to exercise control properly over them.

171. Before analysing each of these elements, the Chamber considers it appropriate to briefly address the nature of liability under Article 28. While there has been considerable debate regarding the precise nature of superior responsibility,[383] the Chamber concurs with the Pre-Trial Chamber that Article 28 provides for a mode of liability, through which superiors may be held criminally responsible

[383] *See* Gerhard Werle, Principles of International Criminal Law (2nd edition, 2009), pages 187 to 197; Kai Ambos, *Treatise on International Criminal Law* (2013), Vol. 1, pages 189 to 197; Chantal Meloni, *Command Responsibility in International Criminal Law* (2010), pages 191 to 207; Guénaël Mettraux, The Law of Command Responsibility (2009), pages 37 to 95; and Otto Triffterer, "Responsibility of Commanders and Other Superiors" in Otto Triffterer (ed), *Commentary on the Rome Statute of the International Criminal Court* (2nd edition, 2008), pages 815 to 822.

for crimes within the jurisdiction of the Court committed by his or her subordinates.[384]

172. The Chamber considers that Article 28 is designed to reflect the responsibility of superiors by virtue of the powers of control they exercise over their subordinates.[385] These responsibilities of control aim, *inter alia*, at ensuring the effective enforcement of fundamental principles of international humanitarian law, including the protection of protected persons and objects during armed conflict.[386] The fundamental responsibilities which such superiors assume, and the potential for irreparable harm from a failure to properly fulfil those responsibilities, has long been recognised as subject to regulation by criminal law. Historically, this is most clearly seen in the context of military commanders, whose individual criminal responsibility has been recognised in domestic law, in jurisprudence since at least the aftermath of the Second World War, and was subsequently reflected in Article 86 of Additional Protocol I to the Geneva Conventions.[387]

173. The plain text of Article 28 – ''[i]n addition to other grounds of criminal responsibility" – and its placement in Part 3 of the Statute indicate that Article 28 is intended to provide a distinct mode of liability from those found under Article 25. Further, the language of Article 28 expressly links the responsibility of the commander to the crimes committed by subordinates – "shall be

[384] Confirmation Decision, paras 341, *referring to* ICC-01/05-01/08-388, paras 407 and 444. This is in contrast to, for example, a distinct crime of pure omission, where the superior's failure of duty would itself constitute the offence.
[385] ICTY, *Delalić et al.* Trial Judgment, para. 377; and ICTY, *Orić* Trial Judgment, para. 307.
[386] ICTY, *Halilović* Trial Judgment, para. 39.
[387] Article 86(2) of Additional Protocol I reads: "The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach." The jurisprudence arising in the context of the Second World War has been recounted in detail in the jurisprudence of other courts and tribunals, including, for example, ECCC, *Ieng Sary et al.*, Decision on Appeals by Nuon Chea and Ieng Thirith Against the Closing Order, paras 230 to 232. In respect of the well-established nature of the principle of command responsibility generally, *see also* ICTY, *Delalić et al.* Trial Judgment, para. 195; Jean-Marie Henckaerts & Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules (2005), at Rule 153. For an overview of practice relating to command responsibility, *see* Jean-Marie Henckaerts & Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume II: Practice, Part 2 (2005), pages 3733 to 3791.

criminally responsible *for* crimes within the jurisdiction of the Court committed by forces under his or her effective command and control […]"(emphasis added)). In this regard, it is, however, important to recognise that the responsibility of a commander under Article 28 is different from that of a person who "commits" a crime within the jurisdiction of the Court. This is supported by the language of Article 28 itself: the crimes for which the commander is held responsible are ''committed'' by forces, or subordinates, under his or her effective command and control, or effective authority and control, rather than by the commander directly.

174. Consequently, Article 28 must be viewed as a form of *sui generis* liability.[388] The Chamber recognises that, in certain circumstances, a commander's conduct may be capable of satisfying a material element of one or more modes of liability.

### 1. Crimes within the jurisdiction of the Court must have been committed by forces

175. As noted above, it is required that crimes within the jurisdiction of the Court have been actually committed by the relevant forces.[389] The Chamber has discussed the elements of the crimes charged in Sections III(B) to III(E).

[388] Regardless of possible differences, the Chamber notes the jurisprudence of the *ad hoc* tribunals which have repeatedly stressed the residual nature of superior responsibility in declining to enter a conviction on the basis of it where another mode of liability has been satisfied by the same conduct. *See* ICTY, *Kordić and Čerkez* Trial Judgment, para. 371; ICTY, *Blaškić* Appeal Judgment, para. 91; and ICTR, *Kajelijeli* Appeal Judgment, para. 81. It is not, however, necessary for the purposes of this case for the Chamber to consider that question. Judge Steiner would adopt the word "additional" instead of "*sui generis*".

[389] *See* *Lubanga* Appeal Judgment, para. 467, *citing* *Lubanga* Trial Judgment, para. 998, noting the dependency of the contribution of an accessory act on the "principal act of 'committing the crime'". *See also* ICTY, *Orić* Appeal Judgment, para. 35, holding that the existence of culpable subordinates, who would have taken part in the commission of the crimes for which the accused superior is found responsible, must be established. The Chamber notes that the *ad hoc* tribunals' jurisprudence defines commission by subordinates in the context of superior responsibility as incorporating modes of liability beyond 'commission' in the strict sense, such as, for example, planning, instigating, or aiding and abetting in the commission by some other person. *See* ICTY, *Blagojević and Jokić* Appeal Judgment, paras 280 to 282; ICTY, *Orić* Appeal Judgment, para. 21; and ICTR, *Nahimana et al.* Appeal Judgment, paras 485 to 486.

### 2. The accused must have been either a military commander or a person effectively acting as a military commander

176. The term "military commander" refers to a person who is formally or legally appointed to carry out a military command function.[390] Commonly, military commanders and their forces will be part of the regular armed forces of a state; such commanders will be appointed and operate according to a state's domestic laws, procedures, or practices (*de jure* commanders). In addition, the term "military commander" in Article 28(a) also extends to individuals appointed as military commanders in non-governmental irregular forces, in accordance with their internal practices or regulations, whether written or unwritten.[391]

177. Article 28(a) not only provides for the liability of military commanders, but also extends to "person[s] effectively acting as military commander[s]" - the latter being, in the submission of the Prosecution, the appropriate characterisation of Mr Bemba's position in the case.[392] These individuals are not formally or legally appointed as military commanders, but they will effectively act as commanders over the forces that committed the crimes.[393] In addition, the phrase "military commander or person effectively acting as a military commander" includes individuals who do not perform exclusively military functions.[394]

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[390] Confirmation Decision, para. 408.

[391] *See* UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Working Group on General Principles of Criminal Law, Working Paper on Article 25, Responsibility of commanders and superiors, A/CONF.183/C.1/WGGP/L.7, 22 June 1998, footnote 1, during the negotiations, it was made explicit that the term "military commander" included persons in control of irregular forces such as warlords. This interpretation finds additional support in Additional Protocol II. Article 1(1) of Additional Protocol II applies to armed conflicts taking place between national armed forces and dissident armed forces or other organized armed groups, where such dissident armed forces or other organized armed groups operate, *inter alia*, under "responsible command". As to the responsible command, the Commentary to the Protocol under consideration states that: "The existence of a responsible command implies some degree of organization of the insurgent armed group or dissident armed forces, but this does not necessarily mean that there is a hierarchical system of military organization similar to that of regular armed forces. It means an organization capable, on the one hand, of planning and carrying out sustained and concerted military operations, and on the other, of imposing discipline in the name of a de facto authority".

[392] Prosecution Closing Brief, paras 509 to 524. Unless otherwise indicated, when the Chambers refers in this section to requirements relevant to the responsibility of "military commanders" these are applicable *mutatis mutandis* to "persons effectively acting as military commanders".

[393] ICTR, *Kajelijeli* Appeal Judgment, para. 85; ICTR, *Gacumbitsi* Appeal Judgment, para. 143; and ICTY, *Aleksovski* Trial Judgment, para. 76.

[394] Confirmation Decision, para. 408 and footnote 522.

178. The Chamber is of the view, and the parties appear to be in agreement,[395] that the factors to be taken into consideration when determining a person's "effective authority and control" and those establishing that a person "effectively acted as a military commander" are intrinsically linked. These factors are analysed in more detail below, when discussing the "effective authority and control" requirement.[396]

179. Article 28(a) not only covers the immediate commanders of the forces that committed the crimes, but is applicable to superiors at every level, irrespective of their rank, from commanders at the highest level to leaders with only a few men under their command.[397]

### 3. The accused must have had effective command and control, or effective authority and control, over the forces who committed the crimes

180. Article 28(a) requires the accused to have "effective command and control", or "effective authority and control" over the forces who committed the crimes. As noted by the Pre-Trial Chamber, the term "command" is defined as "authority, especially over armed forces", and the expression "authority" refers to the "power or right to give orders and enforce obedience".[398]

181. The Chamber concurs with the Pre-Trial Chamber that the terms "command" and "authority" have "no substantial effect on the required level or standard of 'control'",[399] but rather denote the modalities, manner, or nature in which a military commander or person acting as such exercises control over his or her forces.[400] Regardless of whether an accused is a military commander or a person effectively acting as such, and regardless of whether he exercises "effective

[395] Prosecution Closing Brief, para. 511; and Defence Closing Brief, para. 672.
[396] *See* Section III(H)(3), paras 188 to 190.
[397] ICTY, *Delalić et al.* Appeal Judgment, paras 252 and 303; ICTY, *Strugar* Trial Judgment, paras 362 to 363; and ICTY, *Kunarac et al.* Trial Judgment, para. 398.
[398] Confirmation Decision, para. 413.
[399] Confirmation Decision, para. 412.
[400] Confirmation Decision, paras 413 to 416.

command" or "effective authority", the required level of control remains the same.[401]

182. The Chamber recalls Decision 836 in which it was held that the Pre-Trial Chamber confirmed the charges against the Accused based solely on the Accused's "effective authority and control" over the MLC troops who committed the crimes, and not his "effective command and control".[402] Consequently, and following the Prosecution's submission as to Mr Bemba's position,[403] the Chamber needs to examine whether effective "authority and control" has been exercised by a person "effectively acting as a military commander".

183. For the purpose of Article 28(a), following consistent international criminal jurisprudence, the Chamber finds that "effective control" requires that the commander have the material ability to prevent or repress the commission of the crimes or to submit the matter to the competent authorities.[404] Any lower degree of control, such as the ability to exercise influence – even substantial influence – over the forces who committed the crimes, would be insufficient to establish command responsibility.[405]

184. The Chamber concurs with the Pre-Trial Chamber's view that "effective control" is "generally a manifestation of a superior-subordinate relationship between the [commander] and the forces or subordinates in a *de jure* or *de facto* hierarchical relationship (chain of command)".[406] By virtue of his position, the commander must be senior in some sort of formal or informal hierarchy to those who commit the crimes.[407] Whether or not there are intermediary

[401] Confirmation Decision, paras 412 to 413.
[402] Decision 836, para. 117.
[403] Prosecution Closing Brief, paras 509 to 524.
[404] Confirmation Decision, para. 415; ICTY, *Delalić et al.* Appeal Judgment, paras 190 to 198 and 256; and ICTR, *Bagilishema* Appeal Judgment, para. 51.
[405] Confirmation Decision, para. 415; and ICTY, *Delalić et al.* Appeal Judgment, para. 266.
[406] Confirmation Decision, para. 414.
[407] Confirmation Decision, para. 414; ICTY, *Delalić et al.* Appeal Judgment, paras 248 to 254 and 303; ICTY, *Delalić et al.* Trial Judgment, paras 354, 371, and 647; and ICTY, *Krnojelac* Trial Judgment, para. 93.

subordinates between the commander and the forces which committed the crimes is immaterial; the question is simply whether or not the commander had effective control over the relevant forces.[408]

185. The Chamber notes the Defence's allegation that MLC troops were re-subordinated to the CAR authorities, and therefore, it cannot be concluded that Mr Bemba had effective control over those forces.[409] The Chamber finds, however, that Article 28 contains no requirement that a commander have sole or exclusive authority and control over the forces who committed the crimes. Further, the effective control of one commander does not necessarily exclude effective control being exercised by another commander. A fact-specific analysis is required in each case to determine whether or not the accused commander did in fact have effective control at the relevant time.[410] Similarly, international criminal jurisprudence supports the possibility that multiple superiors can be held concurrently responsible for actions of their subordinates.[411] The Chamber notes that the jurisprudence cited by the Defence in support of its submission[412] does not indicate otherwise.[413] In addition, the "mere participation" of particular forces in joint combat operations is not sufficient in itself to establish

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[408] ICTY, *Orić* Appeal Judgment, para. 20. *See also* ICTY, *Orić* Trial Judgment, para. 311; ICTY, *Šainović et al.* Trial Judgment, para. 118; SCSL, *Brima et al.* Trial Judgment, para. 786; ICTY, *Halilović* Trial Judgment, paras 62 to 63; ICTY, *Strugar* Trial Judgment, paras 363 to 366; ICTY, *Naletilić and Martinović* Trial Judgment, para. 69; ICTY, *Krnojelac* Trial Judgment, para. 93; ICTY, *Blaškić* Trial Judgment, paras 296 and 303; and ICTY, *Aleksovski* Trial Judgment, para. 106.

[409] Defence Closing Brief, paras 613 to 636, 675, 691, and 723.

[410] *See* ICTR, *Nizeyimana* Appeal Judgment, para. 346, considering that evidence that others had effective control over the same troops does not necessarily cast doubt on the effective control of the accused and rejecting defence's arguments concerning parallel authority. *See also* ICTY, *Popović et al.* Appeal Judgment, para 1892.

[411] ICTR, *Bagosora and Nsengiyumva* Appeal Judgment, paras 491 and 494 to 495; ICTR, *Nizeyimana* Appeal Judgment, paras 201 and 346; SCSL, *Brima et al.* Trial Judgment, para. 786; ICTY, *Popović et al.* Appeal Judgment, para. 1892; ICTY, *Blaškić* Trial Judgment, paras 296 and 303; ICTY, *Krnojelac* Trial Judgment, para. 93; ICTY, *Naletilić and Martinović* Trial Judgment, para. 69; ICTY, *Halilović* Trial Judgment, para. 62; ICTY, *Boškoski and Tarčulovski* Trial Judgment, para. 408; ICTY, *Aleksovski* Trial Judgment, para. 106; ICTY, *Strugar* Trial Judgment, para. 365; ICTY, *Mrkšić et al.* Trial Judgment, para. 560; and ICTY, *Krstić* Appeal Judgment, paras 45 to 47.

[412] Defence Closing Brief, paras 626 and 675, *citing* SCSL, *Taylor* Trial Judgment, para. 6984; ICTY, *Kunarac et al.* Trial Judgment, paras 399 and 626 to 628; ICTY, *Hadžihasanović and Kubura*, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, para. 51; and ICTY, *Hadžihasanović and Kubura* Trial Judgment, para. 1485.

[413] *See, for example*, SCSL, *Taylor* Trial Judgment, para. 6984, holding that the Trial Chamber's determination was based on a factual assessment of the evidence of effective control.

that a commander had effective control over all of the different units participating in the operation.[414]

186. Further, and contrary to the Defence submissions,[415] proof of a superior-subordinate relationship does not require the identification of principal perpetrators by name. It is sufficient to identify the perpetrators by group or unit in relation to a particular crime site.[416] The perpetrators need, however, to be identified at least to the extent necessary to assess the existence of the superior-subordinate relationship with the commander. The identification of the principal perpetrators by name may assist in this verification; however, it is not a legal requirement.

187. Similarly, contrary to the Defence submissions,[417] a commander's liability under Article 28 is not dependent upon the size of the subordinate unit committing the crimes. Indeed, there is no minimum number of subordinates that are required to be involved to trigger command responsibility.[418]

188. The Chamber considers that the question of whether a commander had effective control over particular forces is case specific.[419] There are a number of factors that may *indicate* the existence of "effective control", which requires the material ability to prevent or repress the commission of crimes or to submit the matter to the competent authorities;[420] these have been properly considered as "more a matter of evidence than of substantive law".[421] These factors may include: (i) the official position of the commander within the military structure

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[414] ICTY, *Hadžihasanović and Kubura* Trial Judgment, para. 84.
[415] Defence Oral Closing Statements, page 21, line 25 to page 22, line 4.
[416] ICTY, *Blaškić* Appeal Judgment, para. 217; ICTR, *Renzaho* Appeal Judgment, paras 64 and 116; and ICTY, *Orić* Trial Judgment, para. 311.
[417] Defence Oral Closing Statements, page 21, lines 21 to 24.
[418] ICTY, *Popović et al.* Appeal Judgment, para. 1898.
[419] ICTY, *Blaškić* Appeal Judgment, para. 69; and ICTY, *Milošević* Appeal Judgment, para. 280.
[420] Confirmation Decision, para. 417. *See also* ICTY, *Halilović* Appeal Judgment, para. 207; ICTY, *Strugar* Appeal Judgment, para. 256; ICTY, *Blaškić* Appeal Judgment, para. 69; ICTY, *Milošević* Appeal Judgment, para. 280; ICTY, *Hadžihasanović and Kubura* Appeal Judgment, para. 199; ICTY, *Orić* Appeal Judgment, para. 159; ICTY, *Halilović* Trial Judgment, para. 58; ICTY, *Kordić and Čerkez* Trial Judgment, paras 418 and 421; ICTY, *Strugar* Trial Judgment, paras 392 to 397, 406, 408, 411, and 413; ICTR, *Muvunyi* Trial Judgment, para. 497; ICTY, *Delalić et al.* Trial Judgment, para. 767; and SCSL, *Brima et al.* Trial Judgment, para. 788.
[421] ICTY, *Blaškić* Appeal Judgment, para. 69; and ICTY, *Strugar* Appeal Judgment, para. 254.

and the actual tasks that he carried out;[422] (ii) his power to issue orders,[423] including his capacity to order forces or units under his command, whether under his immediate command or at lower levels, to engage in hostilities;[424] (iii) his capacity to ensure compliance with orders including consideration of whether the orders were actually followed;[425] (iv) his capacity to re-subordinate units or make changes to command structure;[426] (v) his power to promote, replace, remove, or discipline any member of the forces, and to initiate investigations;[427] (vi) his authority to send forces to locations where hostilities take place and withdraw them at any given moment;[428] (vii) his independent access to, and control over, the means to wage war, such as communication equipment and weapons;[429] (viii) his control over finances;[430] (ix) the capacity to represent the forces in negotiations or interact with external bodies or individuals on behalf of the group;[431] and (x) whether he represents the ideology of the movement to which the subordinates adhere and has a certain level of profile, manifested through public appearances and statements.[432]

189. The Chamber also notes that a finding that a person was legally or formally appointed to a position of military command or authority over the relevant forces is neither required,[433] nor sufficient in itself,[434] to satisfy the effective

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[422] ICTY, *Orić* Appeal Judgment, paras 91 to 92; ICTY, *Hadžihasanović and Kubura* Appeal Judgment, para. 21; and ICTY, *Kordić and Čerkez* Trial Judgment, para. 438.
[423] ICTY, *Kordić and Čerkez* Trial Judgment, para. 421; ICTY, *Hadžihasanović and Kubura* Appeal Judgment, para. 199; and ICTY, *Strugar* Trial Judgment, paras 395 to 396.
[424] ICTY, *Strugar* Trial Judgment, paras 394 to 396.
[425] ICTY, *Strugar* Appeal Judgment, para. 256. *See also* ICTY, *Halilović* Appeal Judgment, para. 207; ICTY, *Blaškić* Appeal Judgment, para. 69; ICTY, *Milošević* Appeal Judgment, para. 280; and ICTY, *Hadžihasanović and Kubura* Appeal Judgment, para. 199.
[426] ICTY, *Strugar* Trial Judgment, para. 397.
[427] ICTY, *Delić* Trial Judgment, para. 62; ICTY, *Strugar* Trial Judgment, paras 406 and 408; ICTY, *Delalić et al.* Trial Judgment, para. 767; and ICTY, *Halilović* Appeal Judgment, para. 182.
[428] *See* Confirmation Decision, para. 417.
[429] SCSL, *Brima et al.* Trial Judgment, para. 788.
[430] ICTR, *Nahimana et al.* Appeal Judgment, para. 606; and SCSL, *Brima et al.* Trial Judgment, para. 788.
[431] ICTY, *Kordić and Čerkez* Trial Judgment, para. 424; and ICTY, *Strugar* Trial Judgment, para. 3988.
[432] SCSL, *Brima et al.* Trial Judgment, para. 788; and ICTY, *Kordić and Čerkez* Trial Judgment, para. 424.
[433] ICTY, *Delalić et al.* Appeal Judgment, paras 188 to 192 and 197; ICTR, *Gacumbitsi* Appeal Judgment, para. 143; ICTR, *Kajelijeli* Appeal Judgment, para. 85; ICTY, *Hadžihasanović and Kubura* Trial Judgment, para. 78; ICTY, *Blaškić* Trial Judgment, para. 302; and ICTY, *Delalić et al.* Trial Judgment, paras 354, 370, 646, and 736.
[434] ICTY, *Delalić et al.* Appeal Judgment, para. 197; ICTY, *Kordić and Čerkez* Trial Judgment, para. 422; ICTY, *Hadžihasanović and Kubura* Trial Judgment, para. 78; and ICTY, *Delić* Trial Judgment, para. 60.

control requirement of Article 28(a). However, it may serve as an indicium of effective control.[435]

190. Conversely, some factors may indicate a *lack* of effective control over forces, such as (i) the existence of a different exclusive authority over the forces in question; (ii) disregard or non-compliance with orders or instructions of the accused; or (iii) a weak or malfunctioning chain of command.[436]

### 4. Knowledge that the forces were committing or about to commit such crimes

191. The Chamber considers that actual knowledge on the part of a commander cannot be presumed.[437] Rather, it must be established either by direct or indirect (circumstantial) evidence.[438] Examples of direct evidence include the accused's admission of knowledge or statements he may have made about the crimes.[439]

192. When the Chamber accepts proof of an accused's state of mind by inference, that inference must be the only reasonable conclusion available based on the evidence.[440] Such inference, moreover, must relate directly to the accused; what needs to be inferred is the *accused's* knowledge, not that of the general public or others in the organization to which the accused belongs.[441]

193. Relevant factors that may indicate knowledge include any orders to commit crimes, or the fact that the accused was informed personally that his forces were involved in criminal activity.[442] Other indicia include the number, nature, scope,

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[435] ICTY, *Orić* Appeal Judgment, paras 91 to 92; ICTY, *Hadžihasanović and Kubura* Appeal Judgment, para. 21; and ICTY, *Kordić and Čerkez* Trial Judgment, para. 438.
[436] ICTY, *Hadžihasanović and Kubura* Appeal Judgment, paras 192, and 225 to 230; and ICTY, *Orić* Trial Judgment, para. 707.
[437] Confirmation Decision, para. 430, *citing* ICTY, *Delić* Trial Judgment, para. 64; and ICTY, *Brđanin* Trial Judgment, para. 278. *See also* ICTY, *Blaškić* Appeal Judgment, para. 57.
[438] Confirmation Decision, para. 430, *citing* ICTY, *Kordić and Čerkez* Trial Judgment, para. 427; and ICTY, *Hadžihasanović and Kubura* Trial Judgment, para. 94. *See also* ICTY, *Galić* Appeal Judgment, paras 171 and 180 to 182.
[439] ICTR, *Kamuhanda* Appeal Judgment, paras 81 to 82.
[440] ICC-02/05-01/09-73, para. 33. *See also* ICTY, *Vasiljević* Appeal Judgment, para. 120; ICTY, *Delalić et al.* Appeal Judgment, para. 458; ICTY, *Krnojelac* Appeal Judgment, paras 177 to 179; ICTY, *Kordić and Čerkez* Trial Judgment, para. 427; ICTY, *Delalić et al.* Trial Judgment, para. 386; and ICTY, *Blaškić* Trial Judgment, para. 307.
[441] ICTY, *Delalić et al.* Trial Judgment, paras 385 to 386.
[442] ICTY, *Galić* Trial Judgment, paras 700 to 705.

location, and timing of the illegal acts, and other prevailing circumstances; the type and number of forces involved; the means of available communication; the *modus operandi* of similar acts; the scope and nature of the commander's position and responsibility in the hierarchical structure; the location of the command at the time; and the notoriety of illegal acts, such as whether they were reported in media coverage of which the accused was aware.[443] Such awareness may be established by evidence suggesting that, as a result of these reports, the commander took some kind of action.

194. Article 28 does not require that the commander knew the identities of the specific individuals who committed the crimes.[444] In addition, it is unnecessary to establish that the accused mastered every detail of each crime committed by the forces, an issue that becomes increasingly difficult as one goes up the military hierarchy.[445]

195. Finally, the Chamber considers that knowledge on the part of the accused of the commission of crimes within the jurisdiction of the Court necessarily implies knowledge of the requisite contextual elements which qualify the conduct as a war crime or a crime against humanity, as applicable.

196. The Chamber recalls that in its Regulation 55 Notification it indicated that it may change the legal characterisation of the facts to the alternate form of "knowledge" under Article 28(a)(i), namely, whether "owing to the circumstances at the time", the Accused "'should have known' that the forces under his effective command and control or under his effective authority and control, as the case may be" were committing or about to commit the crimes

[443] Confirmation Decision, para. 431. *See also* Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), UN Doc. S/1994/674, 27 May 1994, pages 16 to 17; ICTY, *Delalić et al.* Trial Judgment, para. 386; ICTY, *Blaškić* Trial Judgment, para. 307; ICTY, *Strugar* Trial Judgment, para. 368; ICTR, *Bagosora et al.* Trial Judgment, para. 2014; SCSL, *Sesay et al.* Trial Judgment, paras 309 and 368; ICTY, *Limaj et al.* Trial Judgment, para. 524; ICTY, *Halilović* Trial Judgment, para. 66; ICTY, *Blagojević and Jokić* Trial Judgment, para. 792; ICTY, *Stakić* Trial Judgment, para. 460; ICTY, *Kordić and Čerkez* Trial Judgment, para. 427; ICTY, *Naletilić and Martinović* Trial Judgment, para. 72; and ICTY, *Galić* Trial Judgment, paras 700 to 705.
[444] ICTY, *Orić* Appeal Judgment, para. 35.
[445] ICTY, *Galić* Trial Judgment, para. 700; and ICTY, *Galić* Appeal Judgment, para. 377.

charged.[446] For present purposes, in light of the factual findings below,[447] the Chamber finds it unnecessary to consider the alternate "should have known" knowledge standard set out in Article 28(a)(i).

### 5. The commander failed to take all necessary and reasonable measures within his power

197. The Chamber, concurring with the Pre-Trial Chamber, finds that what constitutes "all necessary and reasonable measures" to prevent or repress the crimes committed by forces, or to submit the matter to the competent authorities, is established on a case-by-case basis[448] and must be addressed "*in concreto*".[449]

198. In the Chamber's view, and taking guidance from the jurisprudence of the *ad hoc* tribunals, "necessary" measures are those appropriate for the commander to discharge his obligation, and "reasonable" measures are those reasonably falling within the commander's material power.[450]

199. The duty of the commander to take all necessary and reasonable measures to prevent or repress the crimes committed by his forces, or to submit the matter to the competent authorities for investigation and prosecution, rests upon his possession of effective authority and control.[451] It is not determinative that the commander had the "explicit legal capacity" to take such measures; what matters is his material ability to act.[452] In other words, what constitutes "all reasonable and necessary measures within his or her power" shall be assessed

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[446] *See* Sections I(D) and II(C).
[447] *See* Section VI(F)(3).
[448] ICTY, *Hadžihasanović and Kubura* Appeal Judgment, paras 33 and 142; and ICTY, *Blaškić* Appeal Judgment, paras 72 and 417.
[449] Confirmation Decision, para. 443; and ICTY, *Popović et al.* Appeal Judgment, para. 1932.
[450] ICTY, *Orić* Appeal Judgment, para. 177; ICTY, *Halilović* Appeal Judgment, para. 63; ICTY, *Blaškić* Appeal Judgment, paras 72, 417, and 419; and ICTR, *Bagilishema* Appeal Judgment, para. 35.
[451] ICTY, *Blaškić* Trial Judgment, para. 72; and ICTY, *Limaj et al.* Trial Judgment, para. 526.
[452] ICTY, *Delić* Trial Judgment, para. 76. *See also* ICTY, *Boškoski and Tarčulovski* Trial Judgment, para. 415; and ICTY, *Stakić* Trial Judgment, para. 461.

on the basis of the *de jure* and/or *de facto* power of the commander[453] and the exercise he or she makes of this power.[454]

200. The Chamber agrees with the Defence that, if the commander has discharged his obligation to take all necessary and reasonable measures within his power, he cannot be held responsible,[455] even if the crimes nonetheless ultimately occur or the perpetrators go unpunished.

201. Under Article 28(a)(ii), three distinct duties are imposed upon commanders: (i) preventing the commission of crimes; (ii) repressing the commission of crimes; or (iii) submitting the matter to the competent authorities for investigation and prosecution. Although the Statute uses alternative language ("or") it is clear that failure to discharge any of these duties may attract criminal liability. For example, a failure to prevent the crimes, when the commander was under a duty to do so, cannot be remedied by subsequently punishing the perpetrators.[456]

**a) Failure to *prevent* the commission of crimes**

202. The ordinary meaning of *prevent* is to "keep from happening", "keep someone from doing something",[457] or "hinder or impede".[458] The Chamber considers that a commander violates his duty to prevent when he fails to take measures to stop crimes that are about to be committed or crimes that are being committed. The duty to prevent arises before the commission of the crimes,[459] and it includes crimes in progress and crimes which involve on-going elements.[460]

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[453] Confirmation Decision, para. 443.
[454] ICTY, *Orić* Appeal Judgment, para. 177; and ICTY, *Halilović* Appeal Judgment, para. 63.
[455] ICTY, *Blaškić*, Appeal Judgment, para. 417; ICTY, *Brđanin*, Trial Judgment, para. 279; ICTY, *Galić*, Trial Judgment, para. 176; ICTY *Stakić*, Trial Judgment, para. 461; and ICTY, *Krnojelac* Trial Judgment, para. 95.
[456] Confirmation Decision, para. 436; ICTY, *Blaškić* Appeal Judgment, para. 83; and ICTY, *Orić* Trial Judgment, para. 326.
[457] *See* Collins English Dictionary (9th edition, 2007).
[458] *See* Black's Law Dictionary (9th edition, 2005).
[459] Confirmation Decision, para. 437. *See also* ICTR, *Ndahimana* Appeal Judgment, para. 79.
[460] *See* ICTR, *Nahimana et al.* Appeal Judgment, para. 721, stating that these include the so-called continuous and enduring crimes.

203. The scope of the duty to prevent depends on the material power of the commander to intervene in a specific situation.[461] This is dependent on the circumstances at the relevant time. The Pre-Trial Chamber identified relevant measures which include: (i) ensuring that the forces are adequately trained in international humanitarian law; (ii) securing reports that military actions were carried out in accordance with international law; (iii) issuing orders aiming at bringing the relevant practices into accord with the rules of war; and (iv) taking disciplinary measures to prevent the commission of atrocities by the forces under the commander's command.[462]

204. Additional measures which should be taken under Article 28(a)(ii) may include: (i) issuing orders specifically meant to prevent the crimes, as opposed to merely issuing routine orders; (ii) protesting against or criticising criminal conduct; (iii) insisting before a superior authority that immediate action be taken; (iv) postponing military operations; (v) suspending, excluding, or redeploying violent subordinates; and (vi) conducting military operations in such a way as to lower the risk of specific crimes or to remove opportunities for their commission.[463]

**b) Failure to *repress* the commission of crimes or *submit* the matter to the competent authorities for investigation and prosecution**

205. Article 28(a)(ii) also criminalises the failure of the commander to "repress" the crimes. The word "repress" means to "put down", "subdue", "restrain", and

[461] ICTY, *Strugar* Trial Judgment, para. 374. *See also* ICTY, *Delalić et al.* Appeal Judgment, para. 256.
[462] Confirmation Decision, para. 438, *citing* ICTY, *Hadžihasanović and Kubura* Trial Judgment, para. 153; and ICTY, *Strugar* Trial Judgment, para. 374 and footnotes 1093 and 1095, *citing* *United States of America et al. v. Araki Sadao et al.* (Tokyo) Judgment. *See also* *United States of America v. Wilhelm List et al.* (Hostage Case) Judgment, page 1311; Article 87(2) of Additional Protocol I; and ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1987), pages 1017 and 1020 (paras 3549, 3558, 3560, and 3563).
[463] ICTY, *Hadžihasanović and Kubura* Trial Judgment, para. 153; ICTY, *Strugar* Trial Judgment, para. 374 and footnote 1094, *citing* *United States of America et al. v. Araki Sadao et al.* (Tokyo) Judgment; and ICTY, *Hadžihasanović and Kubura* Appeal Judgment, para. 153. *See also* *United States of America v. von Leeb et al.* (High Command Case) Judgment, page 623.

"keep or hold back".[464] The notion of "repression" therefore overlaps to a certain degree with "prevention", particularly in terms of a duty to prevent crimes in progress and crimes which involve on-going elements being committed over an extended period.

206. The Chamber concurs with the Pre-Trial Chamber that the duty to repress also encompasses an obligation to punish forces after the commission of crimes.[465] The Chamber notes that the statutes of the *ad hoc* tribunals do not make reference to a duty to "repress"; rather the terms "to prevent […] or to punish" are used.[466] The term "repress" is used in Article 2 of the 1996 Draft Code of Crimes against the Peace and Security of Mankind and Article 86 of Additional Protocol I where, as in the Rome Statute, this notion is distinguished from "prevention".[467] The International Committee of the Red Cross ("ICRC") Commentary to Article 86 of Additional Protocol I indicates that the purpose of the requirement that commanders repress crimes is to ensure that military commanders fulfil their obligation to search for the perpetrators and either bring them before the courts or hand them over to another state for trial.[468]

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[464] *See* The Oxford English Dictionary, Vol. XII (2nd edition, 1989).
[465] Confirmation Decision, para. 439.
[466] ICTY Statute, Article 7(3); ICTR Statute, Article 6(3); and SCSL Statute, Article 6(3), each referring to "prevent "and "punish".
[467] According to Article 86 of Additional Protocol I, "[…] 2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to *prevent* or *repress* the breach" (emphasis added). Pursuant to Article (2)(3)(c) of the Draft Code of Crimes against the Peace and Security of Mankind, an individual shall be responsible for a crime if that individual "fails to *prevent* or *repress* the commission of such a crime" (emphasis added).
[468] ICRC, *Commentary to the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1987), page 1010, para. 3538. "Grave breaches must be repressed, which implies the obligation to enact legislation laying down effective penal sanctions for perpetrators of such breaches […] '(Repression of breaches of this Protocol)', i.e., the search for the perpetrators, regardless of their nationality, and the obligation either to bring them before the courts of the Detaining Power or to hand them over to another contracting Party concerned in order that it may try them". Addressing the repression of breaches other than grave breaches at page 1011, para. 3539, the Commentary states: "For breaches of the Protocols other than grave breaches the terms are the same as those used by the Conventions for breaches of the Conventions other than grave breaches: the Parties to the Protocol undertake to 'suppress' them, which means that any 'repression' that might be undertaken ultimately by penal or disciplinary sanctions are the responsibility of the authority on which those committing such breaches depend or the Power to which they belong. However, this does not detract from the right of States under customary law, as reaffirmed in the writings of a number of publicists, to punish serious violations of the

207. A commander's lack of formal competence to take certain measures does not relieve the commander of the duty to take all necessary and reasonable measures within his power to repress the crimes.[469] In the event the commander holds disciplinary power, he is required to exercise it, within the limits of his competence. If he does not hold disciplinary power, measures which may, depending upon the circumstances, satisfy the commander's duties include proposing a sanction to a superior who has disciplinary power or remitting the case to the judicial authority with such factual evidence as it was possible to find.[470] The *ad hoc* tribunals have established what has been termed a "minimum standard" for measures that may fulfil the duty to punish, directing that a Trial Chamber "must look at what steps were taken to secure an adequate investigation capable of leading to the criminal prosecution of the perpetrators".[471] The duty to punish includes, at least, the obligation to investigate possible crimes in order to establish the facts.[472] The commander is required to take an "important step in the disciplinary process".[473]

208. If the commander has no power to sanction those who committed the crimes, he has an obligation to submit the matter to the competent authorities.[474] This obligation to submit the matter also arises where the commander has the ability to take certain measures, but such measures would be inadequate.[475] On a plain

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laws of war under the principle of universal jurisdiction. With regard to other measures, administrative sanctions or change of assignment, they can, by the nature of things, only be taken by their own authorities".

[469] ICTY, *Aleksovski* Trial Judgment, para. 78; ICTY, *Blaškić* Trial Judgment, paras 302, 335, and 464; and ICTY, *Halilović* Trial Judgment, para. 100.

[470] ICTY, *Halilović* Appeal Judgment, para. 182; and ICTY, *Šainović et al.* Trial Judgment, para. 123.

[471] ICTY, *Popović et al.* Appeal Judgment, para. 1932.

[472] ICTY, *Popović et al.* Appeal Judgment, para. 1932; ICTY, *Halilović* Appeal Judgment, para. 182; ICTY, *Boškoski and Tarčulovski* Trial Judgment, para. 418; ICTY, *Mrkšić et al.* Trial Judgment, para. 568; and ICTY, *Strugar* Trial Judgment, paras 376 to 378.

[473] ICTY, *Kvočka et al.* Trial Judgment, para. 316.

[474] ICTY, *Halilović* Appeal Judgment, para. 182, *affirming* ICTY, *Halilović* Trial Judgment, para. 97; and ICTY, *Halilović* Trial Judgment, para. 100. The military commander will normally only have the duty to initiate an investigation and to establish the facts, and, if he or she has no power to sanction, to submit the matter to the competent authorities. *See* ICRC, *Commentary to the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1987), page 1020, para. 3562. *See* ICTY, *Blaškić* Appeal Judgment, para. 69, noting that the duty of the commander to report to competent authorities is specifically provided for under Article 87(1) of Additional Protocol I. *See also* ICTY, *Hadžihasanović and Kubura* Appeal Judgment, para. 154.

[475] Confirmation Decision, para. 442.

reading of Article 28(a)(ii), the Chamber finds that a commander cannot be considered to have discharged his duty to submit the matter if he does not submit the matter to an authority competent to investigate and prosecute the alleged perpetrator. Further, referral to a non-functioning authority or an authority likely to conduct an inadequate investigation or prosecution may not be sufficient to fulfil the commander's obligations.[476]

209. The Chamber considers that the duty to punish or to submit the matter to competent authorities aims at ensuring that offenders are brought to justice,[477] in order to avoid impunity and to prevent future crimes.[478] These duties arise after the commission of the crimes.[479]

### 6. The crimes committed by the forces must have resulted from the failure of the accused to exercise control properly over them

210. The Chamber recalls that Article 28(a) stipulates that a military commander, or person effectively acting as such, shall:

> […] be criminally responsible for crimes […] committed by forces under his or her effective command and control, or effective authority and control as the case may be, *as a result of his or her failure to exercise control properly over such forces,* where:
>
> (i) […]; and
>
> (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution (emphasis added).

211. It is a core principle of criminal law that a person should not be found individually criminally responsible for a crime in the absence of some form of personal nexus to it. The Chamber concurs with the Pre-Trial Chamber that the

[476] *See* ICTY, *Boškoski and Tarčulovski* Appeal Judgment, para. 234.
[477] ICTY, *Strugar* Trial Judgment, para. 378; and ICTY, *Halilović* Trial Judgment, para. 98. *See also* *United States v. von Leeb et al.* (High Command Case) Judgment, Vol. XI, TWC, 462, page 623.
[478] *See* ICTY, *Delalić et al.* Trial Judgment, paras 399 and 400.
[479] ICTY, *Strugar* Trial Judgment, para. 373; and ICTY, *Kordić and Čerkez* Trial Judgment, paras 445 to 446.

portion of text emphasised above does not require the establishment of "but for" causation between the commander's omission and the crimes committed.[480]

212. The Chamber has had regard to the particular nature of superior responsibility, as considered above. Additionally, practical and legal considerations militate against imposing a standard which would be incapable of consistent and objective application, bearing in mind the hypothetical assessment required in cases of omission.[481]

213. A nexus requirement would clearly be satisfied when it is established that the crimes would not have been committed, in the circumstances in which they were, had the commander exercised control properly, or the commander exercising control properly would have prevented the crimes.[482] Noting the foregoing analysis, the Chamber emphasises that such a standard is, however, higher than that required by law. Nonetheless, in light of the factual findings below, the Chamber does not consider it necessary to further elaborate on this element.[483]

[480] Confirmation Decision, para. 425.
[481] *See*, *similarly*, Confirmation Decision, paras 425 and 426.
[482] *R v. Morby*, 1882, 8 QBD 571, providing for a would or would probably standard; and in Germany, *see*, *for example*, BGH, 6.11.2002, in BGH St 48, 77, 93, holding that "[a] failure to act can be considered as 'quasi-causal' for the concrete result […] if the necessary action would have frustrated the result".
[483] Judges Steiner and Ozaki elaborate on this issue in their separate opinions.

# IV. ISSUES OF EVIDENCE

214. In this section, the Chamber follows, for the most part, the approach set out by Trial Chamber I in *Lubanga*[484] and then applied, with limited variations, by Trial Chamber II in *Ngudjolo*[485] and *Katanga*.[486] The Chamber also considers the jurisprudence of the Appeals Chamber,[487] as well as the relevant findings of the Pre-Trial Chamber in the Confirmation Decision. Finally, where pertinent for this section, the Chamber addresses the closing submissions of the parties and Legal Representative.

## A. BURDEN OF PROOF

215. Under Article 66(1), the Accused shall be presumed innocent until proved guilty before the Court in accordance with the applicable law. Pursuant to Article 66(2), the onus is on the Prosecution to prove the guilt of the Accused.[488] For a conviction, each element of the particular offence charged must be established "beyond reasonable doubt".[489] In this regard, the Appeals Chamber specified that this standard is to be applied not to "each and every fact in the Trial Judgment",[490] but "*only* to the facts constituting the elements of the crime and mode of liability of the accused as charged".[491]

216. When a Chamber concludes that, based on the evidence, there is only one reasonable conclusion to be drawn from particular facts, the conclusion is that

[484] *Lubanga* Trial Judgment, paras 92 to 123.
[485] *Ngudjolo* Trial Judgment, paras 33 to 72.
[486] *Katanga* Trial Judgment, paras 58, and 68 to 110.
[487] *See* ICC-01/05-01/08-1386; *Ngudjolo* Appeal Judgment; and *Lubanga* Appeal Judgment.
[488] Article 66(1) and (2) of the Statute.
[489] Article 66(3) of the Statute; *Lubanga* Trial Judgment, para. 92; *Katanga* Trial Judgment, para. 68.
[490] *Lubanga* Appeal Judgment, para. 22, *quoting* ICTY, *Milošević* Appeal Judgment, para. 20.
[491] *Lubanga* Appeal Judgment, para. 22 (emphasis added).

they have been established beyond reasonable doubt.[492] The Appeals Chamber has elaborated upon this standard:[493]

> The reasonable doubt standard in criminal law cannot consist in imaginary or frivolous doubt based on empathy or prejudice. It must be based on logic and common sense, and have a rational link to the evidence, lack of evidence or inconsistencies in the evidence.

217. The Chamber adopts the aforementioned principles.

218. When determining whether the applicable evidential threshold has been met, the Chamber bears in mind the Appeals Chamber's finding that it "is required to carry out a holistic evaluation and weighing of *all the evidence taken together* in relation to the fact at issue".[494] At the same time, in accordance with the approach articulated by the Pre-Trial Chamber, the Chamber "is guided by the principle *in dubio pro reo* as a component of the presumption of innocence, which as a general principle in criminal procedure applies, *mutatis mutandis*, to all stages of the proceedings".[495]

## B. FACTS REQUIRING NO EVIDENCE

219. Under Article 69(6), the Chamber may take judicial notice of facts of common knowledge.[496] Where relevant and appropriate, the Chamber has applied Article 69(6).

220. In accordance with Rule 69, the parties may agree that an alleged fact, which is contained in the charges, the contents of a document, the expected testimony of a witness, or other evidence is not contested. In such circumstances, the Chamber may consider such alleged fact as being proven. The parties in the

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[492] *Lubanga* Trial Judgment, para. 111; and *Katanga* Trial Judgment, para. 109. *See also* ICC-02/05-01/09-73, para. 33.
[493] *Ngudjolo* Appeal Judgment, para. 109, *quoting* ICTR, *Rutaganda* Appeal Judgment, para. 488.
[494] *Lubanga* Appeal Judgment, para. 22 (emphasis in original). *See also* *Lubanga* Trial Judgment, para. 94; and *Katanga* Trial Judgment, para. 79.
[495] Confirmation Decision, para. 31.
[496] ICC-01/05-01/08-2012, para. 124, rejecting, in line with this provision, a request for the admission of a calendar into evidence.

*Bemba* case failed to reach a clear agreement on any of the alleged facts.[497] However, the Chamber notes that, in their closing submissions, the parties made similar statements in relation to certain alleged facts. The Chamber has, as relevant and appropriate, taken apparent agreements into account in its assessment of the evidence.

## C. CRITERIA FOR THE WEIGHT TO BE ACCORDED TO THE EVIDENCE

221. During the trial, evidence was introduced in oral, written, and audio-visual form. This included the *viva voce* testimony of 77 witnesses, including seven expert witnesses, who appeared before the Chamber in person, at the seat of the Court or via video-link. The Chamber admitted a total of 733 items of documentary evidence,[498] including, *inter alia*, witnesses' written statements, sketches drawn by witnesses, maps, medical certificates, photographs, videos, letters, press releases, news and non-governmental organization ("NGO") reports, and legal documents.[499] Documentary evidence was introduced during the oral evidence of witnesses or by written application. Further, after having considered the observations of the parties and Legal Representatives, the Chamber also admitted certain items pursuant to Article 69(3).[500]

222. In deciding on the admission of the various items, the Chamber followed the Appeals Chamber's direction that, in making an admissibility determination under Article 69(4), the Chamber is afforded a measure of discretion.[501]

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[497] The last document filed in relation to this issue indicates that no agreement on facts was reached by the parties. ICC-01/05-01/08-997-Conf.

[498] ICC-01/05-01/08-3176; ICC-01/05-01/08-3034-Conf; ICC-01/05-01/08-3019; ICC-01/05-01/08-3015; ICC-01/05-01/08-2981-Conf; ICC-01/05-01/08-2974-Conf; ICC-01/05-01/08-2864-Conf; ICC-01/05-01/08-2793, para. 9; ICC-01/05-01/08-2721; ICC-01/05-01/08-2688-Conf; ICC-01/05-01/08-2299; ICC-01/05-01/08-2012; and T-363, pages 30 to 33.

[499] Judge Ozaki notes that she dissented on the admission of certain items of evidence. Further, in certain circumstances, she agreed with the Majority that an item should be admitted, but disagreed with the Majority's findings on the purposes for which the material, once admitted, could be used. For purposes of the present Judgment, Judge Ozaki has evaluated all admitted evidence on the basis of the relevant admissibility decisions issued by the Chamber, whether unanimously or by the Majority. *See* footnotes 537, 613, 614, and 619.

[500] ICC-01/05-01/08-3034-Conf; and ICC-01/05-01/08-2841.

[501] ICC-01/05-01/08-1386, para. 37.

Specifically, the Appeals Chamber held that the Chamber "may rule on the relevance and/or admissibility of each item of evidence when it is submitted, and then determine the weight to be attached to the evidence at the end of the trial".[502] Alternatively, the Chamber may defer its admissibility assessment until the end of the proceedings.[503] Irrespective of the timing of the assessment, however, the Chamber is required "to consider the relevance, probative value and the potential prejudice of each item of evidence at some point in the proceedings".[504]

223. Applying the above principles, the Chamber followed a three-part test initially formulated by Trial Chamber I and adopted, with slight variations, by Trial Chamber II.[505] Under this test, the Chamber examined, on a preliminary basis, whether the submitted materials (i) are relevant to the trial, (ii) have probative value, and (iii) are sufficiently relevant and probative to outweigh any prejudicial effect that could be caused by their admission. [506] In this respect, the Chamber stressed from the outset that "the Chamber's admissibility inquiry has no bearing on the Chamber's final determination of the weight that it will give to any particular item of evidence […][which] is to be performed at the end of the case when the Chamber assesses the evidence as a whole."[507]

224. In accordance with Article 74(2), the Judgment is based on the Chamber's "evaluation of the evidence" and "the entire proceedings". This provision further directs the Chamber to "base its decision only on evidence submitted and discussed before it at the trial". The Chamber agrees with Trial Chambers I and II that the phrase "discussed before it at the trial" encompasses not only oral testimony, together with any documents and other items, such as video

[502] ICC-01/05-01/08-1386, para. 37.
[503] ICC-01/05-01/08-1386, para. 37.
[504] ICC-01/05-01/08-1386, para. 37.
[505] ICC-01/04-01/06-1399, paras 27 to 32; ICC-01/04-01/06-2595, para. 39; and ICC-01/04-01/07-2289, para. 13.
[506] ICC-01/04-01/06-1399, paras 27 to 32; ICC-01/04-01/06-2595, para. 39; and ICC-01/04-01/07-2289, para. 13. For the Chamber's interpretation of these criteria, *see* ICC-01/05-01/08-2012, paras 14 to 16.
[507] ICC-01/05-01/08-2012, para. 18.

recordings, that were "discussed" during the hearings, but also items of evidence that were "discussed" in the written submissions of the parties and Legal Representatives at any stage during the trial, i.e. documents introduced by counsel pursuant to a written application.[508] Ultimately, the evidence upon which the Chamber bases its Judgment must have been introduced, admitted into evidence, and become part of the trial record through the assignment of an evidence (EVD) number.[509] Further, the parties must have had an opportunity to make submissions as to each item of evidence.[510]

225. Following the principle of "holistic evaluation and weighing of *all the evidence*",[511] the Chamber has assessed the reliability and credibility of the evidence it considered to be relevant to the Chamber's determination. The individual pieces of evidence were therefore analysed in light of other relevant evidence in the record of the case.[512] On the basis of this analysis, the Chamber decided whether incriminatory evidence in the record of the case should be accorded any weight and whether it established any of the alleged facts and circumstances beyond reasonable doubt, notwithstanding the exculpatory evidence submitted.[513]

226. In determining whether an allegation by the Prosecution has been proved, the Chamber did not restrict its assessment to the evidence that the parties and Legal Representative reference explicitly in their closing submissions.[514] Rather, it considered, on a case-by-case basis, whether it could rely on evidence in the record, regardless of whether it was explicitly referred to in order to establish a factual allegation, taking into account the requirements of Articles 64(2) and

[508] *Lubanga* Trial Judgment, para. 98; *Katanga* Trial Judgment, para. 78; and *Ngudjolo* Trial Judgment, para. 44.
[509] *Lubanga* Trial Judgment, para. 98; *Katanga* Trial Judgment, para. 78; and *Ngudjolo* Trial Judgment, para. 44.
[510] *Ngudjolo* Trial Judgment, para. 44; and *Katanga* Trial Judgment, para. 78.
[511] *Lubanga* Appeal Judgment, para. 22 (emphasis in original). *See also* *Lubanga* Trial Judgment, para. 94; *Ngudjolo* Trial Judgment, para. 45; and *Katanga* Trial Judgment, para. 79.
[512] *See* *Lubanga* Trial Judgment, para. 94; *Katanga* Trial Judgment, para. 79; and *Ngudjolo* Trial Judgment, para. 45.
[513] *Ngudjolo* Trial Judgment, para. 46; and *Katanga* Trial Judgment, para. 80.
[514] *Ngudjolo* Trial Judgment, para. 47; and *Katanga* Trial Judgment, para. 81.

74(2).[515] The Chamber ensured that the Defence had an opportunity to make submissions as to the evidence in question.[516]

227. The Chamber notes that, in performing its "holistic evaluation and weighing of *all the evidence*",[517] it is under no obligation "to refer to the testimony of every witness or every piece of evidence on the trial record".[518] In line with the position adopted by the ICTY Appeals Chamber, the Chamber is mindful that it does not need to explicitly refer to specific witness testimony where there is significant contrary evidence on the record.[519] Indeed, the Chamber notes that, where it "did not refer to the evidence given by a witness, even if it is in contradiction to the Trial Chamber's finding, it is to be presumed that the Trial Chamber assessed and weighed the evidence, but found that the evidence did not prevent it from arriving at its actual findings".[520] In the Chamber's view the same applies to evidence other than testimony. Likewise, the Chamber has taken into account all relevant submissions, in particular closing submissions, by the parties and the Legal Representative in its assessment of the evidence and findings.

### 1. Oral evidence

228. In evaluating the oral testimony of a witness, the Chamber considered a number of factors, which are set out below. In this regard, the Chamber first notes the relevant findings of the Appeals Chamber:[521]

> In assessing the weight to be given to the testimony of a witness, a Trial Chamber needs to assess the credibility of the witness and the reliability of his or her testimony. While the Statute and the Rules of

[515] *Ngudjolo* Trial Judgment, para. 47; and *Katanga* Trial Judgment, para. 81.
[516] *Ngudjolo* Trial Judgment, para. 47; and *Katanga* Trial Judgment, para. 81.
[517] *Lubanga* Appeal Judgment, para. 22 (emphasis in original). *See also* *Lubanga* Trial Judgment, para. 94; *Ngudjolo* Trial Judgment, para. 45; and *Katanga* Trial Judgment, para. 79.
[518] ICTY, *Kvočka et al.* Appeal Judgment, para. 23. *See also* ICTY, *Delalić et al.* Appeal Judgment, para. 498; ICTY, *Kupreškić et al.* Appeal Judgment, para. 39; and ICTY, *Kordić and Čerkez* Appeal Judgment, para. 382.
[519] ICTY, *Perišić* Appeal Judgment, para. 95, *citing* ICTY, *Kvočka et al.* Appeal Judgment, paras 23, 483 to 484, 487, and 582 to 583; and ICTR, *Simba* Appeal Judgment, paras 143, 152, and 155.
[520] ICTY, *Kvočka et al.* Appeal Judgment, para. 23.
[521] *Lubanga* Appeal Judgment, para. 239 (internal citations omitted).

> Procedure and Evidence do not specifically refer to these concepts, they are part of the evaluation of evidence required of a Trial Chamber by article 74 (2) of the Statute. The Appeals Chamber notes that there is a strong link between the two concepts, as reflected in the jurisprudence of the *ad hoc* international criminal tribunals. This jurisprudence shows that, while credibility is generally understood as referring to whether a witness is testifying truthfully, the reliability of the facts testified to by the witness may be confirmed or put in doubt by other evidence or the surrounding circumstances. Thus, although a witness may be honest, and therefore credible, the evidence he or she gives may nonetheless be unreliable because, *inter alia*, it relates to facts that occurred a long time ago or due to the "vagaries of human perception".

229. In assessing a witness's credibility, the Chamber has considered the individual circumstances of each witness, including their relationship to the Accused, age, vulnerability, any involvement in the events under consideration, the risk of self-incrimination, possible bias towards or against the Accused, and/or motives for telling the truth or providing false testimony.[522]

230. With regard to the reliability of the witnesses' testimony, the Chamber determined the weight to be accorded to the information provided. To this end, it considered the entirety of their testimony, having regard, in particular, to the capacity and quality of their recollection. In this respect, the Chamber took into account, *inter alia*, (i) the consistency and precision of the accounts; (ii) whether the information provided was plausible; and (iii) whether the evidence conflicted with a witness's prior statement. Finally, whenever relevant and necessary, the Chamber considered the witnesses' conduct during their testimony, including their readiness, willingness, and manner of responding to questions put to them by the parties, the Legal Representatives, and the Chamber.[523] Bearing in mind the overall context of the case and the specific circumstances of the individual witnesses, the Chamber has also taken into account the fact that the charges relate to events that occurred in 2002 and 2003,

[522] *Lubanga* Trial Judgment, para. 106; *Katanga* Trial Judgment, para. 85; and *Ngudjolo* Trial Judgment, para. 51.
[523] *Ngudjolo* Trial Judgment, para. 53; and *Katanga* Trial Judgment, para. 87. *See also* *Lubanga* Trial Judgment, para. 102, regarding consistency with prior statements admitted into evidence.

and that witnesses who suffered trauma may have had particular difficulty in providing a coherent, complete, and logical account. There are other potential reasons why a witness's evidence may have been flawed and the Chamber has taken these considerations into account when assessing his or her testimony.[524]

231. In certain instances, the Chamber decided not to rely on part of a witness's account whilst accepting other aspects of his or her evidence, thereby acknowledging that it is possible for a witness to be accurate on some issues and less accurate on others. Nonetheless, when the Chamber rejected part of a witness's testimony, it invariably considered the impact of that rejection on the reliability of the remainder of the relevant witness's testimony.[525] The Chamber also notes the Appeals Chamber's findings that (i) "the evidence of a witness in relation to whose credibility the Trial Chamber has some reservations may be relied upon to the extent that it is corroborated by other reliable evidence"; and (ii) "there may be witnesses whose credibility is impugned to such an extent that he or she cannot be relied upon even if other evidence appears to corroborate parts of his or her testimony".[526]

232. With reference to the Defence submissions on "unchallenged testimony",[527] the Chamber recalls that, in line with Article 74(2), the present Judgment is based on the Chamber's evaluation of the evidence and the entire proceedings. In this context, and in view of its mandate to determine the truth,[528] the Chamber has assessed the weight to be accorded to each of the particular items of evidence admitted, including the testimony of witnesses, and it has assessed each aspect of a witness's testimony in the context of the totality of the evidence

[524] *Lubanga* Trial Judgment, para. 103; *Katanga* Trial Judgment, para. 83; and *Ngudjolo* Trial Judgment, para. 49.
[525] *Lubanga* Trial Judgment, para. 104; *Katanga* Trial Judgment, para. 84; and *Ngudjolo* Trial Judgment, para. 50. *See also* *Ngudjolo* Appeal Judgment, para. 168.
[526] *Ngudjolo* Appeal Judgment, para. 168.
[527] *See* Defence Closing Brief, paras 297, 545, 630 to 632, 687, 706, 735, 767, 806, and 955, and footnotes 1486 and 1620; Prosecution Response Brief, paras 22 to 24; and Defence Reply Brief, paras 11 to 22.
[528] *See* Article 69(3) of the Statute. *See also* *Ngudjolo* Appeal Judgment, para. 256, finding that "[t]he establishment of the truth is one of the principal objectives of the Statute, to which the Trial Chamber must actively contribute".

presented.[529] Rule 63(2) provides the Chamber with "the authority [...] to assess freely all evidence submitted in order to determine its relevance or admissibility in accordance with article 69". Contrary to Defence submissions,[530] the Chamber is not bound to consider as established those portions of a witness's testimony that were not challenged by the opposing party during its questioning of that witness or in its final submissions.

233. Finally, in relation to the specific category of evidence given by expert witnesses, the Chamber has considered factors such as the established competence of the particular witness in his or her field of expertise, the methodologies used, the extent to which the findings were consistent with other evidence in the case, and the general reliability of the expert's evidence.[531]

### 2. Documentary and other non-oral evidence

234. The Chamber recalls its findings in the "First decision on the prosecution and defence requests for the admission of evidence":[532]

> Article 64(9)(a) of the Statute provides the Chamber with the power to "[r]ule on the admissibility or relevance of evidence". When making such a determination. Rule 63(2) of the Rules provides the Chamber with "the authority [...] to assess freely all evidence submitted in order to determine its relevance or admissibility in accordance with article 69." Article 69(4) of the Statute directs the Chamber to "tak[e] into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness [...]". The Chamber is also guided by Article 69(3) of the Statute, which permits it "to request the submission of all evidence that it considers necessary for the determination of the truth" and Article 64(2) of the Statute, which requires the Chamber to ensure that the trial is fair and expeditious, and is conducted with full respect for the rights of the accused. Further, the Chamber may consider the form or manner in which evidence is presented, giving due regard to the desirability of witnesses giving evidence orally in accordance with Article 69(2) of

[529] *See* *Lubanga* Appeal Judgment, para. 22 (emphasis in original), finding that "when determining whether [the standard of proof beyond reasonable doubt] has been met, the Trial Chamber is required to carry out a holistic evaluation and weighing of *all the evidence taken together* in relation to the fact at issue".
[530] *See* footnote 527.
[531] *Lubanga* Trial Judgment, para. 112; *Katanga* Trial Judgment, para. 94; and *Ngudjolo* Trial Judgment, para. 60.
[532] ICC-01/05-01/08-2012, para. 11 (internal citations omitted, alterations in original).

> the Statute, while at the same time acknowledging that the Statute and Rules contain "a clear recognition that a variety of other means of introducing evidence may be appropriate".

235. The Chamber further agrees with Trial Chambers I and II, in that the statutory framework provides the Chamber with a considerable degree of flexibility in weighing the evidence brought before it.[533] Trial Chamber I elaborated as follows:[534]

> [T]he drafters of the Statute framework have clearly and deliberately avoided proscribing certain categories or types of evidence, a step which would have limited - at the outset - the ability of the Chamber to assess evidence "freely". Instead, the Chamber is authorised by statute to request any evidence that is necessary to determine the truth, subject always to such decisions on relevance and admissibility as are necessary, bearing in mind the dictates of fairness. In ruling on admissibility the Chamber will frequently need to weigh the competing prejudicial and probative potential of the evidence in question. It is of particular note that Rule 63(5) mandates the Chamber not to "apply national laws governing evidence". For these reasons, the Chamber has concluded that it enjoys a significant degree of discretion in considering all types of evidence. This is particularly necessary given the nature of the cases that will come before the ICC: there will be infinitely variable circumstances in which the court will be asked to consider evidence, which will not infrequently have come into existence, or have been compiled or retrieved, in difficult circumstances, such as during particularly egregious instances of armed conflict, when those involved will have been killed or wounded, and the survivors or those affected may be untraceable or unwilling - for credible reasons - to give evidence.

236. With evidence other than direct oral testimony, the Chamber made allowances for the difficulties encountered where it proves impossible to examine the individual who originally supplied the information. The degree of relevance and potential prejudice, and the weight to be attached therein, would then depend on the nature and circumstances of the particular piece of evidence. Taking into account that the situations which the Chamber might face in this

[533] *Lubanga* Trial Judgment, para. 107; *Katanga* Trial Judgment, para. 88; and *Ngudjolo* Trial Judgment, para. 54. *See also* Confirmation Decision, para. 46, recalling that "neither the Statute nor the Rules provide that a certain type of evidence is *per se* inadmissible".
[534] ICC-01/04-01/06-1399, para. 24.

respect are infinitely variable, as indicated in the preceding quotation, the Chamber has approached this issue on a case-by-case basis.[535]

237. The Chamber assesses the contents of a particular item of documentary evidence, its provenance, source or author, as well as their role in the relevant events, the chain of custody from the time of the item's creation until its submission to the Chamber, and any other relevant information. The indicia of reliability have been assessed on a broad basis and the Chamber has borne in mind that a document, although having sufficient indicia of authenticity, may be unreliable.[536] It should be further recalled that the Majority of the Chamber repeatedly expressed its preference for the admission of items of documentary evidence in their entirety, rather than excerpts.[537] The Chamber also admitted items of documentary evidence whose authenticity was challenged, but which it considered to "have relevance and probative value with respect to the Chamber's analysis of the testimonies" of witnesses "and its overall determination of the truth". In this context, the Chamber stressed that "[i]n its final assessment of the evidence, [it would] consider all submissions and testimonial evidence related to the authenticity of [such evidence]".[538]

### 3. Hearsay evidence

238. The Chamber took a cautious approach in assessing evidence originating from hearsay. It did not rule out such evidence *ab initio*, instead assessing the weight to be accorded to it, taking into account the context and conditions in which such evidence was obtained, and with due consideration of the impossibility of questioning the information source in court.[539] The Chamber further notes the

[535] *Lubanga* Trial Judgment, para. 108; *Katanga* Trial Judgment, para. 89; and *Ngudjolo* Trial Judgment, para. 55.
[536] *Lubanga* Trial Judgment, para. 109.
[537] ICC-01/05-01/08-2793, para. 18; ICC-01/05-01/08-2299, para. 116; ICC-01/05-01/08-2012, para. 90; and ICC-01/05-01/08-1470, para. 11. Judge Ozaki dissented in relation to the Majority's approach. ICC-01/05-01/08-2015, para. 30; and ICC-01/05-01/08-1471.
[538] ICC-01/05-01/08-3019, para. 50.
[539] *Katanga* Trial Judgment, para. 90; and *Ngudjolo* Trial Judgment, para. 56.

Appeals Chamber's finding that "the fact that evidence is hearsay does not necessarily deprive it of probative value, but does indicate that the weight or probative value afforded to it may be less, 'although even this will depend upon the infinitely variable circumstances which surround hearsay evidence'".[540]

### 4. Circumstantial evidence

239. Nothing in the statutory framework prevents the Chamber from relying on circumstantial evidence. When based on the evidence available, there is only one reasonable conclusion to be drawn therein, the Chamber has concluded that particular facts have been established beyond reasonable doubt.[541] Further, in relation to the mental elements of crimes, the Chamber notes that, pursuant to paragraph 3 of the General introduction to the Elements of Crimes, "[e]xistence of intent and knowledge can be inferred from relevant facts and circumstances".

### 5. Identification evidence

240. The Chamber notes that, as discussed below, other chambers of this Court have considered evidence identifying individuals, in particular, alleged perpetrators, but did not set out general principles on how to assess such evidence. In the *Bemba* case, the Defence has raised specific challenges to the identification of the perpetrators, arguing that the Prosecution failed to prove beyond reasonable doubt that the perpetrators of crimes were MLC soldiers subordinated to the Accused.[542] In particular, the Defence challenges the Prosecution's reliance on appearance (uniform),[543] language (Lingala),[544] and control of an area at a

[540] *Ngudjolo* Appeal Judgment, para. 226, *quoting* ICTY, *Aleksovski* Appeal on Admissibility of Evidence, para. 15.
[541] *Lubanga* Trial Judgment, para. 111; *Katanga* Trial Judgment, para. 109; and *Ngudjolo* Trial Judgment, para. 71. *See also* ICC-02/05-01/09-73, para. 33.
[542] Defence Closing Brief, paras 522 to 525, and 550 to 557.
[543] Defence Closing Brief, paras 526, 536, and 558 to 573.
[544] Defence Closing Brief, paras 526, and 574 to 593.

certain time to identify perpetrators as MLC troops.[545] Given the Defence's specific submissions, the Chamber deems it appropriate to state principles on how to assess evidence identifying individuals, in particular, alleged perpetrators.

241. Identification evidence does not need to be of any particular type,[546] but the Chamber must be extremely cautious in assessing it due to "the vagaries of human perception and recollection", in particular, where identification is made in turbulent and traumatising circumstances.[547] Nevertheless, contrary to the Defence's assertion,[548] the Chamber agrees with the jurisprudence of the ICTY that there is "no recognised rule of evidence that traumatic circumstances necessarily render a witness's evidence unreliable".[549]

242. When assessing identification evidence, the Chamber may consider, as relevant and among others, the circumstances in which a witness observed the perpetrator, the length of the observation, distance between the perpetrator and the witness, obstruction of the observation, interactions between the witness and the perpetrators or their group, and the manner in which the witness describes the perpetrators, for example, whether there are inconsistencies, misidentification followed by later identification, or delayed assertion of memory coupled with the clear possibility that the witness had been influenced by the suggestion of others.[550]

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[545] Defence Closing Brief, paras 526, 544 to 549, and 572. *See also* Defence Closing Brief, paras 299 to 374, and 453 to 520.
[546] ICTR, *Kamuhanda* Appeal Judgment, para. 298; and ICTY, *Lukić and Lukić* Appeal Judgment, para. 140.
[547] ICTY, *Kunarac et al.* Trial Judgment, para. 561; and ICTY, *Kupreškić et al.* Appeal Judgment, paras 34, 39, and 134 to 135. *See also* ICTY *Lukić and Lukić* Appeal Judgment, para. 136; ICTY, *Haradinaj et al.* Appeal Judgment, para. 155; ICTY, *Limaj et al.* Appeal Judgment, para. 30; ICTR, *Kamuhanda* Appeal Judgment, paras 234 and 257; ICTR, *Kajelijeli* Appeal Judgment, para. 61; ICTY, *Kordić and Čerkez* Appeal Judgment, para. 274; ICTY, *Mucić et al.* Sentencing Appeal Judgment, paras 58 to 60; and ICTY, *Kunarac et al.* Appeal Judgment, para. 324.
[548] Defence Closing Brief, paras 530 to 537.
[549] ICTY, *Kunarac et al.* Appeal Judgment, para. 324. *See also* ICTY, *Lukić and Lukić* Appeal Judgment, paras 136 and 142 to 143; and ICTY, *Kupreškić et al.* Appeal Judgment, para. 135. *See also* Section IV(C)(1).
[550] *See* *Lubanga* Appeal Judgment, paras 235 to 236, 241, 345 to 351, and 356 to 360; *Ngudjolo* Appeal Judgment, paras 111 to 117, 204, and 226; ICTY, *Lukić and Lukić* Appeal Judgment, paras 119, and 133 to 143; ICTY, *Haradinaj et al.* Appeal Judgment, para. 156; ICTY, *Limaj et al.* Appeal Judgment, para. 30; ICTY,

243. Chambers of the Court have considered various criteria in identifying accused persons and their subordinates, including the position and role of the accused at the time of the charges,[551] the presence in and control of an area by the perpetrators and commanders,[552] the direction from which a perpetrator came,[553] composition of the troops,[554] a perpetrator's uniform—including insignia, footwear, headwear, arms, and clothing,[555] his or her language,[556] and the perpetrator's specific behaviour.[557] In addition, chambers at the *ad hoc* tribunals have considered other factors, including the timing and location of an identification,[558] self-identification by the perpetrator,[559] indications of rank,[560] and a perpetrator's vehicle,[561] origins,[562] and level of discipline.[563]

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*Kupreškić et al.* Appeal Judgment, para. 40; ICTY, *Popović et al.* Trial Judgment, para. 55; SCSL, *Sesay et al.* Trial Judgment, paras 492 and 494; ICTY, *Haradinaj et al.* Trial Judgment, para. 29; ICTY, *Limaj et al.* Trial Judgment, para. 17; ICTY, *Kordić and Čerkez* Trial Judgment, paras 721, 724, and 725; and ICTY, *Krstić* Trial Judgment, para. 153.

[551] *See* *Ngudjolo* Appeal Judgment, para. 88; and *Katanga* Trial Judgment, paras 1334, 1342, 1347, 1350, 1353, and 1358 to 1365. *See also* ICTY, *Delalić et al.* Trial Judgment, paras 718 to 721, 774 to 775, and 800 to 810; and ICTY, *Krstić* Trial Judgment, paras 419 to 423.

[552] *See* *Katanga* Trial Judgment, paras 734, 736, 745 to 748, 755, and 1350; and *Ngudjolo* Trial Judgment, paras 323 and 337. *See also* SCSL, *Taylor* Trial Judgment, para. 1272; SCSL, *Sesay et al.* Trial Judgment, para. 1514; and SCSL, *Brima et al.* Trial Judgment, para. 937.

[553] *See* *Katanga* Trial Judgment, paras 733 and 735; and *Ngudjolo* Trial Judgment, paras 326 and 327. *See also* ICTR, *Nyiramasuhuko et al.* Trial Judgment, para. 1323.

[554] *See* *Katanga* Trial Judgment, paras 618, 748, 755, 842 to 848, and 933 to 939.

[555] *See* *Katanga* Trial Judgment, paras 732, 740, and 744; and *Lubanga* Trial Judgment, paras 779, 803, 829 to 830, 861 to 862, 1239, 1242, 1250 to 1253, and 1257. *See also* ICTY, *Šainović et al.* Appeal Judgment, paras 488 and 491; ICTY, *Lukić and Lukić* Appeal Judgment, para. 247; ICTR, *Ndindiliyimana et al.* Trial Judgment, paras 276, 319, 684, 1051, 1055, 1072, 1094, 1099, 1103 to 1104, 1116, 1133 to 1135, 1145 to 1146, 1153, 1206, 1226, 1318, 1442, 1487, and 1576; ICTY, *Haradinaj et al.* Appeal Judgment, para. 347; and ICTY, *Boškoski and Tarčulovski* Trial Judgment, paras 46, 48, 58 to 59, 61, 66, 546, and 553.

[556] *See* *Katanga* Trial Judgment, paras 215, 693 to 694, 735, 844 to 845, and 847; and *Ngudjolo* Trial Judgment, para. 328. *See also* SCSL, *Taylor* Trial Judgment, paras 733, 735, 1271 to 1272, 1703, and 1710; ICTY, *Boškoski and Tarčulovski* Trial Judgment, paras 46 and 546; and SCSL, *Brima et al.* Trial Judgment, para. 978.

[557] *See* *Katanga* Trial Judgment, para. 732; and ECCC, *Nuon and Khieu* Trial Judgment, paras 464 and 472, and footnotes 1371 and 1397.

[558] *See* SCSL, *Taylor* Trial Judgment, paras 1271 to 1272; SCSL, *Sesay et al.* Trial Judgment, paras 1512 to 1514; ICTY, *Boškoski and Tarčulovski* Trial Judgment, paras 48, 49, and 60; and SCSL, *Brima et al.* Trial Judgment, paras 547, and 933 to 938.

[559] *See* ICTY, *Šainović et al.* Appeal Judgment, paras 488 and 491; and SCSL, *Fofana and Kondewa* Appeal Judgment, para. 214.

[560] *See* ICTY, *Haradinaj et al.* Trial Judgment, para. 173, discussing how the witness believed the person was a commander because the soldiers greeted him with their right fists raised to their foreheads.

[561] *See* ICTY, *Đorđević* Appeal Judgment, footnote 2671; ICTR, *Nyiramasuhuko et al.* Trial Judgment, paras 410 and 1295; and ICTY, *Boškoski and Tarčulovski* Trial Judgment, paras 47 and 59.

[562] *See* SCSL, *Fofana and Kondewa* Appeal Judgment, para. 214.

[563] *See* ICTR, *Munyakazi* Trial Judgment, para. 185; and ICTY, *Krstić* Trial Judgment, para. 155.

244. In case a single identifying factor or piece of evidence is not sufficient to satisfy the Chamber beyond reasonable doubt as to the identification of an individual, the Chamber may still be satisfied based on the cumulative effect of the relevant evidence as a whole.[564]

### 6. Corroboration

245. Rule 63(4) prohibits the Chamber from "impos[ing] a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence". The extent to which a piece of evidence, standing alone, is sufficient to prove a fact at issue is entirely dependent on the issue in question and the strength of the evidence. The Appeals Chamber found that "[d]epending on the circumstances, a single piece of evidence […] may suffice to establish a specific fact. However, […] this does not mean that *any* piece of evidence provides a sufficient evidentiary basis for a factual finding".[565] The Chamber agrees with this approach.

246. Accordingly, there may be situations where the Chamber considers that a single piece of evidence is sufficient to prove a fact beyond reasonable doubt. In other situations, the Chamber may consider the applicable standard to be reached on the basis of a sum of several pieces of evidence. The Chamber's findings in this regard depend on the circumstances of the facts to be proven and the evidence presented. The Chamber has adopted a case-by-case approach.

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[564] ICTY, *Limaj et al.* Appeal Judgment, paras 153 to 154 and 285. *See also* SCSL, *Taylor* Trial Judgment, para. 735, "[b]ased on the evidence of the manner of dress and languages spoken by the rebels, the Trial Chamber finds that the perpetrators were a mixed group of AFRC/RUF rebels", and paras 1271 to 1272, finding the identity of the perpetrators on the basis of the language spoken by the perpetrators, the fact that they were armed, and the identity of the forces invading Freetown at that time; ICTY, *Popović et al.* Trial Judgment, para. 54; SCSL, *Brima et al.* Trial Judgment, para. 976, "[t]he Trial Chamber is satisfied on the basis of the witness's description of the perpetrators as 'rebels', wearing combat trousers or shorts and t-shirts, carrying guns and a cutlass and speaking Liberian English that they were members of either the AFRC or the RUF"; and ICTY, *Limaj et al.* Trial Judgment, para. 20.

[565] *Lubanga* Appeal Judgment, para. 218 (emphasis in original). *See also* *Ngudjolo* Appeal Judgment, para. 148, clarifying in a later Appeal Judgment that "while corroboration is 'an element that a reasonable trier of fact may consider in assessing the evidence', the question of whether or not to consider it forms part of the Trial Chamber's discretion", *quoting* ICTY, *Mrkšić and Šljivančanin* Appeal Judgment, para. 264; and Confirmation Decision, para. 53, finding that, with regards to Rule 63(4), "more than one piece of indirect evidence having low probative value is required to prove an allegation made".

## D. PROTECTIVE MEASURES

247. The Chamber ordered measures to protect the identities of many of the witnesses who testified in this case, due to concerns for their safety or that of their families.[566] For the same reasons, most witnesses are referred to in this Judgment by their code, rather than by name, and certain details that may reveal their identities have been omitted. It is to be emphasised that whenever the Chamber ordered protective measures for witnesses, the parties and Legal Representatives were aware of the relevant identifying information.[567]

248. To ensure the effectiveness of the protective measures ordered by the Chamber, testimony was occasionally heard in "private" or "closed" session, where the public was unable to follow. Pursuant to Articles 64(7) and 67(1), the Chamber has ordered the parties and Legal Representatives to undertake a comprehensive review of the transcripts of these sessions and has ordered the reclassification as public of any portions that do not contain information which may create a security risk.[568]

249. In addition to the in-court protective measures discussed above, the Chamber ordered redactions to certain documents, either at the request of the parties and/or the Legal Representatives or *proprio motu* by the Chamber, in order to protect various categories of sensitive information. These redactions were reviewed by the Chamber and some were lifted during the course of the trial or after closing submissions.

250. Finally, the Chamber notes that it has publicly referred to previously confidential information in this Judgment, whenever it considers that the basis

[566] All expert witnesses, six non-expert witnesses called by the Prosecution, two witnesses called by the Legal Representative, and one non-expert witness called by the Defence testified without protective measures.
[567] *Lubanga* Trial Judgment, para. 115; *Katanga* Trial Judgment, para. 97; and *Ngudjolo* Trial Judgment, para. 63.
[568] *See* ICC-01/05-01/08-3038; ICC-01/05-01/08-2223; and ICC-01/05-01/08-2153. *See also* *Lubanga* Trial Judgment, para. 116; *Katanga* Trial Judgment, para. 98; and *Ngudjolo* Trial Judgment, para. 64.

for the confidential classification of the information no longer exists.[569] The Chamber clarifies that limited re-classification of information for the purposes of this Judgment does not affect the classification of any material on the case record.

## E. SPECIFIC EVIDENTIARY ISSUES

251. In this section, the Chamber addresses certain items and categories of evidence, including and in addition to those challenged in the parties' and Legal Representative's closing submissions.

### 1. Approach to case ICC-01/05-01/13 and the 14 witnesses

252. During the course of the trial, the Prosecution initiated proceedings related to alleged offences under Article 70 against Mr Bemba, his former Lead Counsel, his former Case Manager, a witness initially called to testify in the *Bemba* case,[570] and a member of Mr Bemba's political party.[571] On 2 April 2014, the Chamber rejected the Prosecution request seeking the admission of material emanating from proceedings in case ICC-01/05-01/13.[572] The Chamber noted that it "retains its discretion under Article 69(3) of the Statute to, at any stage, request submission of additional relevant evidence, including [the evidence] relating to the ongoing proceedings in case ICC-01/05-01/13, where it considers it appropriate and necessary for the determination of the truth".[573]

253. On 11 November 2014, Pre-Trial Chamber II issued its Confirmation Decision in case ICC-01/05-01/13,[574] in which it partially confirmed the charges and committed the suspects to trial on charges for offences against the

[569] *See* Regulations of the Court, Regulation 23*bis*(3).
[570] *See* ICC-01/05-01/08-2329, para. 4, noting that, although called to testify by the Defence, this individual failed to appear before the Chamber.
[571] *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, ICC-01/05-01/13 ("case ICC-01/05-01/13").
[572] ICC-01/05-01/08-3029, para. 34.
[573] ICC-01/05-01/08-3029, para. 33.
[574] ICC-01/05-01/13-749.

administration of justice.[575] Pre-Trial Chamber II found that there was sufficient evidence to establish substantial grounds to believe[576] that the following crimes had been committed: (i) committing, soliciting, aiding, abetting, or otherwise assisting in the commission of the offence of corruptly influencing witnesses D2, D3, D4, D6, D13, D15, D23, D25, D26, D29, D54, D55, D57, and D64 ("14 witnesses") in the *Bemba* case; (ii) committing, soliciting, aiding, abetting, or otherwise assisting in the commission of the offence of presenting false evidence with regard to the 14 witnesses in the *Bemba* case; and (iii) soliciting, inducing, aiding, abetting, or otherwise assisting in the commission by the 14 witnesses in the *Bemba* case of the offence of giving false testimony when under an obligation pursuant to Article 69(1) to tell the truth.[577]

254. Further, with regard to the 14 witnesses, Pre-Trial Chamber II found that:[578]

> [T]here is evidence that the [14 witnesses] falsely testified before TCIII in respect of the following issues: (i) their previous contacts with the Defence; (ii) their meetings with other prospective witnesses; (iii) their acquaintance with some of the Suspects, or other persons associated with them; (iv) the fact that promises had been made to them in exchange for their testimony; (v) the fact that they had received reimbursements or transfers by Mr Bemba or on his behalf, regardless of their purpose; and (vi) other substantive issues related to the charges against Mr Bemba in the Main Case, such as the witnesses' membership of certain groups or entities, the structure of these groups or entities, their movements on the ground, and names of officials.

255. In its Closing Brief – filed almost three months before the issuance of the Confirmation Decision in case ICC-01/05-01/13 – the Defence recalls that five individuals face charges for offences against the administration of justice.[579] The Defence further recalls that, in Decision 3029, the Chamber determined that "no

[575] ICC-01/05-01/13-749, pages 47 to 55.
[576] ICC-01/05-01/13-749, para. 25.
[577] ICC-01/05-01/13-749, pages 47 to 54.
[578] ICC-01/05-01/13-749, para. 64 (internal citations omitted).
[579] Defence Closing Brief, paras 11 to 12.

material from those proceedings would be admitted in [the *Bemba*] case at this stage".[580]

256. Although stating that it "does not condescend into the facts of those allegations, such as it knows them to be",[581] the Defence submits that:[582]

> (…) the mere existence of those indeterminate proceedings presents the Accused with a conundrum in making his final submissions. Whilst not making any concession that any Defence witness gave anything less than truthful evidence, he cannot ignore the fact that the outcome of the Article 70 case will impact upon this case one way or another at some future date. The impact, moreover, may not depend upon the outcome in his own individual case.
>
> With that in mind, and being on notice of some specifics of the Prosecution's allegations in that case, the Defence in drafting this Brief have relied on the following Defence witnesses: D-53, D-60, D-65, D-9, D-59, D-48, D-7, D-49, D-45, D-16, D-50, D-51, D-66, D-21, D-39, D-36, D-56, D-19, D-18 and D-30. The Defence will rely on other witnesses who do not appear on the above list where the same is relied upon by the Prosecution.
>
> The basis upon which the above list has been compiled should be obvious and Counsel for the Defence does not regard it to be within the range of their ethical responsibilities to make subjective value judgments above and beyond that. After all, if the fact that a witness had received money were, for example, the yardstick then Counsel for the Prosecution would be ethically bound to abandon its whole case.
>
> All the same this approach is designed to protect the integrity of these proceedings and Mr. Bemba's position on appeal. Should the Trial Chamber find certain facts in the Article 70 case, the Defence reserves its right to seek to make further submissions before this Chamber or the Appeals Chamber.

257. In its Response Brief, the Prosecution notes that "[b]ased on the 'notice of some specifics' of the related Article 70 case, the Defence had no other choice but to exclude 14 of its witnesses in its Closing Brief".[583]

258. Later, in its "Defence Request for Relief for Abuse of Process",[584] the Defence submitted that, because the Prosecution had "contaminated the Trial Chamber's

[580] Defence Closing Brief, para. 12.
[581] Defence Closing Brief, para. 12.
[582] Defence Closing Brief, paras 13 to 16.
[583] Prosecution Response Brief, para. 119.
[584] ICC-01/05-01/08-3217.

appreciation of such testimony", the Defence was "compelled to abandon its reliance on a raft of exculpatory testimony".[585] For present purposes, the Chamber recalls its findings in its Decision 3255[586] that the Defence's allegation that it was "compelled" to abandon reliance on its witnesses is contradicted and undermined by the Defence's own submissions in its Closing Brief[587] and was unfounded.[588] The Chamber also confirmed that "any information, allegations, or submissions made before it not based upon evidence admitted in the *Bemba* case will not be taken into consideration in the Chamber's determination pursuant to Article 74(2)".[589]

**a) Approach to case ICC-01/05-01/13**

259. As stated in its Decision 3029, the Chamber did not consider it appropriate – at that time – for matters related to case ICC-01/05-01/13 to be litigated in parallel before the Chamber and a Pre-Trial Chamber, and found that it was premature to consider whether evidence arising out of case ICC-01/05-01/13 was necessary for the determination of the truth in the *Bemba* case, "before any findings are made in relation to such matters, by the competent Pre-Trial Chamber, particularly in accordance with the threshold set out in Article 61(7)".[590]

260. While noting that Pre-Trial Chamber II confirmed charges against the accused in case ICC-01/05-01/13, and trial proceedings are ongoing before Trial Chamber VII, the Chamber does not consider it necessary to review its position set out in Decision 3029, and finds that material arising from the proceedings in case ICC-01/05-01/13 is not necessary for the determination of the truth in the *Bemba* case.

[585] ICC-01/05-01/08-3217, para. 94.
[586] ICC-01/05-01/08-3255.
[587] Defence Closing Brief, paras 13 to 16.
[588] ICC-01/05-01/08-3255, paras 88 to 89.
[589] ICC-01/05-01/08-3255, para. 105.
[590] ICC-01/05-01/08-3029, para. 31.

### b) Approach to the testimony of the 14 witnesses

261. At the outset, the Chamber notes that it heard the testimony of the 14 witnesses in court and that their testimony thus forms a part of the evidentiary record of the case.

262. The Chamber notes that the Defence, as the calling party, while not seeking to withdraw the testimony of the 14 witnesses, has declined to rely upon their evidence in its Closing Brief.[591] The Defence submits that this approach, i.e. non reliance on the testimony of the 14 witnesses, was taken to "protect the integrity of the proceedings and Mr Bemba's position on appeal".[592] Although the Prosecution relies on three of the 14 witnesses in its Closing Brief,[593] it appears to be in agreement with the Defence, submitting that "the Defence had no other choice but to exclude [these witnesses] in its Closing Brief".[594] While noting the Defence's submission that it makes no concessions regarding the truthfulness of the evidence provided by the 14 witnesses, the Chamber understands the approach adopted by the parties as reflecting their awareness that there are serious unresolved issues in relation to the 14 witnesses' testimony.

263. Although there is no formal agreement between the parties in this regard, the Chamber takes note of their position. However, the Chamber is not bound by the parties' non-reliance on any witness.[595] The Chamber has full discretion to analyse, consider, and evaluate the weight of any evidence in the record in its determination of the truth and bases its decision pursuant to Article 74(2) on its evaluation of the evidence and the entire proceedings.[596] In this determination,

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[591] Defence Closing Brief, para. 14, submitting that the Defence will rely on the 14 witnesses "where the same is relied upon by the Prosecution". *See also* Defence Closing Brief, para. 244, footnote 531, referencing D57 in its Closing Brief, once.
[592] Defence Closing Brief, para. 16.
[593] *See* Prosecution Closing Brief, footnotes 5, 25, 29, 45, 50, 54, 398, 401, 409, and 460, *referring to* D6, D13, and D26.
[594] Prosecution Response Brief, para. 119.
[595] ICC-01/04-01/07-2731, para. 13. *See also* ICC-01/04-01/07-2731, paras 14 to 16, noting that the Defence could still rely on the witness for exculpatory purposes, but that the witness's avowed lack of credibility would affect all of the witness's factual assertions. *See* similarly ICC-01/04-01/06-803, paras 141 to 142.
[596] *See* Section IV(C).

the Chamber, guided by its duty to ensure the fairness of the trial and full respect for the rights of the Accused, has assessed and carefully weighed all the evidence before it.

**2. Procès-verbaux**

264. The Chamber admitted into evidence a number of *procès-verbaux* from the Bangui Court of Appeal, including the following:

a. a file of 203 *procès-verbaux d'audition de victime*, containing records of the questioning of victims of crimes allegedly committed by MLC troops, as authenticated before the Chamber by Mr Pamphile Oradimo (P9), who conducted the questioning in his capacity as the CAR investigative judge investigating crimes allegedly committed in the course of the 2002-2003 CAR Operation;[597]

b. three *procès-verbaux d'interrogatoire*, used during the questioning of Mr Firmin Findiro (P6), the CAR public prosecutor who investigated crimes allegedly committed during the 2002-2003 CAR Operation, and P9;

c. four *procès-verbaux d'audition de témoin*; and

d. two *procès-verbaux de constat*.[598]

265. The Defence submits that the *procès-verbaux* should be afforded "very little evidential weight", given that they do not meet the criteria of Rule 68, were not taken under oath, and not accompanied by a confirmation that they were transcribed properly and accurately.[599]

266. When admitting the *procès-verbaux*, the Chamber considered that they would "assist the Chamber in its assessment of whether the crimes allegedly perpetrated by the MLC troops were committed as part of a widespread or

[597] *See* Section V, para. 380, defining the term "2002-2003 CAR Operation".
[598] ICC-01/05-01/08-2012, paras 58 to 82.
[599] Defence Closing Brief, paras 55 to 60.

systematic attack directed against a civilian population, pursuant to or in furtherance of a State or organizational policy."[600] When assessing their potential prejudice, the Chamber noted the Prosecution's submission that they were "relevant to prove, *inter alia*, that crimes committed by the MLC were widespread".[601] The Chamber was therefore "satisfied that the potential prejudice to the accused will be minimal if the *procès-verbaux* are admitted for this limited purpose",[602] stressing that "the *procès-verbaux* are being offered to prove the contextual elements of the crimes charged and not the accused's individual criminal responsibility."[603] In addition, the Chamber held that "if the Chamber finally concludes that the *procès-verbaux* are hearsay evidence the Chamber will ascribe less probative value to the *procès-verbaux* than testimony or other evidence that is testable in court".[604] In line with this approach, the Chamber has relied on the *procès-verbaux* to the extent that they corroborate other evidence related to the contextual elements of the crimes charged.

267. Among the 203 *procès-verbaux* submitted by the Prosecution, one *procès-verbal* was also submitted by the Defence and the Chamber considered it to be "relevant to the Chamber's assessment of the testimony of prosecution witnesses".[605] The weight to be accorded to that document is addressed in the context of the assessment of P79's testimony.[606]

### 3. The Bomengo case file

268. The Chamber admitted the transmission of a dossier, dated 27 November 2002, to Mr Bemba, which concerns pillaging during the first days of the 2002-2003

[600] ICC-01/05-01/08-2012, para. 64.
[601] ICC-01/05-01/08-2012, para. 69.
[602] ICC-01/05-01/08-2012, para. 69.
[603] ICC-01/05-01/08-2012, para. 69.
[604] ICC-01/05-01/08-2012, para. 69.
[605] ICC-01/05-01/08-2012, para. 70. The relevant document is **EVD-T-OTP-00248/CAR-OTP-0001-0539**, discussed during the testimony of P9 and P79.
[606] *See* Section V(C)(4)(f).

CAR Operation ("Bomengo case file").[607] Noting Defence submissions concerning the limited use and weight of the Bomengo case file,[608] the Chamber recalls that, when it admitted this document, it found it to be relevant to "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".[609] In line with this finding, the Chamber has considered the Bomengo case file primarily in analysing Mr Bemba's knowledge and the measures taken to punish crimes allegedly committed by MLC troops.[610] When relevant to other issues in this case, the Chamber only relied upon the information contained in the Bomengo case file to the extent it corroborates other evidence.

### 4. Press and NGO reports

269. The Majority of the Chamber first set out its approach in relation to the admissibility of press reports in Decision 2299,[611] and confirmed this approach in its subsequent decisions on the admissibility of evidence.[612] Specifically, the Majority held that press reports "may be admitted for limited purposes to be determined on a case-by-case basis", such as to "corroborate other pieces of evidence" or to assess 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.[613]

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[607] ICC-01/05-01/08-2299, paras 58 to 62.
[608] Defence Closing Brief, paras 64 to 67.
[609] ICC-01/05-01/08-2299, para. 59 (emphasis added).
[610] *See* Sections V(D)(2), VI(F)(3), and VI(F)(4).
[611] ICC-01/05-01/08-2299, paras 85 to 128.
[612] *See* ICC-01/05-01/08-2864-Conf, paras 61 to 106; and ICC-01/05-01/08-2721, para. 23.
[613] ICC-01/05-01/08-2299, paras 95, 101, 104, 107, 110, 124, 126, and 128. Judge Ozaki did not object to the admission of press reports for the purpose of the Chamber's determination of whether crimes committed by MLC troops in the CAR in 2002 and 2003 were widely reported, which may be of relevance to the Accused's knowledge of the alleged crimes. However, she dissented on the Chamber's reasoning that press records are admissible because they may serve to "corroborate other pieces of evidence". In this regard, she did not "consider the possibility of corroboration sufficient to justify their admission, particularly when balanced against the very real potential for prejudice if these media reports are admitted for the truth of their contents". ICC-01/05-01/08-2300, paras 7 to 10.

270. Concerning official NGO reports, the Majority found that they can be considered (i) "*prima facie* reliable, provided that they offer sufficient guarantees of impartiality"; and (ii) admissible "for the limited purpose that the information contained therein may serve to corroborate other pieces of evidence".[614]

271. Noting the Defence submissions on the limited use and weight that should be accorded to press and NGO reports,[615] the Chamber has cautiously considered the information contained in press and NGO reports in light of the principles articulated in its decisions admitting these items, as set out above.

### 5. Victims' application forms

272. The Majority of the Chamber previously found that (i) "victims' application forms may, in certain circumstances, be relevant to the questioning of dual status individuals";[616] (ii) in view of their administrative nature, the way and process of creation, and their limited purpose, "the probative value of the application forms is limited";[617] (iii) application forms do not constitute "testimony";[618] (iv) "admitting application forms as evidence may be perceived by victim applicants as an unfair use of documentation that was provided to the Court for a discrete purpose"; and (v) "rejecting the admission of the victims' application forms will not prejudice the defence because its questioning on potential inconsistencies is already reflected in the transcripts."[619] In accordance

[614] ICC-01/05-01/08-2299, paras 35 to 36. Judge Ozaki dissented on the admission of NGO reports considering that "[d]ue to the lack of guarantees concerning the reliability of [their] sources and without hearing the testimony of [their] authors […] their probative value is low", while the potential for prejudice to the Defence is high. ICC-01/05-01/08-2300, para. 12.
[615] Defence Closing Brief, paras 29 to 54. *See also* Defence Closing Brief, paras 33, 51, 450 to 452, 477, 861 to 862, 867, 979 to 980, and 1040 to 1041.
[616] ICC-01/05-01/08-2012, para. 99.
[617] ICC-01/05-01/08-2012, para. 100.
[618] ICC-01/05-01/08-2012, para. 101.
[619] ICC-01/05-01/08-2012, para. 102. Judge Ozaki, in her partly dissenting opinion, explained that she would have admitted the application forms submitted by the Defence "for the purpose for which admission was sought, namely to test the credibility of the related witnesses". For that purpose, she found that "[i]n properly applying the three-stage test to the application forms, it appears that the forms are relevant, as they all refer to the events charged and relate to the credibility of witnesses"; "[t]he victims' application forms also bear minimum probative value warranting their use in testing the credibility of witnesses"; and "the victims' application forms

with this ruling, and noting the Defence submissions urging non-reliance on them,[620] the victims' application forms themselves are not part of the evidence of this case and, in line with Article 74(2), have not been relied upon as evidence in the present Judgment.

### 6. Allegedly fraudulent and other documents

273. In this section, the Chamber addresses the authenticity of the following documents contested in the parties' and Legal Representative's closing submissions: (i) seven documents allegedly signed by General Antoine Gambi; (ii) three documents allegedly signed by, or on behalf of, General Maurice Regonessa; (iii) one document allegedly signed by President Patassé; (iv) one document allegedly signed by Mr Jean-Jacques Demafouth; and (v) one document allegedly signed by General François Bozizé (''Contested Items'').[621] In addition, although not specifically contested in the closing submissions, the Chamber addresses the document entitled "*Rapport des Opérations Militaires menées par les Troupes de l'ALC (MLC) du 29 Oct 2002 au 15 Mars 2003 à BANGUI/RCA*", dated 4 May 2003, which was purportedly sent from MLC Commander Colonel Moustapha Mukiza Gabby ("Colonel Moustapha") to Mr Bemba ("Operations Report").[622]

274. In Decision 3019,[623] the Chamber noted that, although on their face the Contested Items bore some indicia of authenticity and appeared to have been produced in the ordinary course of operations within the CAR Presidency and Defence Ministry, the Prosecution and the Legal Representative challenged their authenticity and CHM1 stated that each document was a "fabrication" or a

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do not cause any prejudice to the fairness of the proceedings or the fair evaluation of the testimonies". ICC-01/05-01/08-2015, paras 7 to 23.

[620] Defence Closing Brief, paras 228 to 234.

[621] *See* Prosecution Response Brief, para. 31; and Defence Reply Brief, paras 90 to 93. *See also* Prosecution Response Brief, para. 40.

[622] **EVD-T-OTP-00394/CAR-DEF-0002-0567**.

[623] ICC-01/05-01/08-3019.

"forgery".[624] The Chamber therefore admitted the documents with the following caveat:[625]

> In view of their use during proceedings and the reliance placed on them by Witnesses D04-53 and D04-59, the Chamber is of the view that the Contested Documents have relevance and probative value with respect to the Chamber's analysis of the testimonies of Witnesses D04-53, D04-59, and CHM-01, and its overall determination of the truth with respect to the chain of command and control of the MLC troops in the CAR during the relevant time period. In its final assessment of the evidence [i.e. the Judgment], the Chamber will consider all submissions and testimonial evidence related to the authenticity of the Contested Documents (…).

275. The Chamber notes that the Defence military expert, D53, clearly stated that he "did not assess the validity of the documents that were provided to [him], because they were official documents".[626] D53 however conceded that, hypothetically, if he had been given false documents, he would have followed a false line of reasoning.[627] He clarified that the documents were all provided to him by the Defence, together with an explanation about the case and the events that occurred in the CAR between October 2002 and March 2003.[628] Similarly, D59, expert on CAR conflicts, did not question the authenticity of the document he discussed during his testimony;[629] he described the document as "not in dispute".[630] Accordingly, given the witnesses' inability to authenticate the documents, the Chamber finds that the testimonies of D53 and D59 are of no assistance for the purposes of determining the authenticity of the Contested Items and the weight to be attached to them, if any.

276. Conversely, during his testimony CHM1 was questioned at length on the Contested Items and expressed his view on the authenticity of each of them. Given his position at the time of the relevant events, CHM1 was well placed to

[624] ICC-01/05-01/08-3019, para. 49.
[625] ICC-01/05-01/08-3019, para. 50.
[626] **D53**: T-232, page 4, lines 4 to 5.
[627] **D53**: T-232, page 4, lines 9 to 12.
[628] **D53**: T-232, page 11, line 18 to page 13, line 8.
[629] The witness was only presented with item **EVD-T-D04-00066/CAR-D04-0003-0137**. *See* **D59**: T-239, page 52, lines 3 to 8.
[630] **D59**: T-239, page 52, line 4 to page 53, line 10.

authenticate the Contested Items.[631] Having considered his testimony, as well as his demeanour while testifying, the Chamber finds that CHM1 gave consistent, credible, and reliable evidence about the Contested Items.

**a) Documents allegedly signed by General Gambi**

277. The Contested Items include the following seven documents allegedly signed by the "*Général de Brigade* Antoine Gambi":

a. item EVD-T-D04-00069, a *message-porté*,[632] dated 8 November 2002, from the CAR *Chef d'Etat-Major* addressed to the *Commandant du Génie Militaire,* containing an urgent order to take all measures to ensure that sanitary facilities, electricity, sleeping facilities, storage, weapons, and ammunition are ready at the Bégoua school for the MLC battalion;[633]

b. item EVD-T-D04-00065, a *message-porté*,[634] dated 20 November 2002, from the CAR *Chef d'Etat-Major* addressed to all unit commanders, containing an urgent and confidential message informing all unit commanders that the MLC has been deployed with the *Forces armées centrafricaines* ("FACA") troops in counter-offensive operations in the centre and north of the country under the command and control of the *Chef d'Etat-Major*;[635]

c. item EVD-T-D04-00066, a letter[636] from the CAR *Chef d'Etat-Major des Armées* to the Commander of the MLC, dated 25 November 2002, containing a request to place the MLC's battalion at the disposal of the *Etat-Major des Armées Centrafricaines* for counter-offensive operations in the centre and north of the CAR;[637]

[631] **CHM1**: T-353-Conf, page 16, line 6 to page 20, line 10.
[632] **EVD-T-D04-00069/CAR-D04-0003-0140**.
[633] ICC-01/05-01/08-3019, para. 46(m).
[634] **EVD-T-D04-00065/CAR-D04-0003-0136**.
[635] ICC-01/05-01/08-3019, para. 46(i).
[636] **EVD-T-D04-00066/CAR-D04-0003-0137**.
[637] ICC-01/05-01/08-3019, para. 46(j).

d. item EVD-T-D04-00061, a *message-porté*,[638] dated 7 January 2003, from the CAR *Chef d'Etat-Major* addressed to the *Commandant du Deuxième Bureau,* containing an order to put at the disposal of the commander of the military security service of the *Ministère de la Défense Nationale* the troops of the 2nd Bureau;[639]

e. item EVD-T-D04-00063, a *message-porté*,[640] dated 7 January 2003, from the CAR *Chef d'Etat-Major* addressed to the *Commandant du Quatrième Bureau,* containing an urgent order to provide the MLC with logistical resources, six vehicles for the transportation of troops, ten jeeps, and fuel;[641]

f. item EVD-T-D04-00062, a *message-porté*,[642] dated 17 January 2003, from the CAR *Chef d'Etat-Major* addressed to the "CDT CCO", containing an urgent order assigning two MLC officers nominated by their commander to the team;[643] and

g. item EVD-T-D04-00060, a *message-porté*,[644] dated 20 January 2003, from the CAR *Chef d'Etat-Major,* addressed to the *Commandant de la Direction des Transmissions,* regarding changing and attribution of new communication frequencies and granting governmental authorisation for future operational cohesion between FACA, USP, and other allied forces (the MLC and the Libyan army).[645]

278. When presented with these documents, CHM1 stated that they were false, falsified, or forged.[646] He identified a series of issues regarding the "form and

[638] **EVD-T-D04-00061/CAR-D04-0003-0131**.
[639] ICC-01/05-01/08-3019, para. 46(e).
[640] **EVD-T-D04-00063/CAR-D04-0003-0133**.
[641] ICC-01/05-01/08-3019, para. 46(g).
[642] **EVD-T-D04-00062/CAR-D04-0003-0132**.
[643] ICC-01/05-01/08-3019, para. 46(f).
[644] **EVD-T-D04-00060/CAR-D04-0003-0130**.
[645] ICC-01/05-01/08-3019, para. 46(d).
[646] **CHM1**: (i) as for **EVD-T-D04-00069/CAR-D04-0003-0140**: T-353, page 40, lines 4 and 23; (ii) as for **EVD-T-D04-00065/CAR-D04-0003-0136**: T-353, page 36, lines 7 and 24 to 25 and page 37, lines 17 to 18; and T-357, page 105, lines 12 to 23; (iii) as for **EVD-T-D04-00066/CAR-D04-0003-0137**: T-353, page 38, lines 8 and

content" of the documents. In particular, as to item EVD-T-D04-00069, CHM1 stated that the stamp and subject of the document were not in line with the practice for this type of documents.[647] He further noted that the commander of military engineering – to whom the document was addressed – was not responsible for lodging or clothing.[648]

279. As to item EVD-T-D04-00065, CHM1 noted that the *Chef d'Etat-Major* would never issue messages to "all the unit commanders" ("*tous les cdts d'unité*"), as appears in the document.[649] As the units are subdivisions of various corps, i.e. regiments or battalions, the *Chef d'Etat-Major* would issue messages to the commanders of those corps and they would convey the messages to the companies or units under their responsibility.[650] CHM1 further noted other issues, including some spelling mistakes;[651] the fact that the priority level is included in written form in the subject and not as a stamp, as was the usual practice; and the inclusion of the stamp and signature of the *Chef de Cabinet*, which is not typical in General Staff correspondence.[652] According to CHM1, all of these issues demonstrate that item EVD-T-D04-00065 was fabricated.[653]

280. As to item EVD-T-D04-00066, CHM1 stated that the mention of "Central African Republic" was missing in the letterhead of this official document, demonstrating that the document is a forgery.[654] He noted that the document appears to be addressed to, among others, *"Général d'Armée, Ministre de la*

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25 and page 39, line 8; T-356, page 45, line 22 to page 46, line 4 and page 47, line 12; and T-357, page 103, lines 24 to 25 and page 104, lines 17 to 22; (iv) as for **EVD-T-D04-00061/CAR-D04-0003-0131**: T-353, page 28, lines 12 to 21; (v) as for **EVD-T-D04-00063/CAR-D04-0003-0133**: T-353, page 34, lines 22 to 23, and page 35, line 2; (vi) as **for EVD-T-D04-00062/CAR-D04-0003-0132**: T-353, page 29, lines 7 to 11; and (vii) as for **EVD-T-D04-00060/CAR-D04-0003-0130**: T-353, page 25, lines 18 to line 19, page 26, lines 2, 4, 18, and 21, and page 27, line 9.

[647] **CHM1**: T-353, page 39, line 25 to page 40, line 18.

[648] **CHM1**: T-353, page 40, lines 18 to 23.

[649] **CHM1**: T-353-Conf, page 36, lines 16 to 17.

[650] **CHM1**: T-353-Conf, page 36, lines 13 to 25 and page 37, lines 11 to 15.

[651] **CHM1**: T-353, page 36, lines 13 to 15.

[652] **CHM1**: T-353-Conf, page 36, lines 13 to 15 and page 37, lines 1 to 6 and 9 to 11; and T-357, page 105, lines 10 to 23.

[653] **CHM1**: T-353-Conf, page 36, lines 13 to 15 and page 37, lines 1 to 6 and 9 to 11; and T-357, page 105, lines 10 to 23.

[654] **CHM1**: T-356, page 45, line 22 to page 46, line 4.

*Défense Nationale"*.[655] However, CHM1 testified that in 2002 the *Ministre de la Défense Nationale* did not have the rank of *"Général d'Armée"*.[656] He pointed out other issues – including the use of a coat of arms, the letterhead, and the addresses – that would demonstrate that the document was fabricated.[657]

281. As to item EVD-T-D04-00061, CHM1 noted that it referred to intelligence, particularly the availability of security agents, a subject that would not have been addressed in a *message-porté*.[658]

282. As to item EVD-T-D04-00063, CHM1 noted that the structure of the document was not that used by the General Staff headquarters.[659] In particular, he stated that the *Chef d'Etat-Major* could "inform" his superior, the *Ministre de la Défense Nationale*, of a decision that he had taken, but would not "inform" the head of the 4th Bureau, who was his subordinate.[660] CHM1 also noted that the document appeared to be dated 17 January 2003, but there was an "unusual" space between the digits 1 and 7.[661] Based additionally on the content of the document, CHM1 insisted that it is a fabrication.[662]

283. Referring to the content of item EVD-T-D04-00062, CHM1 testified that it is a fabrication.[663] Likewise, concerning item EVD-T-D04-00060, CHM1 stated that the content and format of the document showed that it was fabricated.[664]

284. In addition, CHM1 did not recognise the signature in any of the above documents as that of Mr Gambi.[665] He further stressed that Mr Gambi was only

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[655] **CHM1**: T-353, page 39, lines 1 to 4; T-356, page 46, lines 20 to 21; and T-357, page 103, lines 10 to 12.
[656] **CHM1**: T-353, page 39, lines 3 and 4; T-356, page 47, lines 5 to 7; and T-357, page 103, lines 10 to 15.
[657] **CHM1**: T-356, page 45, line 19 to page 46, line 4 and 22 to 25; and T-357, page 103, lines 17 to 25.
[658] **CHM1**: T-353, page 28, lines 16 to 20.
[659] **CHM1**: T-353-Conf, page 34, line 25 to page 35, line 2.
[660] **CHM1**: T-357-Conf, page 56, line 14 to page 57, line 2 and page 57, lines 10 to 13.
[661] **CHM1**: T-357-Conf, page 59, lines 8 to 13.
[662] **CHM1**: T-353, page 35, lines 5 to 21, testifying that, while FACA had "Sovamags", "Samus", and a few utility vehicles, specifically 4-by-4 Toyotas, they had not had jeeps for a long time. *See also* Section V(B)(1).
[663] **CHM1**: T-353, page 29, lines 21 to 24.
[664] **CHM1**: T-353, page 26, line 1 to page 27, line 11.
[665] **CHM1**: (i) as for **EVD-T-D04-00069/CAR-D04-0003-0140**: T-353-Conf, page 39, lines 24 to 25; (ii) as for **EVD-T-D04-00065/CAR-D04-0003-0136**: T-353-Conf, page 37, lines 19 to 23; and T-357-Conf, page 105, lines 8 to 17; (iii) as for **EVD-T-D04-00066/CAR-D04-0003-0137**: T-353-Conf, page 38, lines 12 to 15; T-356-Conf, page 47, lines 12 to 13; and T-357-Conf, page 102, line 23 to page 103, line 2 and page 104, lines 1 to 7

appointed *Chef d'Etat-Major* on 16 January 2003 and did not have the rank of *Brigadier-Général* on the date mentioned in any of the documents discussed above, since Mr Gambi was only promoted to that rank in May 2003.[666] The Chamber notes that, according to official documents submitted by the Legal Representative, and discussed and admitted into evidence at trial, Mr Gambi was "appointed or confirmed" to the role of *Chef d'Etat-Major des Armées* by Presidential Decree No. 03.013, dated 16 January 2003,[667] and was promoted to the rank of *Général de Brigade* by Presidential Decree No. 03.096, dated 31 May 2003.[668]

285. In the present case, for the Chamber's assessment of the weight to be accorded to these documents, it is of particular relevance that a person who was well placed to authenticate the Contested Items, given his occupation at the time of the relevant events, provided testimony before the Chamber impugning the items' authenticity.

286. In light of the above, the Chamber attaches no weight to items EVD-T-D04-00069, EVD-T-D04-00065, EVD-T-D04-00066, EVD-T-D04-00061, EVD-T-D04-00063, EVD-T-D04-00062, and EVD-T-D04-00060.

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and 17 to 21; (iv) as for **EVD-T-D04-00061/CAR-D04-0003-0131**: T-353-Conf, page 28, line 14; (v) as for **EVD-T-D04-00063/CAR-D04-0003-0133**: T-353-Conf, page 34, lines 24 to 25; T-357-Conf, page 56, lines 2 to 4 and 10 to 11 and page 57, line 9; (vi) as for **EVD-T-D04-00062/CAR-D04-0003-0132**: T-353-Conf, page 29, line 9; and (vii) as for **EVD-T-D04-00060/CAR-D04-0003-0130**: T-353-Conf, page 25, lines 19 to 20 and page 26 lines 3 and 20.

[666] **CHM1**: (i) as for **EVD-T-D04-00069/CAR-D04-0003-0140**: T-353-Conf, page 39, lines 21 to 24 and page 40, lines 23 to 25; (ii) as for **EVD-T-D04-00065/CAR-D04-0003-0136**: T-353-Conf, page 36, lines 8 to 13 and page 37, lines 7 to 9; (iii) as for **EVD-T-D04-00066/CAR-D04-0003-0137**: T-353-Conf, page 38, lines 15 to 20 and page 39, line 4; T-356-Conf, page 47, lines 1 to 5 and 13 and 14; and T-357-Conf, page 103, lines 3 to 9; (iv) as for **EVD-T-D04-00061/CAR-D04-0003-0131**: T-353-Conf, page 28, lines 14 and 15; (v) as for **EVD-T-D04-00063/CAR-D04-0003-0133**: T-353-Conf, page 34, lines 23 and 24; and T-357-Conf, page 56, lines 11 and 12 and page 57, line 10; (vi) as **for EVD-T-D04-00062/CAR-D04-0003-0132**: T-353-Conf, page 29, lines 8 and 9; and (vii) as for **EVD-T-D04-00060/CAR-D04-0003-0130**: T-353-Conf, page 25, lines 20 to 25.

[667] **EVD-T-OTP-00856/CAR-OTP-0069-0043_R01**.

[668] **EVD-T-OTP-00857/CAR-OTP-0069-0045_R01**.

### b) Documents allegedly signed by or on behalf of General Regonessa

287. The Contested Items further include the following documents signed by, or on behalf of, "Maurice Regonessa":

a. item EVD-T-D04-00058, an *Autorisation Gouvernementale*,[669] dated 17 January 2003, from the CAR *Ministère de la Défense Nationale*, signed on behalf of General Regonessa (containing a hand-written signature over a hand-written text reading "P.O G' y.s. Yangongo"), with instructions for the implementation of an integrated command between the FACA-USP and the MLC and authorising that the MLC be given weapons, uniforms, and operational radio frequencies;[670]

b. item EVD-T-D04-00067, an *Autorisation Gouvernementale*,[671] dated 19 January 2003, from the CAR *Ministère de la Défense*, allegedly signed by "Général Maurice Regonessa", containing an instruction to General Yangongo and the commander of the *Bataillon Amphibie* to organize, on the CAR side of the river at Port Beach, the crossing of the Oubangui River by a MLC reinforcement battalion;[672] and

c. item EVD-T-D04-00068, an *Autorisation Gouvernementale*,[673] dated 19 January 2003, from the CAR *Ministère de la Défense Nationale*, allegedly signed by "Général Maurice Regonessa", authorising, *inter alia*, a MLC battalion to set up its base at the Bégoua public school at the northern exit of Bangui.[674]

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[669] **EVD-T-D04-00058/CAR-D04-0003-0128/CAR-D04-0003-0135**.
[670] ICC-01/05-01/08-3019, para. 46(b).
[671] **EVD-T-D04-00067/CAR-D04-0003-0138**.
[672] ICC-01/05-01/08-3019, para. 46(k).
[673] **EVD-T-D04-00068/CAR-D04-0003-0139**.
[674] ICC-01/05-01/08-3019, para. 46(l).

288. When presented with these documents, CHM1 stated that they were false, falsified, or forged.[675] As to item EVD-T-D04-00058, he stated that a document of this importance would not have been signed by an officer on behalf of the *Ministre de la Défense Nationale*.[676] Further, CHM1 stated that the signature on the document did not belong to General Yangongo.[677] He also expressed his doubts as to whether General Yangongo was *Ministre Délégué* on 17 January 2003, since he believed that the *Ministre Délégué* at the time was "Colonel Bouba".[678] The Chamber notes that the CAR Presidential Decree No. 03.008, dated 16 January 2003, includes, *inter alia*, the appointment of *Général de Brigade* Maurice Regonessa as *Ministre de la Défense Nationale*,[679] and of Lieutenant-Colonel Jérôme Bouba, as *Ministre Délégué auprès du Ministre de la Défense Nationale, chargé de la Restructuration des Forces Armées*.[680] Regarding the content of the document, CHM1 stated that a decision to establish a joint integrated command was the prerogative of the Head of the State because the *Unité de sécurité présidentielle* ("USP") came under his command and he was "the high authority" that took the decisions.[681] Operational radio frequencies, however, were something that came under the *Ministère de la Défense Nationale*.[682] Accordingly, CHM1 concluded that the fact that the instructions were mixed in the same document demonstrates that the document is a fabrication.[683]

289. As to item EVD-T-D04-00067, CHM1 noted that, at the time of the document's alleged creation, the Ministry was called "*Ministère de la Défense nationale des anciens combattants, des victimes de guerre et de la restructuration de l'armée*" and no

[675] **CHM1**: (i) as for **EVD-T-D04-00058/CAR-D04-0003-0128/CAR-D04-0003-0135**: T-353, page 74, lines 7 to 8, page 75, lines 9 to 12, and page 76, lines 17 to 18 and 22 to 23; and T-354, page 14, lines 21 to 23; (ii) as for **EVD-T-D04-00067/CAR-D04-0003-0138**: T-354, page 16, lines 3, 4, and 18 to 19, page 17, line 14, and page 18, lines 5 to 6 and 20 to 21; and T-357, page 50, lines 13 to 20; and (iii) as for **EVD-T-D04-00068/CAR-D04-0003-0139**: T-354, page 25, lines 7 to 9; and T-357, page 53, line 6.
[676] **CHM1**: T-356, page 42, lines 4 to 5.
[677] **CHM1**: T-353, page 74, lines 14 to 25.
[678] **CHM1**: T-353-Conf-FRA, page 66, lines 11 to 16; and T-353, page 74, lines 4 to 9.
[679] **EVD-T-V20-00005/CAR-V20-0001-0189**, at 0190.
[680] **EVD-T-V20-00005/CAR-V20-0001-0189**, at 0193.
[681] **CHM1**: T-353, page 75, line 24 to page 76, line 5 and page 76, lines 15 to 17.
[682] **CHM1**: T-353, page 76, lines 6 to 11.
[683] **CHM1**: T-353, page 76, lines 12 to 23.

longer "*Ministère de la Défense*", and in the document's letterhead the old name was used.[684] He further noted that the document contains an order to General Yangongo, without indicating in what capacity he was being given orders by the *Ministre de la Défense*.[685] CHM1 testified that, at the time, General Yangongo was not the *Ministre Délégué* in charge of national defence.[686] As for the addressees, CHM1 noted some inconsistencies, including that the letter was addressed to both the "control of armies" and the "inspection of armies" units, in circumstances where, at the time, the "control of armies" unit had been replaced by the "general inspectorate of armies".[687]

290. As to item EVD-T-D04-00068, CHM1 reiterated the same comments on the document's inconsistencies as expressed in relation to item EVD-T-D04-00067.[688] CHM1 further stated that, as this document is an operational order, it would not have been issued by the *Ministre de la Défense*, but by the operational commander in the field.[689] He recalled that the MLC soldiers arrived in the CAR in October 2002, but by January 2003, the front was no longer in PK12; thus, the reinforcements that arrived went directly to the combat zones in the east, centre-north, or centre-west, and did not stay in PK12 where there was no threat.[690] CHM1 further noted inconsistencies as to the persons actually notified of the document.[691]

291. In light of the above, the Chamber attaches no weight to items EVD-T-D04-00058, EVD-T-D04-00067, and EVD-T-D04-00068.

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[684] **CHM1**: T-354, page 16, lines 12 to 17; and T-354-Conf-FRA, page 14, lines 17 to 21.
[685] **CHM1**: T-354, page 16, lines 8 to 11.
[686] **CHM1**: T-354-Conf, page 16, line 8 to page 17, line 8.
[687] **CHM1**: T-354, page 17, line 21 to page 18, line 21.
[688] **CHM1**: T-354, page 21, line 21 to page 22, line 5 and page 25, lines 1 to 6.
[689] **CHM1**: T-354, page 22, line 12 to page 24, line 23.
[690] **CHM1**: T-354, page 22, line 19 to page 24, line 19; and T-357, page 53, lines 9 to 20.
[691] **CHM1**: (i) as for **EVD-T-D04-00058/CAR-D04-0003-0128/CAR-D04-0003-0135**: T-353-Conf, page 75, line 3 to page 76, line 23; (ii) as for **EVD-T-D04-00067/CAR-D04-0003-0138**: T-354-Conf, page 15, lines 22 to 24 and page 19, line 6 to page 20, line 19; and (iii) as for **EVD-T-D04-00068/CAR-D04-0003-0139**: T-354-Conf, page 21, line 21 to page 22, line 11.

### c) Document allegedly signed by President Patassé

292. The Contested Items also include a *message-porté*,[692] dated 2 February 2003, from the CAR *Président de la République*, addressed to the "*Général, Directeur l'Unité de Sécurité Présidentielle*", apparently signed by "President Ange-Félix Patassé", containing an urgent order to take command and organization of the FACA and the MLC for all counter-offensive military operations.[693] The order in the message reads, "*Honneur Vous Informer Stop Bien Vouloir Prendre Le Commandement Et L'organisation Des FACA Et Des Forces Alliées (MLC) Stop Pour Toutes les Operations Militaires de Contre Offensive Stop Urgence et Importance Signalée Stop Et Fin*."[694] When presented with the document, CHM1 stated that it is a fabrication.[695] He explained that the President does not "inform" a subordinate to whom he is entrusting a mission; instead, he decides or appoints someone as an operational commander for the counteroffensive.[696] Thus, according to CHM1, the wording and the format of the document,[697] as well as its date, content, and notification procedure,[698] indicate that it is a fabrication.

293. In light of the above, the Chamber attaches no weight to item EVD-T-D04-00059.

### d) Documents with illegible dates and other issues

294. The Contested Items also include item EVD-T-D04-00064, a *message-porté*,[699] from the CAR *Ministère de la Défense* addressed to the *Directeur Général de l'Intendance*, apparently signed by "Jean-Jacques Demafouth".[700] The message contains an order purportedly made on the instruction of the President for the

[692] **EVD-T-D04-00059/CAR-D04-0003-0129**.
[693] ICC-01/05-01/08-3019, para. 46(c).
[694] **EVD-T-D04-00059/CAR-D04-0003-0129**.
[695] **CHM1**: T-353, page 77, lines 22 to 23 and page 78, line 17; and T-354, page 5, lines 19 to 22.
[696] **CHM1**: T-353, page 78, lines 9 to 17.
[697] **CHM1**: T-353, page 78, lines 2 to 17.
[698] **CHM1**: T-353, page 78, lines 8 to 14; and T-354-Conf, page 4, line 8 to page 5, line 6.
[699] **EVD-T-D04-00064/CAR-D04-0003-0134**.
[700] ICC-01/05-01/08-3019, para. 46(h).

*Directeur Général de l'Intendance* to take over the subsistence allowance of the MLC troops. As with the previous documents, CHM1 stated that this document was "a piece of falsification".[701] According to the witness, Mr Jean-Jacques Demafouth was *Ministre de la Défense Nationale* only until 2001,[702] and that between October 2002 and January 2003, the post was held by Mr Jean-Pierre Angoa and General Regonessa.[703]

295. As noted above, on 16 January 2003, *Général de Brigade* Maurice Regonessa was appointed *Ministre de la Défense Nationale*.[704] However, the Chamber notes that P15, P33, and P173 testified that Mr Demafouth was the CAR *Ministre de la Défense Nationale*, at least at the time immediately prior to the 2002-2003 CAR Operation.[705] Nevertheless, since the date of the document is illegible, and given the MLC's previous intervention in the CAR in 2001,[706] the Chamber is not in a position to determine the relevance of the document, particularly, whether it relates to the temporal scope of the charges.

296. Lastly, the Contested Items include item EVD-T-D04-00075, a *note de service*,[707] dated 4 June 2001, from *l'Etat Major des Armées Centrafricaines* and allegedly signed by "François Bozizé", stating that the allied troops (Libyan and MLC) were engaged in supporting the FACA to liberate areas held by the rebels.[708] As with the previous documents, CHM1 stated that it was "a fabrication".[709] He testified that there were a number of significant errors as to the presentation or formatting of the document.[710] In particular, CHM1 noted that "Camp Kasai"

[701] **CHM1**: T-354, page 9, lines 11 to 12.
[702] **CHM1**: T-354, page 7, lines 1 to 5.
[703] **CHM1**: T-354, page 7, line 6 to page 8, line 15.
[704] **EVD-T-V20-00005/CAR-V20-0001-0189**, at 0190.
[705] **P173**: T-146, page 10, lines 9 to 12; **P33**: T-160, page 8, line 14 to page 9, line 3; and T-160-FRA, page 9, lines 6 to 22. The name "Demafouth" is omitted in the English transcript: **P33**: T-160, page 8, line 12 to page 9, line 3; and **P15**: T-209-Conf, page 31, lines 22 to 23.
[706] *See* **D18**: T-318, page 17, line 4 to page 20, line 1, and page 25, line 20 to page 26, line 6.
[707] **EVD-T-D04-00075/CAR-D04-0003-0141**.
[708] ICC-01/05-01/08-3019, para. 46(n). The use of the term "rebels" throughout this Judgment is based on the language commonly used by witnesses and in documentary evidence. It does not imply any finding as to the legal status of the relevant forces.
[709] **CHM1**: T-354, page 28, line 23, page 33, line 11, and page 34, line 20.
[710] **CHM1**: T-354, page 28, lines 19 to 23.

was wrongly spelled "Cam Kassat", which does not exist;[711] "DGA" was also wrongly spelled "DIGA";[712] and there were also other formatting issues.[713] In addition, the Chamber notes that the document clearly falls outside the temporal scope of the charges and is therefore of limited relevance.

297. In light of the above, the Chamber attaches no weight to items EVD-T-D04-00064 and EVD-T-D04-00075.

**e) Operations Report**

298. The Operations Report purports to be a summary of the MLC's military engagement in Bangui from 29 October 2002 to 15 March 2003, from Colonel Moustapha to the President of the MLC, issued on 4 May 2003.[714] Information in the Operations Report relates to the command structure during the 2002-2003 CAR Operation, alleged crimes committed by General Bozizé's rebels, the arrest of seven MLC soldiers for pillaging, and the relative significance of the MLC force in the conflict as a whole.

299. Although P65, D19, and D45 provided corroborated testimony as to the Operations Report's authenticity,[715] the Chamber is not convinced of the document's reliability for the following reasons. First, the Chamber notes that Colonel Moustapha's signature on the Operations Report is upside down.[716] D19, who claimed to be familiar with the Operations Report, gave evasive and uncooperative testimony attempting to explain the evidently upside down

[711] **CHM1**: T-354, page 27, line 17 to page 28, line 3.
[712] **CHM1**: T-354, page 33, lines 10 to 12.
[713] **CHM1**: T-354, page 33, lines 2 to page 34, line 20.
[714] **EVD-T-OTP-00394/CAR-DEF-0002-0567**. *See also* ICC-01/05-01/08-2688-Conf, para. 58.
[715] **D45**: T-296, page 9, lines 19 to 22; and T-299, page 30, lines 23 to 25; **D19**: T-284-Conf, page 21, line 17 to page 23, line 18; T-285-Conf, page 18, line 24 to page 22, line 21; and T-287-Conf, page 5, lines 15 to 21; and **P65**: T-170, page 54, line 9 to page 58, line 14.
[716] **EVD-T-OTP-00394/CAR-DEF-0002-0567**.

signature.[717] D19's testimony is also evasive on other details of the Operations Report's creation.[718]

300. Second, D19 and D45 both explained that the lapse of one and a half months between the conclusion of the 2002-2003 CAR Operation and the writing of the Operations Report was necessary to determine the number of troops that survived, as it was not possible to determine those figures earlier due to the disorganization of the withdrawal and the fact that the MLC troops were under attack.[719] However, the Operations Report provides no information as to the number of casualties or survivors.[720] Further, the lapse of time would have limited its utility to the MLC leadership. In this regard, the Chamber also emphasises that the Operations Report contains a list of assertions directly relevant to key live issues in the *Bemba* case, rather than information that would have been useful to Mr Bemba months after the conclusion of the conflict, such as information regarding losses and logistics.

301. Finally, the Chamber notes P36's testimony that the Operations Report would breach the MLC's administrative procedure,[721] and creation of this type of report was not standard.[722] P36 testified that, in his view, the "document has been drawn up, or is intended to provide some coverage – to cover – to provide a certain defence, perhaps in the event that later on perhaps the author thought that later on there will be a prosecution, or some investigations".[723]

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[717] **D19**: T-285-Conf, page 22, lines 4 to 20; T-286-Conf, page 38, line 15 to page 57, line 14; T-287-Conf, page 27, line 19 to page 28, line 11, page 29, lines 8 to 12, and page 48, line 13 to page 49, line 5; and T-293-Conf, page 10, line 22 to page 11, line 5; **EVD-T-OTP-00817/CAR-ICC-0001-0085; EVD-T-OTP-00818/CAR-ICC-0001-0086**; **EVD-T-OTP-00809/CAR-OTP-0011-0381; EVD-T-OTP-00810/CAR-OTP-0011-0382**; **EVD-T-OTP-00812/CAR-OTP-0011-0384**; and **EVD-T-OTP-00813/CAR-OTP-0011-0385**.
[718] **D19**: T-284-Conf, page 23, lines 8 to 17; T-287-Conf, page 33, line 25 to page 36, line 15, page 41, line 23 to page 42, line 22, page 43, lines 3 to 14, and page 44, lines 3 to 12; and T-292-Conf, page 54, lines 10 to 16.
[719] **D19**: T-287-Conf, page 44, lines 15 to 23; and **D45**: T-296, page 9, lines 19 to 22; and T-299, page 30, lines 23 to 25.
[720] **EVD-T-OTP-00394/CAR-DEF-0002-0567**.
[721] **P36**: T-215, page 51, lines 24 to 25, and page 52, lines 8 to 15, noting that he never saw the report as it was addressed directly to the President, without going through the hierarchy, and it did not receive an identification number.
[722] **P36**: T-215, page 53, line 17 to page 54, line 13, and page 59, lines 7 to 11.
[723] **P36**: T-215, page 59, lines 7 to 11.

302. In light of the above, the Chamber considers the Operations Report to be entirely unreliable and attaches no weight to it.

### 7. Issues of witness credibility

303. In this section, the Chamber addresses the credibility of several witnesses called by the parties.[724] The Defence challenges the credibility of (i) certain "central"[725] Prosecution witnesses, i.e. P33, P36, P45, P47, P169, P173, P178, P209, and P213 ("Central Prosecution Witnesses"), and 19 other protected witnesses called by the Prosecution ("19 Protected Witnesses");[726] and (ii) various witnesses involved in the *Organisation pour la Compassion et le Développement des Familles en Détresse* ("OCODEFAD")[727] and/or alleged of collusion. Further to those witnesses whose general credibility is challenged by the Defence, the Chamber also addresses the credibility of the following additional witnesses: P65, D2, D3, D7, D15, D19, D25, D45, D49, D53, D54, D55, D57, and D64. Below, the Chamber sets forth its general conclusions as to the credibility of all of the above-mentioned witnesses. The Chamber notes that, where necessary, it addresses the credibility of certain witnesses and the reliability of their evidence, including and in addition to those identified in this section, in the section addressing the facts of the case.

#### a) Central Prosecution Witnesses and 19 Protected Witnesses

304. The Chamber notes that the Defence makes repeated arguments that the Central Prosecution Witnesses provided hearsay testimony that should not be relied upon.[728] Such submissions do not *per se* impact the credibility of

[724] The Chamber notes that, in principle, it is under no obligation to provide a specific analysis of the credibility of each witness. For a similar approach, *see* *Katanga* Trial Judgment, para. 111; and *Ngudjolo* Trial Judgment, para. 124.
[725] *See* Defence Closing Brief, pages 89 to 187.
[726] The 19 Protected Witnesses are P22, P23, P29, P38, P41, P42, P63, P68, P69, P73, P75, P79, P80, P81, P82, P110, P112, P119, and P209.
[727] The NGO OCODEFAD was founded after the 2002-2003 CAR Operation to provide support to victims.
[728] Defence Closing Brief, para. 89.

witnesses; rather, they are relevant to the reliability of the witnesses' evidence. The Chamber sets out its approach to hearsay evidence in Section IV(C)(3). Insofar as the Defence's arguments concerning hearsay are not substantively linked to the credibility of specific witnesses, the Chamber does not address them in this section. Instead, and as necessary, it takes them into account in assessing and weighing any hearsay evidence in its factual analysis below.

**i. P33**

305. In line with its approach regarding the motives behind a witness's decision to testify,[729] the Chamber finds that, in itself, the Defence's challenge to P33's credibility based on his motivation for testifying and private economic activity at the time of his testimony[730] is insufficient to cast doubt on his general credibility. Regarding the Defence's allegations that P33's testimony was, in certain matters, "patently disingenuous, if not downright dishonest"[731] and that he sought to protect General Amuli,[732] the Chamber notes that the witness was occasionally evasive, especially when questioned in relation to General Amuli's role in the context of the 2002-2003 CAR Operation.[733] The Chamber is, however, not persuaded that this evasion on limited topics or the Defence's general and largely unsubstantiated allegations, even considered cumulatively, raise any significant doubts concerning P33's overall credibility or the general reliability of his evidence.

**ii. P36**

306. The Chamber notes the Defence submissions that some of P36's evidence was "highly valuable, objective, and reliable".[734] However, it also submits that his

[729] *See* Section IV(C)(1).
[730] Defence Closing Brief, paras 136 to 144.
[731] Defence Closing Brief, para. 143. *See also* Defence Closing Brief, para. 137.
[732] Defence Closing Brief, para. 141.
[733] *See*, *for example*, **P33**: T-161-Conf, page 14, line 15 to page 15, line 21.
[734] Defence Closing Brief, paras 147 to 151.

evidence about his own role during the CAR conflict is "wholly exculpatory and self-serving",[735] and contradicted by other evidence in the case.[736] The Defence further submits that certain sections of P36's testimony – that it qualifies as "wholly disingenuous" and contradictory to his own evidence – demonstrate his determination to distance himself from the events and exaggerate Mr Bemba's role.[737]

307. The Chamber observes that P36 was, at times, evasive or contradictory in an apparent attempt to distance himself from the events and understate his role and position within the MLC.[738] Accordingly, the Chamber considers that particular caution is required in analysing P36's evidence.

**iii. P45**

308. Concerning the Defence submissions that P45 was improperly influenced,[739] the Chamber notes P45's explanation that neither his superiors, nor anyone else within his political party, knew about his testimony.[740] Indeed, there are no indications that P45 was improperly influenced by such superiors or others within his political party. Similarly, P45 explained the reasons and circumstances under which he distanced himself from the MLC,[741] and specified his motive for testifying.[742] In light of the above, and having analysed his testimony as a whole, the Chamber is not persuaded by the Defence's

[735] Defence Closing Brief, para. 151.
[736] Defence Closing Brief, para. 152.
[737] Defence Closing Brief, paras 153 to 155.
[738] *See*, *inter alia*, **P36**: T-214, page 53, line 19 to page 54, line 6; T-217, page 24, line 16 to page 25, line 25; T-217-Conf, page 26, lines 1 to 9; and T-218-Conf, page 3, line 15 to page 5, line 19, page 5, line 24 to page 6, line 6, and page 27, line 14 to page 30, line 24.
[739] Defence Closing Brief, para. 156.
[740] **P45**: T-202, page 64, line 7 to page 65, line 4.
[741] **P45**: T-202, page 18, line 23 to page 20 line 8; and T-202-Conf, page 55, line 13 to page 56, line 19, and page 58, lines 6 to 16.
[742] **P45**: T-202, page 21, lines 4 to 15.

contention that P45 provided false testimony out of resentment towards Mr Bemba or in the hope of financial or political benefits.[743]

309. Regarding the allegation that P45's evidence is inconsistent,[744] the Chamber notes that, although P45 was uncertain on dates, he provided the Chamber with lengthy chronologies of events, explaining the reasons for his uncertainty numerous times.[745] The Chamber finds that P45's imprecision regarding the exact dates of events, occurring almost a decade before his testimony, is insufficient, in itself, to undermine his credibility.

310. As to the allegation that P45 concealed important aspects of his role during the 2002-2003 CAR Operation,[746] the Chamber notes that neither party – both of which were in possession of relevant information[747] – explored the issue. The Chamber further notes that there is no concrete support for the Defence's suggestion of any illicit or dishonest motive underlying this omission.[748] Nevertheless, the Chamber is concerned by the omission of potentially relevant and available information concerning P45's involvement in the events and source of knowledge. In light of the above issues, considered cumulatively, the Chamber considers that particular caution is required in analysing P45's evidence.

[743] Defence Closing Brief, para. 156.
[744] *See* Defence Closing Brief, para. 161.
[745] *See*, *inter alia*, **P45**: T-201, page 52, lines 13 to 19; T-201-Conf, page 20, line 20 to page 21, line 10; T-203, page 40, line 20 to page 41, line 21, page 44 lines 11 to 20, page 55, lines 9 to 18, page 57, lines 2 to 12 and 20 to 23, and T-203-Conf, page 45, line 18 to page 47, line 8, page 49, line 6 to page 50, line 17, page 51, lines 6 to 17, and page 64, lines 9 to 15.
[746] Defence Closing Brief, paras 136 to 144; and Defence Reply Brief, para. 33.
[747] The video recorded during the events, **EVD-T-D04-00008/CAR-DEF-0001-0832**, in which the witness is seen, *inter alia*, from 00:11:47 to 00:11:56, from 00:12:19 to 00:12:23, from 00:51:53 to 00:52:20, and from 00:54:12, was disclosed to the Prosecution on 25 November 2008.
[748] Defence Closing Brief, paras 136 to 144; and Defence Reply Brief, para. 33.

### iv. P47

311. The Chamber is not persuaded that the Defence's general allegations[749] raise any significant doubts concerning P47's overall credibility, and notes that some of the evidence challenged by the Defence was, to a certain extent, corroborated by other witnesses and documentary evidence.[750] However, the Chamber notes that, in relation to some discrete topics, including certain incidents of rape P47 allegedly witnessed, his testimony was confusing.[751] In light of this confusion in P47's evidence on certain topics, the Chamber has, on a case-by-case basis, taken into account the Defence's allegations in assessing his testimony.

### v. P209

312. The Defence challenges several aspects of P209's testimony,[752] including, in particular, his evidence against the MLC and Mr Bemba.[753] In this regard, the Chamber notes that P209 gave a detailed account of events he claimed to have personally witnessed,[754] and otherwise explained the basis for his knowledge.[755] However, the Chamber notes that, at times, P209 was evasive or contradictory,[756] and disagreed with sections of his prior written statement.[757] In

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[749] Defence Closing Brief, paras 175 to 187, generally claiming that his testimony was "untrue, exaggerated and misleading".
[750] *See*, *inter alia*, **EVD-T-OTP-00383/CAR-OTP-0028-0398**; **EVD-T-OTP-00384/CAR-OTP-0028-0399**; **EVD-T-OTP-00385/CAR-OTP-0028-0400**; **EVD-T-OTP-00386/CAR-OTP-0028-0404**; **EVD-T-OTP-00387/CAR-OTP-0028-0437**; **D51**: T-261, page 55, lines 1 to 10, and T-261-Conf, page 54, lines 16 to 22; T-262, page 16, lines 22 to 23, page 48, lines 1 to 5; and **D66**: T-279, page 40, line 2 to page 41, line 1; and T-280, page 52, lines 1 to 14. *See*, *inter alia*, Sections V(B)(2) and V(C)(14).
[751] **P47**: T-176, page 34, line 18 to page 35, line 18; T-177, page 12, line 1 to page 15, line 24; T-178, page 7, lines 19 to 21; T-179, page 34, line 21 to page 36, line 6; and T-181, page 23, lines 12 to 17, and page 32, line 17 to page 34, line 2. *See also* Section V(C)(3)(d).
[752] Defence Closing Brief, paras 168 to 170.
[753] Defence Closing Brief, para. 174.
[754] *See*, *inter alia*, **P209**: T-119, page 16, line 24 to page 18, line 19, page 28, lines 21 to 23, and page 30, line 17 to page 34, line 19; and T-122, page 30, lines 4 to 12, and page 31, line 25 to page 32, line 4.
[755] *See*, *inter alia*, **P209**: T-117, page 25, lines 16 to 21, page 27, line 8 to page 28, line 13, and page 29, line 14 to page 31, line 7; T-118, page 8, lines 3 to 16, and page 14, line 19 to page 15, line 14; T-119, page 21, line 2 to page 23, line 6, page 26, lines 2 to 20, and page 28, lines 7 to 12; and T-122, page 26, lines 1 to 9, page 28, line 11 to page 30, line 3, page 31, lines 13 to 24, and page 33, lines 8 to 16.
[756] *See*, *inter alia*, **P209**: T-121, page 21, lines 16 to 25, page 42, lines 10 to 23, and page 45, lines 6 to 23.
[757] *See*, *inter alia*, **P209**: T-124, page 32, line 11 to page 38, line 6.

light of the above issues, considered cumulatively, the Chamber considers that particular caution is required in analysing P209's evidence.

**vi. P213**

313. The Defence challenges P213's credibility on the basis of, *inter alia*, a letter he sent to the Prosecution in 2009, in which he offered himself to testify, the motives underlying this offer, financial and other benefits received for his testimony, his "resentment" towards Mr Bemba, and a series of examples that allegedly demonstrate that he told the Chamber "palpable lies".[758]

314. P213's explained that, although he hoped to improve his situation, his motivation for testifying, as well as his initial offer of assistance to the Court,[759] were to "assist the ICC and the victims from the Central African Republic".[760] P213 testified that, when he met Prosecution investigators, he asked questions about issues related to security, but the investigators explained that they could not make decisions in that regard.[761] The Chamber accepts these explanations and is not persuaded by the Defence's related submissions. Further, while noting P213's testimony about his situation when he appeared before the Court,[762] and that he received certain benefits from his state of residence,[763] the Chamber does not consider that this supports the Defence's contention that he received "incalculably large" financial and material benefits.[764]

315. However, the Chamber notes that at times P213 was inconsistent, appeared to overemphasise his role and position, or was evasive,[765] for example, when

[758] Defence Closing Brief, paras 92 to 103.
[759] **EVD-T-OTP-00736/CAR-OTP-0062-0094_R01**.
[760] **P213**: T-189, page 36, lines 16 to 22, and page 37, lines 2 to 13.
[761] **P213**: T-189, page 39, line 23 to page 40, line 6.
[762] **P213**: T-189-Conf, page 16, line 12 to page 21, line 21, page 27, line 7 to page 29, line 1, and page 31, line 22 to page 34, line 18.
[763] **P213**: T-189-Conf, page 40, line 16 to page 41, line 10.
[764] Defence Closing Brief, para. 93.
[765] *See*, *inter alia*, **P213**: T-190, page 37, lines 3 to 16, page 49, line 20 to page 50, line 18, and page 51, lines 12 to 18; and T-190-Conf: page 14, line 18 to page 15, line 10, and page 28, line 18 to page 29, line 5.

testifying about his personal situation at the time he appeared before the Chamber.[766]

316. In light of the above issues, considered cumulatively, the Chamber considers that particular caution is required in analysing P213's evidence.

### vii. P169, P173, P178, and 19 Protected Witnesses

317. P169 initially testified in 2011 ("2011 Testimony") and was recalled in 2014 for the limited purpose of being heard in relation to issues allegedly impacting his credibility ("2014 Testimony").[767] Specifically, the witness was recalled on the basis of a letter sent by him to the Court, dated 5 August 2014,[768] referring to "money transferred by the ICC" and claiming that 22 individuals, including P169, P178, and the 19 Protected Witnesses, listed in an annex to his letter, were gathered by P178 to look at loss of income claims and willing to bring evidence of subornation of witnesses.[769]

318. At the outset, regarding the Defence's challenges to the credibility of P169, P178 and the 19 Protected Witnesses based on allegations of collusion,[770] the Chamber recalls its prior finding that:[771]

> […] the testimony of Witness P-169, and the reports submitted by the prosecution and the VWU in relation to the alleged contacts between witnesses, is in line with the Chamber's assessment that the defence's allegations of collusion among witnesses called by the prosecution is unsubstantiated.

[766] **P213**: T-189-Conf, page 16, line 12 to page 21, line 21, page 27, line 7 to page 29, line 1, and page 31, line 22 to page 34, line 18.
[767] *See* Decision ICC-01/05-01/08-3154.
[768] This letter was preceded by four letters, dated 6 August 2011 (ICC-01/05-01/08-1660-Conf-Anx1), 7 June 2013 (**EVD-T-D04-00057/CAR-OTP-0072-0504_R02**), 8 June 2013 (**EVD-T-D04-00056/CAR-OTP-0072-0508_R01**), and 11 June 2014 (**EVD-T-D04-00102/CAR-OTP-0083-1303**), in which P169 requested reimbursement for loss of income, referred to outstanding claims, and claimed that 22 individuals were gathered by P178 to look at loss of income claims.
[769] ICC-01/05-01/08-3138-Conf-AnxA.
[770] Defence Closing Brief, paras 197 to 214.
[771] ICC-01/05-01/08-3186, para. 22 (internal citations omitted), *citing* ICC-01/05-01/08-2924-Red, para. 34.

319. The Defence effectively seeks reconsideration of this prior decision, but has not further substantiated its allegations concerning collusion. In such circumstances, the Chamber dismisses these submissions.

320. In relation to Defence challenges to P169's credibility based on the letters he wrote and his alleged "pursuit of money for his testimony",[772] the Chamber notes that P169's 2014 Testimony lacked clarity in relation to various issues, such as the source, drafting, and meaning of the letters;[773] P169's use of the list of 19 Protected Witnesses;[774] and the date, place, and number of meetings with P42 and/or P178.[775] Further, the Chamber notes that P169 believed himself entitled to reimbursements for his appearance before the Court[776] and initially believed that the money came from the Prosecution.[777] In this regard, the Chamber notes P169's explanation that he spontaneously told the Court and investigators he had received money because he intended to tell the entire truth before the Court.[778]

321. Additionally, the Chamber notes P169's repeated assertion that his 2011 Testimony was truthful and that he had no intention to reconsider it.[779] The Chamber also places particular emphasis on the fact that P169's claims were made *after* the completion of his 2011 Testimony and that he denied that the Prosecution exerted any influence on his testimony before or after his appearance at the Court.[780] In light of the above, the Chamber is of the view that the letters sent by P169 were motivated by a personal desire to receive benefits

[772] ICC-01/05-01/08-3200-Conf, paras 46 to 64.
[773] *See*, *for example*, **P169**: T-361, page 35, line 24 to page 37, line 1, page 37, lines 10 to 12, page 54, line 20 to page 55, line 14, page 56, lines 3 to 22, page 57, lines 19 to 24; T-362, page 13, line 15 to page 14, line 5; T-363, page 17, lines 17 to 23; and T-363-Conf, page 19, line 23 to page 20, line 1.
[774] *See*, *for example*, **P169**: T-363, page 9, line 16 to page 10, line 2, page 10, line 9 to page 11, line 9, and page 23, lines 4 to 22; and T-363-Conf, page 17, lines 4 to 8.
[775] *See*, *for example*, **P169**: T-363, page 8, lines 18 to 21.
[776] *See*, *for example*, **P169**: T-361, page 44, line 14 to page 45, line 12; T-362, page 42, lines 22 to 25.
[777] *See*, *for example*, **P169**: T-361, page 53, lines 12 to 15; T-362, page 35, line 22 to page 36, line 2, page 37, lines 10 to 15 and 17 to 24.
[778] **P169**: T-139, page 12, lines 7 to 9; and T-142, page 31, lines 2 to 7.
[779] *See*, *inter alia*, **P169**: T-361, page 40, line 20 to page 41, line 11, and page 42, lines 16 to 22; and T-362, page 9, line 14 to page 10, line 9.
[780] **P169**: T-361, page 65, lines 7 to 14.

from the Court after having completed his testimony, but do not, in themselves, render his 2011 Testimony on issues related to the merits of the case unreliable.

322. Similarly, recalling its findings on the Defence's allegations of collusion, and noting P169's statement that claims of subornation of witnesses were untrue and used for the sole purpose of putting pressure on the readers of his letters,[781] the Chamber sees no reason to doubt the testimony of P173, P178, or the 19 Protected Witnesses on the basis of the letters P169 sent to the Court or in light of the 2014 Testimony.

323. In relation to Defence assertions that P169, P173, and P178 were opponents of, showed hostility towards, or otherwise tried to discredit or incriminate Mr Bemba,[782] the Chamber notes that P169 affirmed that he had been a victim of the MLC in the past[783] and that he had been "angry" at Mr Bemba,[784] explaining that it was partly on this basis that he was chosen to report on the MLC.[785] Likewise, P178 made value judgments about Mr Bemba and the MLC.[786] P173 also testified about certain actions he took in opposition to Mr Bemba.[787] However, without more, and noting that they expressed their opinions openly, the Chamber finds that any contention that P169, P173, or P178 provided false testimony out of resentment or anger towards Mr Bemba is unsubstantiated.

324. As to the Defence submissions concerning the relationship between P169 and P173, including that they faced difficulties in "attempting to fabricate a coherent narrative",[788] the Chamber finds that the differences in their testimonies in fact

[781] **P169**: T-363, page 22, lines 15 to 25.
[782] Defence Closing Brief, paras 108, 117, and 131 to 135.
[783] **P169**: T-142-Conf, page 31, lines 13 to 18.
[784] **P169**: T-139, page 22, lines 5 to 7.
[785] **P169**: T-142-Conf, page 29, lines 15 to 21, page 30, lines 3 to 6 and page 32, lines 2 to 5. *See also* **P169**: T-139, page 17, lines 19 to 21.
[786] *See*, *inter alia*, **P178**: T-151, page 39, line 23 to page 40, line 5, and page 65, line 14 to page 66, line 7.
[787] *See*, *inter alia*, **P173**: T-145-Conf, page 56, line 17 to page 58, line 6.
[788] Defence Closing Brief, para. 119.

support the conclusion that they did not collude.[789] Further, P169 explained his relationship with P173 in detail,[790] which was corroborated by P173.[791]

325. The Chamber further notes Defence submissions that the testimonies of P169, P173, and P178, including their explanations as to their activities during the time of the events, are implausible, unreliable, contradicted by the weight of the evidence, and/or unsupported.[792]

326. Regarding the activities of P169 and P173 during the time of the events, the Chamber notes that, although P169 acknowledged having been paid to provide information about MLC movements in the past,[793] he asserted that, during the 2002-2003 CAR Operation, he was in the CAR on account of his business and not to collect information.[794] P173 also testified about his activities prior to the 2002-2003 CAR Operation,[795] and explained his status[796] and activities during the events.[797] However, although P169 corroborated P173's account as to his status,[798] he did not do so in relation to P173's activities in Bangui.[799] A further contradiction exists between their testimonies insofar as P169 stated that, after the conflict, he was again paid to provide information on the MLC[800] with the involvement of P173;[801] while P173 insisted that, during the time he was in

[789] For a similar approach, *see*, *inter alia*, ICTR, *Karera* Appeal Judgment, para. 234; and ICTR, *Renzaho* Appeal Judgment, para. 276.
[790] *See*, *inter alia*, **P169**: T-139-Conf, page 9, line 8 to page 22, line 4; T-142-Conf, page 27, line 14 to page 29, line 12; and T-362-Conf, page 23, lines 13 and 14, and page 29, lines 15 to 20.
[791] **P173**: T-145-Conf, page 20, lines 5 to 6.
[792] Defence Closing Brief, paras 104, 107, 109, 112 to 119, 121 to 124, and 126 to 130.
[793] **P169**: T-137, page 36, lines 4 to 21; T-139, page 12, lines 12 to 14 and page 13, lines 12 to 16; and T-142, page 29, lines 15 to 21.
[794] **P169**: T-139-Conf, page 12, lines 15 to 19; and T-142, page 30, lines 3 to 6.
[795] **P173**: T-144, page 9, lines 10 to 21; and T-145-Conf, page 15, line 25 to page 16, line 24, page 42, line 24 to page 43, line 10, and page 44, lines 3 to 6.
[796] **P173**: T-144-Conf, page 9, line 5 to page 10, line 15, and page 46, line 19; and T-145-Conf, page 16, lines 24 to 25, page 43, line 18 to page 44, line 2, and page 53, lines 17 to 19.
[797] **P173**: T-144-Conf, page 24, lines 20 to 21, and page 37, line 5; and T-145-Conf, page 20, line 9, page 32, lines 19 to 25, page 49, lines 11 to 12, and page 51, line 11; and T-147-Conf, page 10, line 5.
[798] **P169**: T-139-Conf, page 17, line 3.
[799] *See*, *inter alia*, **P169**: T-139-Conf, page 9, lines 8 to 17, page 12 lines 1 to 6, and page 15, line 17 to page 17, line 21.
[800] **P169**: T-137, page 36, lines 7 to 21; and T-142, page 30, line 7 to page 31, line 7.
[801] *See*, *inter alia*, **P169**: T-139-Conf, page 23, line 16 to page 25, line 3.

Bangui, he was not involved with P169 in spying on the MLC.[802] Although the Chamber considers that this contradiction warrants particular caution in the assessment of their testimonies, the Chamber is satisfied that it does not, in itself, render P169 or P173 not credible or their testimonies, as a whole, unreliable.

327. Turning to the witnesses' source of knowledge, the Chamber notes that P169, on many occasions, explained the basis for his knowledge,[803] or openly admitted when he lacked the relevant information to respond to a given question.[804] Similarly, P173 explained his relationship with the MLC and his access to sensitive information,[805] and gave reasons as to why he was in contact with MLC officers during the time of the events.[806] P173 also provided detailed accounts of certain events he claimed to have personally witnessed,[807] or explained how he obtained the relevant information.[808] As to P178, the Chamber notes that he indeed stated that he never saw crimes being committed,[809] and described certain events without clearly indicating the source of his knowledge.[810] However, P178 also gave a detailed account of events he

[802] **P173**: T-145-Conf, page 48, line 1 to page 50, line 5.
[803] *See, for example*, **P169**: T-136-Conf, page 36, lines 12 to 18, page 37, line 1 to page 39, line 2; T-136: page 40, line 12 to page 41, line 20; T-137-Conf, page 6, lines 4 to 19, page 12, lines 1 to 7, page 21, lines 1 to 13, page 22, lines 15 to 23, and page 25, lines 18 to 24; T-138-Conf, page 26, line 23 to page 27, line 7, page 46, lines 18 to 24; and T-141-Conf, page 5, line 17 to page 8, line 20.
[804] *See, for example*, **P169**: T-136, page 43, lines 19 to 25; T-137, page 2, line 19 to page 3, line 8, and page 10, lines 20 to 23; T-138, page 24, lines 1 to 6; and T-138-Conf, page 24, line 20 to page 25, line 14.
[805] **P173**: T-144, page 24, lines 5 to 13.
[806] **P173**: T-144-Conf, page 24, line 5 to page 26, line 2, page 31, line 14 to page 32, line 7, page 46, lines 19 to 24, and page 51, lines 8 to 14; T-145, page 63, line 23 to page 64, line 4; and T-145-Conf, page 17, lines 2 to 7, page 20, lines 5 to 16, page 50, line 23 to page 51, line 14, page 54, line 17 to page 55, line 6, page 61, line 17 to page 62, line 20, and page 66, lines 3 to 11.
[807] *See, inter alia*, **P173**: T-144, page 10, line 23 to page 11, line 18, page 30, lines 21 to 25, and page 49, line 16 to page 51, line 9; T-147, page 21, lines 17 to 24; T-149, page 52, lines 3 to 16, page 56, lines 5 to 19; and T-149-Conf, page 31, line 22 to page 33, line 4, page 49, lines 20 to 24, and page 57, lines 7 to 13.
[808] **P173**: T-144, page 14, lines 19 to 22, page 53, lines 8 to 23, and page 57, lines 2 to 24; T-144-Conf, page 37, lines 1 to 11; T-145-Conf, page 16, lines 24 to 25, and page 50, lines 1 to 2; and T-149-Conf, page 31, line 22 to page 32, line 2.
[809] **P178**: T-157, page 4, lines 3 to 13, and page 36, line 18 to page 38, line 14.
[810] *See, inter alia*, **P178**: T-150, page 21, line 18 to page 22, line 17, page 32, lines 16 to 22, page 33, line 20 to page 34, line 11, and page 66, line 17 to page 68, line 14; and T-151, page 15, lines 10 to 17, and page 18, line 8 to page 21, line 2.

allegedly witnessed,[811] or explained the basis for his knowledge, either by identifying the individuals who provided him with information or otherwise explaining the circumstances under which he obtained knowledge of events he did not witness.[812] In these circumstances, the Chamber finds that the witnesses' source of knowledge is a matter to be taken into account in assessing their evidence, but does not, in itself, impact on their credibility.

328. Lastly, as regards P169's demeanour during his 2011 Testimony, the Chamber notes that, on several occasions, his answers missed the point of the questions posed or seemed illogical.[813] Furthermore, when questioned by the Defence, he occasionally appeared uncooperative, refusing to answer, giving very limited or metaphorical answers, or requesting a quotation from his previous statements.[814] However, the Chamber is not persuaded that this is sufficient to materially undermine his testimony, although – particularly when considered with the other concerns outlined above – it does require the exercise of particular caution in assessing P169's testimony.

329. In conclusion, although the Defence has failed to identify any reason to doubt the testimony of the 19 Protected Witnesses, the Chamber has reservations in relation to specific issues impacting on the credibility of P169, P173, and P178 and/or the reliability of their testimony. In light of these issues, considered

[811] *See*, *inter alia*, **P178**: T-150, page 17, line 7 to page 19, line 9, page 38, lines 5 to 10, page 63, lines 2 to 11, page 72, lines 11 to 20, and page 74, lines 3 to 19; T-150-Conf, page 23, line 13 to page 28, line 1, page 43, lines 11 to page 45, line 7, and page 60, line 14 to page 61, line 17; T-151, page 5, line 19 to page 6, line 9; and T-154-Conf, page 62, line 6 to page 65, line 13.

[812] *See*, *inter alia*, **P178**: T-150, page 39, lines 14 to page 40, line 7, page 56, lines 8 to 14, page 61, line 19 to page 63, line 11, and page 64, line 14 to page 65, line 10; T-150-Conf, page 38, line 19 to page 39, line 4; T-151, page 9, lines 2 to 25, page 11, line 18 to page 13, line 3, page 14, lines 13 to 21, page 15, line 10 to page 18, line 7, page 21, line 3 to page 22, line 5, page 42, lines 3 to 21, and page 44, line 22 to page 45, line 15; T-151-Conf, page 6, lines 10 to 15, and page 20, lines 21 to 25; T-154, page 60, line 18 to page 61, line 7; T-156-Conf, page 31, line 4 to page 32, line 7, page 33, line 13 to page 35, line 5, page 40, lines 12 to 15, page 41, line 25 to page 43, line 8, and page 45, line 19 to page 46, line 6; and T-157-Conf, page 11, line 12 to page 15, line 17, and page 32, line 9 to page 34, line 10.

[813] *See*, *for example*, **P169**: T-138, page 29, lines 9 to 16, and page 55, lines 13 to 25; T-139-Conf, page 40, line 19 to page 41, line 6; and T-141, page 11, lines 3 to 11.

[814] *See*, *for example*, **P169**: T-138, page 22, line 19 to page 23, line 3; T-139, page 5, lines 7 to 15, page 11, lines 5 to 25, page 24, lines 11 to 18, and page 45, lines 11 to 22; T-139-Conf, page 23, lines 8 to 20; T-140, page 13, lines 15 to 22, page 25, lines 19 to 25, page 30, lines 8 to 13, and page 46, lines 14 to 20; T-140-Conf, page 31, lines 15 to 24; and T-141, page 16, lines 3 to 8, page 33, line 16 to page 34, line 2, and page 45, line 18 to page 46, line 6.

cumulatively, the Chamber considers that particular caution is required in analysing the testimonies of P169, P173, and P178.

**b) OCODEFAD and other allegations of improper influence**

330. The Chamber notes that the Defence challenges the credibility of a number of witnesses involved with the NGO OCODEFAD on the basis of, *inter alia*, the political links of the organization,[815] its relationship and interactions with the Prosecution, including "coach[ing] potential witnesses",[816] and allegations of "collusion" among witnesses.[817]

331. The Chamber notes that the creation of and participation in victims' organizations is a common feature of post-conflict societies. In addition to providing some level of psychological and material support to victims and their families, such organizations may assist victims in their search for justice and facilitate victims' claims for reparations, furthering the victims' right to a remedy, which has been recognised in international instruments.[818] Accordingly, membership or participation in a victims' organization, or their potential future claims for reparation, cannot, in itself, be considered as factors undermining a witness's credibility.

332. In the present case, the Chamber stresses that it is required to assess the credibility of witnesses who testified in the case, rather than make a value-judgment about the role and links of OCODEFAD. Therefore, rather than addressing issues related to the organization itself, the following analysis focuses on specific issues that, according to the Defence submissions, could impact on witness credibility.

[815] Defence Closing Brief, paras 220 to 221.
[816] Defence Closing Brief, para. 222.
[817] Defence Closing Brief, paras 224 to 225.
[818] *See*, *inter alia*, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims; and Declaration of Basic Principles of Justice.

### i. Allegations of coaching, collusion, or information sharing

333. Regarding the Defence submissions that witnesses were coached by OCODEFAD or influenced by information shared at meetings,[819] the Chamber finds that this assertion is unsubstantiated. To the contrary, a number of witnesses explicitly refuted any such allegations.[820]

334. Concerning the allegation that witnesses were in contact before, during, and after their testimony,[821] the Chamber notes that witnesses had contacts among each other because some were members of the same family,[822] were neighbours, or lived in the same area.[823] In such circumstances, the Chamber considers that it is not unexpected or improper for victims to discuss their experiences.[824] Such discussions do not inherently undermine a witness's credibility, unless it is demonstrated that witnesses colluded or actually fabricated or falsified their evidence.[825] The Chamber therefore rejects the Defence's challenge to the credibility of witnesses on this basis.

335. Noting the Defence's specific allegations of collusion between P23 and P42,[826] the Chamber recalls that P42 did indeed testify that he knew that P23 had come to the Court to testify.[827] P42 claimed that he knew of P23's return because they

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[819] *See* Defence Closing Brief, para. 222.
[820] *See*, *inter alia*, **P82**: T-60, page 29, lines 2 to 10, and page 40, line 13 to page 41, line 11; **P80**: T-61, page 27, lines 5 to 14; and T-63, page 38, line 18 to page 39, line 7; **P79**: T-77, page 28, lines 11 to 23, and page 33, lines 1 to 8; **P23**: T-52, page 27, lines 4 to 10, and page 32, lines 5 to 11; **P29**: T-80, page 42, lines 12 to 20; **P42**: T-65, page 45, line 24 to page 46, line 6; and **P68**: T-50, page 36, lines 6 to 17.
[821] *See* Defence Closing Brief, para. 224.
[822] *See*, *for example*, **P23**: T-52-Conf, page 44, lines 2 to 14; **P80**: T-60-Conf, page 58, lines 1 to 16; **P81**: T-54-Conf, page 54, lines 9 to 14; and **P82**: T-58-Conf, page 8, lines 7 to 12, testifying that P23, P80, P81, and P82 are all members of the same family.
[823] *See*, *for example*, **P42**: T-64-Conf, page 60, lines 7 to 18; and **P73**: T-70-Conf, page 7, line 4 to 5, testifying that P42 lived in the same area as P73.
[824] For a similar approach, *see*, ICTY, *Limaj et al.* Trial Judgment, paras 33 to 35.
[825] For a similar approach, *see*, *inter alia*, ICTR, *Setako* Appeal Judgment, paras 137 to 138; ICTR, *Renzaho* Appeal Judgment, paras 275 to 276; ICTR, *Kalimanzira* Appeal Judgment, para. 105; ICTR, *Karera* Appeal Judgment, paras 234 to 235; ICTY, *Popović et al.* Trial Judgment, paras 1210 to 1218; and ICTY, *Limaj et al.* Trial Judgment, para. 35.
[826] *See* Defence Closing Brief, paras 202 to 205.
[827] ICC-01/05-01/08-2830, para. 1. *See also* **P42**: T-65-Conf, page 47, lines 18 to 20.

had met and spoken at an airport.[828] Irrespective of whether they met at the airport,[829] the Chamber notes that they lived in close proximity,[830] met at various local services, and talked over the telephone before P23 travelled to give testimony at the Court.[831] In this regard, the Chamber observes that P42 understood the importance of not discussing the content of his testimony.[832] In light of the foregoing and having assessed the witnesses' testimony as a whole, the Chamber finds that the contact between P42 and P23 prior to and after their testimonies is, in itself, insufficient to cast doubt on their credibility or the reliability of the entirety of their evidence.

336. The Defence further highlights that the Prosecution contacted P73 via P42's telephone.[833] In the view of the Chamber, this was the most convenient means for the Prosecution to contact P73, who did not have a telephone himself.[834] Regarding the Defence's claim that P42 and P73 discussed the content of their interviews with the Prosecution,[835] the Chamber notes P42's testimony that he and P73 discussed the similarity of the questions they were asked and the fact that their examiners were apparently trying to determine whether they were telling the truth.[836] However, P42 asserted he did not know the content of the statement provided by P73 to the Prosecution.[837] Further, explaining his assertion that P73 would give the same account as himself, P42 clarified that P73 witnessed the crimes he suffered, and thus could only give the same account.[838] In light of the above, and noting that P42 openly addressed this matter before the Chamber and did not attempt to avoid the issue, the Chamber

[828] ICC-01/05-01/08-2830, paras 1 and 5. *See also* **P42**: T-66-Conf, page 53, line 2 to page 61, line 1; and T-69-Conf, page 50, line 15 to page 51, line 21.
[829] ICC-01/05-01/08-2830, paras 4 and 9.
[830] **P42**: T-66-Conf, page 32, line 17 to page 33, line 2.
[831] **P42**: T-66-Conf, page 34, line 21 to page 35, line 15, and page 53, line 10 to page 54, line 15.
[832] **P42**: T-66, page 54, lines 9 to 10.
[833] Defence Closing Brief, para. 205.
[834] **P42**: T-66, page 39, lines 8 to 25.
[835] Defence Closing Brief, para. 206.
[836] **P42**: T-66, page 48, lines 1 to 17.
[837] **P42**: T-66, page 39, lines 21 to 23.
[838] **P42**: T-66, page 48, line 23 to page 49, line 19.

does not find that the contacts between P42 and P73, who were neighbours,[839] undermine their credibility or the reliability of their evidence.

337. Finally, on the issue of whether the witnesses colluded as to the dates on which the events took place,[840] the Chamber notes P73's explanation that they were trying to ensure that the evidence they gave was accurate, and had no ulterior or dishonest motives.[841] The Chamber accepts this explanation and does not consider that the discussion about dates between P42 and P73 undermines their general credibility or the overall reliability of their accounts. Nevertheless, the Chamber considers that particular caution is required when assessing the chronology of events provided by P42 and P73.

### ii. Allegation of influence by "material benefits"

338. As to the alleged influence of "material benefits" resulting from OCODEFAD membership,[842] the Chamber finds this allegation to be unsubstantiated. In particular, the Chamber notes that a number of witnesses refuted this allegation, stating that they only received minor benefits, constituting psychological, medical, and other basic humanitarian assistance from their OCODEFAD membership.[843] The Chamber considers that such minor material benefits are insufficient to cast doubt on the credibility of witnesses who were members of OCODEFAD.

[839] **P42**: T-66-Conf, page 33, line 25 to page 34, line 11.
[840] *See* Defence Closing Brief, para. 225.
[841] **P73**: T-72, page 20, lines 2 to 13; and T-73, page 36, lines 10 to 21.
[842] *See* Defence Closing Brief, para. 222.
[843] *See*, *inter alia*, **P42**: T-65-Conf, page 41, line 16 to page 42, line 12, noting that P42 only received a bicycle to carry out his official duties for the organization; T-67, page 14, lines 2 to 14, page 18, line 1 to page 20, line 1, and page 29, lines 17 to 19; and T-67-Conf, page 12, lines 2 to 21, and page 13, lines 16 to 18; **P110**: T-128, page 3, line 20 to page 4, line 7; **P79**: T-77, page 30, lines 11 to 15; **P80**: T-61, page 26, lines 18 to 25; and **P82**: T-60, page 32, lines 15 to 18, page 33, line 17 to page 34, line 3, and page 34, line 18 to page 35, line 6.

### iii. Allegations concerning incentives for exaggeration of claims

339. The Chamber considers that the Defence's allegation that OCODEFAD created an incentive for victims to exaggerate their claims[844] is unsubstantiated. In this regard, the Chamber notes P81's testimony that during OCODEFAD meetings, victims discussed the obligation of identified perpetrators to pay compensation.[845] However, she testified that she was unaware that compensation would vary depending on the degree of the loss or suffering.[846] Similarly, when P69 was asked by the Defence whether Ms Bernadette Sayo, the head of OCODEFAD, told victims they could expect compensation, he clarified that she never gathered victims for any kind of reparations; rather, she informed them of the likelihood of a trial and advised them to prepare relevant information concerning the crimes for transmission to the Court.[847] P69 added that this information and advice was "some sort of relief or comfort" to the victims.[848] Further, P79 testified that OCODEFAD never mentioned reparations.[849]

340. The Chamber acknowledges P73's testimony that, in their application forms, some victims exaggerated the harm they had suffered, and that portions of P73's own application form are incorrect.[850] P73 explained that he did not think that the application forms would actually be presented to the Court,[851] and indicated that he was generally an honest person.[852] The Chamber accepts P73's explanation, is satisfied that he testified honestly about this issue, and finds no reason to doubt his overall credibility or the general reliability of his testimony.

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[844] *See* Defence Closing Brief, para. 223.
[845] **P81**: T-56, page 7, lines 17 to 23.
[846] **P81**: T-56, page 7, line 24 to page 8, line 1.
[847] **P69**: T-195, page 6, lines 8 to 18. *See also* **P82**: T-60, page 37, lines 21 to 24, testifying that Ms Sayo did not discuss compensation.
[848] **P69**: T-195, page 6, lines 4 to 7.
[849] **P79**: T-79, page 25, lines 10 to 12.
[850] **P73**: T-73, page 19, line 23 to page 20, line 15, and page 21, lines 3 to 20, acknowledging that P73 signed a form containing false information that was added by the intermediary who completed the form.
[851] **P73**: T-76, page 10, lines 10 to 17.
[852] **P73**: T-76, page 10, lines 18 to 19.

341. Like P73, the Chamber notes that, during his testimony, P42 openly discussed discrepancies between his victim's application and the actual loss he suffered, explaining that he had not re-read the form once it was completed for him.[853] The Chamber finds that this information casts no doubt on P42's in-court testimony generally. Overall, the Chamber is satisfied that the issue of financial rewards and exaggerated claims was adequately explored in court, with plausible explanations offered as to erroneous claims. As a result, the Chamber finds the Defence argument that the witnesses lacked credibility and/or their evidence lacked reliability on this basis unpersuasive.

342. Lastly, regarding the Defence submissions related to the role of intermediaries,[854] the Chamber recalls that this issue has been addressed in previous decisions.[855] Insofar as issues related to victims' application forms may affect the reliability of witnesses' in-court testimony, the Chamber notes that the Defence had an opportunity to and sometimes did question them on this matter. The Chamber takes such testimony into account where relevant in its assessment of the facts. Further, regarding the Defence submissions on the "industrial scale" of application forms, the Chamber finds that, while there is conflicting evidence as to whether some intermediaries received financial compensation for the completion of application forms,[856] there is no indication that this impacted the credibility of the witnesses' testimony.[857]

[853] **P42**: T-68, page 61, lines 5 to 13.
[854] *See* Defence Closing Brief, paras 223 to 227.
[855] *See* Section I(E)(2).
[856] *Compare* **P69**: T-195, page 18, line 18 to page 19, line 4, testifying that victims did not pay any money for filling out the form; *with* **P73**: T-73, page 20, line 24 to page 21, line 7, testifying that people were paid between 2,000 to 2,500 francs, to pay for typing and the computers to prepare the documents.
[857] *See*, *inter alia*, **P73**: T-73, page 21, lines 14 to 20.

### c) Additional witnesses

#### i. P65

343. P65 provided unconvincing, inconsistent – often with prior statements – and evasive evidence throughout those portions of his testimony relevant to the charges, and upon topics that a person in his position would be expected to know.[858] In particular, P65 was inconsistent regarding the MLC means of communications,[859] and matters relating to operational command over the MLC generally and the contingent in the CAR.[860] P65, in an often confusing and inconsistent manner, also qualified his prior statements, particularly on matters relating to Mr Bemba and the MLC's communications capabilities and structure, arguing that they applied only to MLC operations in the DRC, and/or pre-dated the 2002-2003 CAR Operation.[861] He was also non-responsive to questions, instead volunteering testimony on points not asked about.[862]

344. For example, the Chamber notes that, in a prior statement, P65 claimed that Mr Bemba did communicate with units in the field.[863] However, during his testimony, he both denied and affirmed this prior statement, later qualifying it as applicable only to MLC operations in the DRC or in 2001, and in the end, claimed he could not remember some related details.[864] P65 also reached

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[858] **P65**: T-168, page 14, line 11 to page 15, line 7; and T-168-Conf, page 16, lines 3 to 11.
[859] **P65**: T-168, page 35, lines 17 to 25, page 36, line 19 to page 37, line 4, testifying that the MLC contingent in the CAR had only phonies and a single Thuraya as means of communications; and T-170, page 26, line 8 to 14. *See also* **P65**: T-168, page 17, line 24 to page 18, line 25, page 21, line 14 to page 22, line 4, page 22, line 19 to page 23, line 4, page 37, lines 5 to 14, and page 51, line 19 to page 52, line 13.
[860] **P65**: T-168, page 17, line 22 to page 18, line 25, and page 37, lines 5 to 15; T-168-Conf, page 16, line 24 to page 18, line 25, page 20, lines 2 to 7, page 48, line 1 to page 50, line 10, confirming in a previous statement Mr Bemba was the Commander-in-Chief, and page 59, line 1 to 16; T-169, page 50, line 2 to page 51, line 14, and page 64, lines 18 to 24, testifying that General Amuli was MLC Commander-in-Chief; T-169-Conf, page 49, line 14 to 19, and T-171, page 489, line 14 to 19.
[861] *Compare* **P65**: T-168, page 18, lines 12 to 25, testifying that Mr Bemba only communicated once with the troops in the field, in 2000; *with* **P65**: T-169, page 48, line 24 to page 65, line 4; and T-170, page 19, line 23 to page 20, line 14, testifying that his prior statements concerning communications by means other than radio only applied to operations in the DRC.
[862] *See*, *inter alia*, **P65**: T-169, page 62, lines 1 to 13.
[863] **P65**: T-168-Conf, page 51, line 15 to page 52, line 13.
[864] **P65**: T-168, page 45, line 5 to page 52, line 13; T-169, page 64, lines 3 to 24; T-170, page 6, lines 3 to 22; and T-171, page 48, lines 6 to 19. *See also* **P65**: T-171, page 21, lines 7 to 11, and page 23, line 3 to page 29,

conclusions as to Mr Bemba's authority, including over the MLC contingent in the CAR,[865] while at the same time testifying that he had no way of knowing about communications between Mr Bemba and Colonel Moustapha, or whether Mr Bemba and General Amuli discussed matters before orders were issued.[866]

345. Moreover, P65 testified that the Operations Report,[867] which the Chamber finds to be lacking in authenticity or probative value,[868] was authentic.[869] In this regard, despite apparent familiarity with the archives in which he claimed to have found the Operations Report, P65 was unable to name or recollect any other document in that archive.[870] The Chamber also considers his testimony that the archives only contained "up to 100" documents to be unlikely in light of his testimony that it contained financial, administrative, communications, and other records, including General Amuli's documents and reports, covering the period from "the beginning of January 1999 to 2003".[871]

346. Finally, near the end of his testimony, P65 expressed frustration, claiming that he testified against his will.[872] Afterwards, he qualified his testimony, for example, saying that he was unable to remember whether Colonel Moustapha sought Mr Bemba's approval before implementing orders from the CAR authorities, and claiming that only the logbooks could answer that question.[873]

347. Overall, and emphasising his demeanour throughout his testimony, the Chamber is concerned by P65's assertion that he "didn't want to come and give

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line 17, testifying that Mr Bemba was rarely involved in communications, claiming that only one logbook message emanated from him, and when confronted, confirming that multiple messages were from Mr Bemba.

[865] **P65**: T-168, page 17, line 22 to page 18, line 25, and page 37, lines 5 to 15; T-168-Conf, page 16, line 24 to page 18, line 25, page 20, lines 2 to 7, and page 59, line 1 to 16; T-169, page 50, line 2 to page 51, line 14, and page 64, lines 18 to 24, testifying that General Amuli was the MLC Commander-in-Chief and had the authority to act without the instructions of others; T-169-Conf, page 49, line 14 to 19, and T-171, page 489, line 14 to 19.

[866] **P65**: T-168-Conf, page 20, lines 2 to 7; and T-170, page 26, line 8 to 14.

[867] **EVD-T-OTP-00394/CAR-DEF-0002-0567**.

[868] *See* Section IV(E)(6)(e).

[869] **P65**: T-170, page 54, line 9 to page 58, line 14.

[870] **P65**: T-171-Conf, page 35, line 11 to page 38, line 13.

[871] **P65**: T-171, page 36, lines 3 to 10.

[872] **P65**: T-171-Conf, page 40, lines 13 to 24.

[873] **P65**: T-171, page 48, lines 6 to 19.

testimony. [He was] shocked",[874] and the fact that the remainder of his testimony effectively qualified previous broad and conclusive assertions relating to key matters at issue in the case. In addition, the Chamber's concerns as to P65's credibility and the reliability of his evidence are not limited to certain issues; rather, they impact the overall quality and content of P65's evidence, and thus cannot be overcome, even if corroborated by other reliable evidence. Accordingly, the Chamber attaches no weight to P65's evidence.

**ii. D2**

348. Throughout his testimony, D2's demeanour was evasive,[875] and his responses to questions were frequently illogical,[876] improbable,[877] or contradictory.[878]

349. Although claiming to be a military officer in President Patassé's regime, D2 was unable to provide information on military issues within his alleged area of competence and knowledge.[879] For example, despite testifying that he joined a militia group in 2001, he claimed to have no knowledge and was not in a position to know of that group's involvement in events that same year or the size of the group.[880] Further, although asserting that he was in a position to

[874] **P65**: T-171, page 40, lines 23 to 24.
[875] *See* **D2**: T-321bis-Conf, page 4, line 24 to page 10, line 21; T-322, page 21, line 5 to page 22, line 2, and page 55, line 24 to page 57, line 7; and T-322-Conf, page 23, line 5 to page 25, line 25, page 35, line 4 to page 37, lines 19, and page 59, line 5 to page 60, line 14.
[876] **D2**: T-322, page 40, line 4 to page 42, line 4; T-322-Conf, page 23, line 5 to page 24, line 2, and page 34, line 14 to page 38, line 4; T-321-Conf, page 41, line 19 to page 48, line 11; and T-321bis, page 20, line 6 to page 23, line 12.
[877] **D2**: T-321bis, page 29, lines 6 to 14; and T-321bis-Conf, page 24, line 12 to page 27, line 7.
[878] **D2**: T-321, page 23 lines 14 to 16, and page 24, line 1 to page 25, line 16; T-321bis, page 15, line 11 to page 19, line 2; and T-322, page 4, line 17 to page 6, line 6, and page 46, line 14 to page 47, line 22.
[879] **D2**: T-321, page 12, lines 20 to 24, and page 51, line 12 to page 52, line 6; T-321-Conf, page 47, line 12 to page 48, line 11, and page 55, line 15 to page 58, line 1; T-321bis-Conf, page 9, line 1 to page 10, line 21; T-322, page 20, lines 8 to 11, and page 49, lines 17 to 22; and T-322-Conf, page 23, line 5 to page 25, line 25.
[880] **D2**: T-321, page 50, line 25 to page 52, line 16, and page 54, lines 1 to 3; and T-321-Conf, page 59, lines 13 to 25.

know about the operation of the CAR Centre of Operation ("CAR CO"),[881] D2 was unable to provide basic information about its structure or organization.[882]

350. Moreover, in light of his position and the abundant public information alleging crimes by the MLC,[883] D2's testimony that he had no information indicating that the MLC or other forces aligned with President Patassé committed crimes is, at best, questionable.[884] In this regard, the Chamber notes D2's unlikely testimony that (i) between October 2002 and March 2003, when he was mostly present in Bangui, he did not have access to the national press, did not read a single newspaper, did not listen to the radio, and did not discuss anything with his neighbours;[885] (ii) he only had information of crimes committed by General Bozizé's rebels;[886] (iii) General Bozizé's rebels were responsible for pillaging Boy-Rabé, which he also claimed to be a stronghold of General Bozizé;[887] and (iv) the MLC soldiers he witnessed fleeing towards the Oubangui River at the end of the conflict had purchased the mattresses and other goods they carried.[888] He claimed to have drawn this latter conclusion solely from the fact that MLC soldiers went to the market during their time in the CAR.[889]

351. Accordingly, the Chamber considers that particular caution is required in analysing D2's evidence.

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[881] **D2**: T-321-Conf, page 56, line 23 to page 57, line 15. For the Chamber's discussion of the CAR CO, *see* Section V(B)(1).
[882] **D2**: T-321, page 25, lines 17 to 21, page 55, line 15 to page 56, line 11, and page 57, line 25 to page 59, line 1; and T-321-Conf, page 11, lines 3 to 9, and page 56, line 23 to page 57, line 24.
[883] *See* Sections V(C) and V(D)(1).
[884] **D2**: T-321, page 37, line 17 to page 38, line 1; T-321bis, page 23, lines 15 to 24, and page 33, lines 4 to 12; T-321bis-Conf, page 27, lines 8 to 22; and T-322, page 39, line 12 to page 40, line 19, page 42, lines 11 to 24, and page 43, line 20 to page 44, line 6.
[885] **D2**: T-321bis, page 29, lines 4 to 14; and T-321bis-Conf, page 24, line 12 to page 27, line 7.
[886] **D2**: T-321, page 17, line 6 to page 19, line 24, page 22, line 16 to page 23, line 5, page 36, line 10 to page 37, line 16, and page 38, lines 6 to 16; T-321-Conf, page 22, lines 3 to 8, and page 32, line 21 to page 35, line 8; T-321bis, page 29, line 25 to page 33, line 3; and T-321bis-Conf, page 27, lines 8 to 16.
[887] **D2**: T-322, page 46, line 2 to page 47, line 22, and page 61, lines 14 to 18.
[888] **D2**: T-321, page 37, line 17 to page 38, line 1; T-321bis, page 23, lines 15 to 24, page 33, lines 4 to 12; T-321bis-Conf, page 27, lines 8 to 22; and T-322, page 39, line 12 to page 40, line 19, and page 42, lines 11 to 24.
[889] **D2**: T-322, page 42, lines 11 to 24.

### iii. D3

352. D3's demeanour during his testimony was evasive and defensive.[890] His testimony was also frequently confusing, illogical, and inconsistent.[891] D3's testimony about which forces committed crimes in the CAR is particularly incoherent. At different points, he testified that (i) the perpetrators of crimes were FACA,[892] (ii) he only knew of crimes committed by Mr Miskine's soldiers,[893] and (iii) he never saw MLC soldiers committing any crimes.[894] Further, although he claimed to belong to Mr Miskine's group, D3 was unable to identify the location of the group's base or the identities of Mr Miskine's deputies,[895] and his testimony as to how he identified Mr Miskine's soldiers as the perpetrators of crimes is confusing and contradictory.[896] Likewise, despite claiming that he never saw MLC soldiers committing crimes, the basis of this assertion is unclear as he also claimed to be unable to identify MLC soldiers.[897] He was repeatedly asked to clarify his basis for identifying different groups, and in response was evasive and non-responsive, explaining that he was only able to testify about what happened within his own group.[898]

353. Accordingly, the Chamber considers that particular caution is required in analysing D3's evidence.

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[890] *See*, *inter alia*, **D3**: T-325, page 34, line 21 to page 35, line 3; and T-330, page 29, line 9 to page 34, line 2, and page 41, lines 4 to 6.
[891] *See* **D3***:* T-325, page 38, line 12 to page 44, line 8; T-326, page 3, line 12 to page 11, line 3; T-330, page 3, line 21 to page 5, line 12, page 12, line 17 to page 13, line 4, page 16, line 17 to page 17, line 4, page 26, lines 7 to 21, page 28, line 1 to page 34, line 2, page 37, line 8 to page 40, line 7, and page 41, lines 4 to 14. *Compare* **D3**: T-325, page 16, line 25 to page 17, line 1; and T-330, page 23, lines 18 to 24, and page 41, lines 19 to 22; *with* **D3**: T-325, page 31, lines 18 to 21.
[892] *See*, *inter alia*, **D3**: T-325, page 21, line 9 to page 24, line 4.
[893] *See*, *inter alia*, **D3**: T-330, page 28, line 1 to page 29, line 21.
[894] **D3**: T-325, page 25, lines 12 to 17, and page 28, line 1 to page 29, line 4; and T-330, page 29, lines 1 to 7.
[895] **D3**: T-325, page 47, lines 7 to 11.
[896] *See*, *inter alia*, **D3**: T-330, page 29, line 9 to page 30, line 14, following questioning by the Chamber on how he could identify Mr Miskine's troops as perpetrators if all soldiers wore the same uniform, D3 stated that the soldiers wore different scarves to distinguish their units, page 30, line 15 to page 31, line 2, testifying further that the soldiers wore the same colour of scarves, page 31, lines 3 to 14, testifying under further questioning that since they wore the same colour of scarves the units could be distinguished by language, and page 31, line 14 to page 32 line 22, avoiding answering how he could distinguish the attackers by language.
[897] **D3**: T-330, page 12, line 17 to page 13, line 7, and page 29, lines 1 to 14.
[898] **D3**: T-330, page 28, line 1 to page 29, line 7, and page 31, line 15 to page 34, line 2.

### iv. D7

354. The Chamber recalls that D7 did not finish his testimony.[899] The Chamber addressed D7's incomplete testimony in its "Decision on 'Defence Submissions on the Testimony of CAR-D04-PPPP-0007'".[900] At the point his testimony was interrupted, D7 had not provided evidence in response to questioning from the Legal Representatives,[901] and potentially by the Chamber.[902] Accordingly, the Chamber held as follows:[903]

> [the Chamber] has sufficient information to be able to assess the witness's testimony, including its reliability and credibility, at the time it considers the evidence of the case as a whole. The Chamber stresses that the finding that Witness D04-07's testimony may be retained on the case record has no bearing on the Chamber's final determination of the credibility or reliability of Witness D04-07's testimony, or whether it will be afforded any weight at the end of the case. When making this determination, the Chamber will fully consider the parties and participants' submissions as to the weight to afford to the testimony of Witness D04-07 and the circumstances surrounding the witness's failure to complete his testimony.

355. The Chamber finds that D7's testimony was unreliable on a number of issues, including in relation to his own activities and income,[904] his contacts with Mr Narcisse Arido,[905] and the activities and individuals working for the CAR CO.[906] Moreover, the Chamber found that D7's demeanour evinced evasiveness; he was often uncooperative, refusing to answer questions from the Prosecution, to the point that the Chamber and the Victims and Witnesses Unit ("VWU") had

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[899] T-251, page 1, line 21 to page 3, line 22.
[900] ICC-01/05-01/08-2839.
[901] *See* **D7**: T-248, page 56, lines 16 to page 57, line 8, noting that pursuant to oral decision of 19 September 2012, the Chamber authorised Me Zarambaud and Me Douzima to ask the witness questions. *See also* **D7**: T-250, page 47, line 4 to page 61, line 9, noting whereby Maître Zarambaud started but did not finish his questioning and Maître Douzima did not have the opportunity to pose any of her questions to the witness.
[902] ICC-01/05-01/08-2839, para. 10.
[903] ICC-01/05-01/08-2839, para. 24.
[904] **D7**: T-249, page 7, lines 2 to 25, and page 9, line 6 to page 10, line 13.
[905] **D7**: T-249, page 11, line 17 to page 17, line 11.
[906] **D7**: T-249, page 27, lines 14 to 25; and T-249-Conf, page 33 lines 17 to 25, page 35, line 3 to page 36, line 11, and page 40, line 23 to page 42, line 22.

to warn him as to the consequences of refusing to testify or providing false testimony more than once.[907]

356. In light of the above, the Chamber finds D7 not credible and his incomplete testimony entirely unreliable. In these circumstances, the Chamber attaches no weight to his evidence.

**v. D15**

357. D15's testimony was exaggerated, inconsistent, and evasive, particularly when questioned about Mr Bemba's role in the 2002-2003 CAR Operation, including in relation to operational command over the MLC troops in the CAR.[908] The Chamber also notes that, despite D15's apparent familiarity with the contents of the MLC logbooks relating to the 2002-2003 CAR Operation, he was defensive and uncooperative when asked if he discussed the logbooks with the Defence.[909] As a further example, the Chamber notes that D15 inconsistently testified, on the one hand, that he was unaware of any crimes attributed to MLC soldiers, and, on the other hand, that "everybody who was in [Gbadolite], […] including Mr Bemba", learned of MLC crimes through the media.[910]

358. Accordingly, the Chamber considers that particular caution is required in analysing D15's evidence.

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[907] *See*, *inter alia*, **D7**: T-249, page 7, lines 14 to 17, page 33, lines 5 to 14, page 34, lines 1 to 9, and page 37, lines 5 to 17.

[908] **D15**: T-343, page 26, line 15 to page 28, line 1, page 32, line 13 to page 35, line 2, and page 36, line 1 to page 37, line 10; T-344, page 13, line 25 to page 17, line 16, page 21, line 21 to page 22, line 16, page 28, lines 13 to 20, page 35, line 1 to page 38, line 10, page 56, line 17 to page 58, line 3; T-345, page 57, lines 13 to 21, page 59, line 11 to page 60, line 20, and page 73, line 10 to page 75, line 18; and T-345-Conf, page 78, lines 12 to 14, and page 88, line 5 to page 90, line 25. *See*, *inter alia*, **D15**: T-343, page 33, line 13 to page 35, line 2, seemingly using the words "instruct", "answer", or "reply" to avoid using the word "order" when commenting on messages sent from Mr Bemba to the commanders.

[909] **D15**: T-345, page 3, line 22 to page 9, line 4.

[910] *Compare* **D15**: T-345, page 73, line 10 to page 75, line 18; and T-345-Conf, page 88, line 5 to page 90, line 25, testifying he was not aware of crimes accredited to the MLC; *with* **D15**: T-344, page 28, lines 13 to 20, testifying that everybody in Gbadolite learned of the crimes through RFI.

### vi. D19

359. The Chamber considers that, with regard to issues that go to Mr Bemba's direct involvement in the 2002-2003 CAR Operation or operational control, as well as certain other discrete issues such as D19's personal involvement in and role during the events,[911] his testimony was not credible. Two key examples include (i) D19's implausible testimony with respect to the Operations Report, which the Chamber found to be entirely not credible,[912] and (ii) the inconsistencies and contradictions within and between his testimony and his prior statements to the Prosecution regarding operational control during the 2002-2003 CAR Operation.[913] On these issues, the Chamber found D19's demeanour and testimony to demonstrate evasion, and a lack of spontaneity and impartiality.

360. Accordingly, the Chamber considers that particular caution is required in analysing D19's evidence.

### vii. D25

361. D25's testimony was often incoherent and unclear.[914] When confronted with evidence during Prosecution questioning contradicting his account, D25 was evasive and qualified his testimony.[915] In particular, in relation to Mr Bemba's

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[911] *See*, *inter alia*, **D19**: (i) inconsistent, incoherent, and evasive testimony concerning command over the MLC contingent in the CAR (*see* Section V(B)(2)(c)); (ii) inconsistencies concerning the logistics of the MLC contingent in the CAR (*see* Section V(B)(2)(a)); (iii) inconsistencies concerning communications between Mr Bemba and Colonel Moustapha (*see* Section V(B)(2)(b)); (iv) inconsistencies as to the arrival date of MLC troops (*see* Section V(C)(2)); and (v) inconsistencies concerning the decision to withdraw from the CAR (*see* Section V(C)(12)).

[912] *See*, *inter alia*, **D19**: T-284-Conf, page 23, lines 8 to 17; T-285-Conf, page 22, lines 4 to 20; T-287-Conf, page 27, line 19 to page 28, line 11, page 29, lines 8 to 12, page 33, line 23 to page 36, line 16, page 41, line 23 to page 44, line 12, and page 48, line 13 to page 49, line 5; and T-293-Conf, page 10, line 19 to page 11, line 5. *See also* Section IV(E)(6)(e).

[913] *See*, *inter alia*, **D19**: T-289-Conf, page 74, line 19 to page 78, line 25; and T-290-Conf, page 32, line 21 to page 33, line 17, and page 42, line 17 to page 45, line 6. *See also* Section V(B)(2)(c).

[914] *See*, *inter alia*, **D25**: T-336, page 68, lines 1 to 19, page 70, line 5 to page 72, line 3; and T-337, page 28, line 14 to page 31, line 20.

[915] *Compare* **D25**: T-336, page 27, lines 17 to 22, testifying that the ALC Chief of General Staff went to Zongo before the MLC troops crossed over to CAR; *with* **D25**: T-337, page 12, lines 1 to 6, testifying that he did not say that the ALC Chief of General Staff went to Zongo and that he was not certain whether Mr Bemba or the Chief of General Staff went. *Compare* **D25**: T-336, page 14, lines 4 to 16, testifying that at Mr Bemba's residence, security personnel stayed about 75 metres away; *with* **D25**: T-336-Conf, page 69, line 15 to page 70, line 4, confirming a previous statement about security personnel being with Mr Bemba 98% of the time, *and*

role in the 2002-2003 CAR Operation, D25 insisted that Mr Bemba had no operational command of the MLC troops in CAR, but also testified that he would not know whether Mr Bemba issued any orders, and that Mr Bemba could have directed the operations through the General Staff.[916] He also inconsistently testified both that the MLC troops never killed anyone and that he did not know anything about the crimes committed by the MLC.[917]

362. Accordingly, the Chamber considers that particular caution is required in analysing D25's evidence.

**viii. D45**

363. The Chamber has various concerns about D45's credibility and the reliability of his testimony, in particular, the sheet of notes brought by D45 to the location of his video-link testimony, purportedly to aid his memory.[918] The Chamber notes that, as a general rule, witnesses were not permitted to use notes without authorisation. Further, while containing some information as to dates and key facts relevant to the 2002-2003 CAR Operation, the notes also contained other information unusual for a memory aid and unrelated to the 2002-2003 CAR Operation, such as details as to D45's contact with members of the Defence team.[919] Moreover, the information that does relate to the 2002-2003 CAR Operation covers key, live issues in the *Bemba* case, such as the command role of the CAR authorities, identifying characteristics of the perpetrators, provision of communications devices by the CAR authorities, the Operations Report, and the timeline of the MLC troops' arrival in the CAR at the beginning of the 2002-

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**D25**: T-337, page 35, line 5 to page 37, line 15, evading answering questions when confronted with video footage showing security guards 10 to 15 metres from Mr Bemba's residence.

[916] *See*, *inter alia*, **D25**: T-336, page 67, lines 10 to 17; T-336-Conf, page 68, line 19 to page 72, line 3; and T-337, page 33, line 8 to page 34, line 4.

[917] **D25**: T-337, page 51, line 25 to page 52, line 3; and T-337-Conf, page 4, line 8 to page 5, line 8.

[918] **EVD-T-OTP-00830/CAR-ICC-0001-0089**. *See also* **D45**: T-293, page 36, lines 6 to 23; T-296-Conf, page 13, line 21 to page 17, line 1; T-299, page 10, line 10 to page 24, line 10, and page 27, line 19 to page 29, line 8; and T-300, page 23, line 14 to page 25, line 12.

[919] **EVD-T-OTP-00830/CAR-ICC-0001-0089**.

2003 CAR Operation.[920] The Chamber finds that the nature of these notes casts significant doubt on the credibility of D45, in particular his spontaneity and impartiality.

364. The Chamber's doubts are further amplified by D45's explanation that "I was asked to bring [the notes]", and his assertion that he prepared them "because I know why I was called and I also know why other colleagues were called and so I mustn't lose sight of the dates".[921] Upon further questioning, including by the Chamber, D45 gave inconsistent and evasive testimony, which was often non-responsive to the questions asked, concerning, *inter alia*, the identity of these "other colleagues" and his reasons for bringing and preparing the notes, as well as who asked him to do so.[922] For example, he testified several times that the details in the notes were details he would never forget,[923] thereby calling into question their utility as a memory aid. Finally, the Chamber considers that D45's testimony on the Operations Report, in light of its findings as to the report's authenticity, further undermines D45's credibility.[924]

365. Accordingly, the Chamber's concerns relating to D45's testimony impact on his overall credibility and reliability of his evidence. The Chamber's most significant concerns revolve around his notes, which relate to a wide-range of topics upon which he testified, both those relevant to issues in dispute in this case, as well as other topics, such as contact with the Defence. In such circumstances, the Chamber finds that D45 is generally not credible and his evidence, as a whole, unreliable. Accordingly, the Chamber attaches no weight to D45's evidence.

[920] **EVD-T-OTP-00830/CAR-ICC-0001-0089**. *See also* Sections IV(E)(6)(e) and Section V(C).
[921] **D45**: T-293, page 36, lines 10 to 23.
[922] **D45**: T-296-Conf, page 13, line 3 to page 17, line 1; T-299, page 10, line 14 to page 29, line 8.
[923] **D45**: T-296-Conf, page 13, line 3 to page 17, line 1; T-299, page 10, line 14 to page 29, line 8.
[924] **D45**: T-296, page 9, lines 19 to 22; and T-299-Conf, page 28, line 6 to page 31, line 18. *See also* Section IV(E)(6)(e).

**ix. D49**

366. D49's testimony evinced a lack of credibility when testifying on certain issues, particularly with respect to the issue of whether Mr Bemba issued "orders" to MLC troops in the CAR as opposed to "instructions" or "general intentions".[925] This testimony directly contradicted the clear wording of a number of messages recorded in the logbooks. In this regard, D49's testimony was evasive and appeared strained in light of D49's efforts to avoid attributing command to Mr Bemba.[926] Likewise, in relation to operational command over the MLC contingent in the CAR, D49 was non-responsive to questions, instead offering explanations without prompting.[927] The Chamber also found D49's testimony related to the crossing of a small number of troops to Bangui on 26 October 2002 to be inconsistent, implausible, and contradicted by other credible and reliable evidence.[928]

367. Accordingly, the Chamber considers that particular caution is required in analysing D49's evidence.

**x. D53**

368. D53, a military expert, produced a report that lists the documents he considered, and the individuals he interviewed,[929] but does not indicate the specific basis for each of his conclusions. Many of the documents listed in D53's report are the Contested Items, to which the Chamber has decided to attach no

[925] **D49**: T-270, page 25, line 19 to page 26, line 8; T-270-Conf, page 52, line 17 to page 53, line 15; and T-271, page 42, line 18 to page 43, line 1. *See also* Section V(B)(2)(c).
[926] *See, inter alia*, **D49**: T-270, page 25, line 19 to page 26, line 8; T-270-Conf, page 29, lines 21 to 25, page 48, line 10 to page 49, line 10, and page 50, lines 1 to 14, and page 52, line 17 to page 53, line 15; T-271, page 42, line 18 to page 43, line 1; T-272-Conf, page 37, lines 21 to 25, and page 42, line 13 to page 44 , line 12; and T-272, page 39, line 23 to page 40, line 23; T-273-Conf, page 64, line 12 to page 66, line 12; and T-274, page 9, line 2 to page 10, line 16, page 14, line 9 to page 15, line 1, page 61, line 6 to page 63, line 13.
[927] **D49**: T-273-Conf, page 64, line 12 to page 66, line 12; and T-274, page 9, line 2 to page 10, line 16, page 14, line 9 to page 15, line 1, page 61, line 6 to page 63, line 13. *See also* Section V(B)(2)(c).
[928] **D49**: T-270-Conf, page 29, lines 21 to 25, page 48, line 10 to page 49, line 10, and page 50, lines 1 to 14; T-272-Conf, page 37, lines 21 to 25; and T-272, page 39, line 23 to page 40, line 23, page 42, line 13 to page 43, line 4. *See also* Section V(C)(2).
[929] **EVD-T-D04-00070/CAR-D04-0003-0342**, at 0346 to 0350.

weight.[930] The Chamber recalls that D53 testified that he "did not assess the validity of the documents that were provided to [him], because they were official documents",[931] and conceded that, if he had been given false documents, he would have "follow[ed] a false line of reasoning".[932] In addition, the Chamber notes that D53 relied on many of D19's prior statements in making his report.[933] The Chamber has set out above its significant concerns relating to aspects of D19's evidence and, in particular, notes the inconsistencies between his testimony and his prior statements.[934]

369. As the Chamber is unable to discern the basis for D53's conclusions and in light of the risk that they were reached on the basis of unreliable information, the Chamber attaches no weight to D53's evidence.

**xi. D54**

370. D54 provided evasive and illogical testimony, particularly when he was questioned about the role of Mr Bemba and the MLC in the 2002-2003 CAR Operation.[935] For example, D54 attempted to make an artificial distinction between military "orders" and "instructions" given by Mr Bemba.[936] Further, when confronted with a letter from Mr Bemba to General Cissé contradicting his testimony that Mr Bemba had no disciplinary authority over the MLC contingent in the CAR and did not order arrests, D54 was evasive and qualified

[930] *See* **EVD-T-D04-00070/CAR-D04-0003-0342**, at 0349; and Section IV(E)(6), including documents **EVD-T-D04-00058/CAR-D04-0003-0128/CAR-D04-0003-0135**; **EVD-T-D04-00059/CAR-D04-0003-0129**; **EVD-T-D04-00060/CAR-D04-0003-0130**; **EVD-T-D04-00061/CAR-D04-0003-0131**; **EVD-T-D04-00062/CAR-D04-0003-0132**; **EVD-T-D04-00063/CAR-D04-0003-0133**; **EVD-T-D04-00064/CAR-D04-0003-0134**; **EVD-T-D04-00065/CAR-D04-0003-0136**; **EVD-T-D04-00066/CAR-D04-0003-0137**; **EVD-T-D04-00067/CAR-D04-0003-0138**; **EVD-T-D04-00068/CAR-D04-0003-0139**; **EVD-T-D04-00069/CAR-D04-0003-0140**; and **EVD-T-D04-00075/CAR-D04-0003-0141**.
[931] **D53**: T-232, page 4, lines 1 to 8.
[932] **D53**: T-232, page 4, lines 9 to 12.
[933] *See* **EVD-T-D04-00070/CAR-D04-0003-0342**, at 0347 to 0348.
[934] *See* Section IV(E)(7)(c)(iv).
[935] *See*, *inter alia*, **D54**: T-347, page 17, line 18 to page 21, line 5, page 51, line 23 to page 55, line 10; T-348, page 22, line 13 to page 23, line 15, and page 29, line 20 to page 30, line 13; T-348-Conf, page 65, line 18 to page 80, line 4; T-349, page 61, lines 13 to 24, and page 73, lines 6 to 13; and T-349-Conf, page 5, line 8 to page 7, line 4.
[936] **D54**: T-347, page 51, line 23 to page 55, line 4; and T-348-Conf, page 65, line 18 to page 80, line 4.

his earlier testimony elicited during Defence questioning. He claimed first that Mr Bemba made "mistakes in writing", and later that such orders could have been issued and he was not in a position to know for sure.[937] He made similar explanations when justifying his testimony on the MLC arrival date in the face of various pieces of contradictory evidence.[938] Finally, the Chamber notes D54's testimony that there were no victim complaints alleging MLC crimes made to certain commissions. When confronted with media reports of MLC crimes, he denied awareness, questioned their reliability, and/or attempted to shift blame to other forces involved in the conflict, in particular, General Bozizé's rebels.[939]

371. Accordingly, the Chamber considers that particular caution is required in analysing D54's evidence.

**xii. D55**

372. D55's testimony concerns a letter[940] sent to the Court that contains information incriminating Mr Bemba and potentially impacts on the credibility of another protected witness.[941] D55 claims that the letter is unreliable and contains false information.[942] However, his testimony was defensive, evasive, inconsistent, and non-responsive on various issues.[943] For example, he provided evasive and inconsistent testimony on the circumstances surrounding his contacts with the Defence.[944]

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[937] **D54**: T-348, page 77, line 3 to page 80, line 4.
[938] **D54**: T-348-Conf, page 15, line 12 to page 28, line 1.
[939] **D54**: T-347-Conf, page 55, lines 7 to 11, and page 72, lines 13 to 19; T-348, page 22, line 13 to page 23 line 15; and T-349, page 10, line 21 to page 15, line 23, insisting repeatedly that the CAR population was happy with the MLC's arrival.
[940] **EVD-T-OTP-00736/CAR-OTP-0062-0094_R01**.
[941] **D55**: T-264-Conf, page 20, line 1 to page 26, line 10.
[942] *See*, *inter alia*, **D55**: T-264-Conf, page 21, line 18 to page 22, line 13.
[943] *See* **D55**: T-264, page 20, line 16 to page 22, line 13, page 31, line 21 to page 33, line 2, and page 62, lines 1 to page 64, line 22; T-265, page 49, line 18 to page 52, line 24, and page 56, line 2 to page 57, line 3; T-266, page 24, line 24, to page 25, line 23; and T-266-Conf, page 32, line 10 to page 35, line 1, and page 38, line 11 to page 41, line 10.
[944] **D55**: T-265-Conf, page 49, line 20 to page 54, line 3.

373. On the second day of his testimony, D55 arrived in the courtroom with notes, which witnesses were not permitted to bring absent the Chamber's authorisation.[945] Without being specifically asked whether others were involved in the creation of the notes, D55 insisted that he wrote them himself and that he did not have contact with others in relation thereto.[946] He read the notes for 30 minutes, touching on various issues relating to the letter and its creation, which he claimed not to have recalled the previous day; he had never been questioned on many of the topics he recalled.[947]

374. Accordingly, the Chamber has concerns that cast significant doubt upon the entirety of the relevant evidence D55 provided. In such circumstances, the Chamber considers that D55 is not credible and his testimony as a whole is unreliable. The Chamber therefore attaches no weight to his evidence.

**xiii. D57**

375. During his testimony, D57 repeatedly offered responses unconnected to the questions posed.[948] For example, he emphasised that the CAR authorities had command over the MLC troops, even when asked unrelated questions, such as questions about General Bozizé's forces or Colonel Moustapha's use of communication devices.[949] Further, D57's testimony was frequently illogical or confusing.[950] In relation to allegations of MLC crimes, D57 testified that he only received uncertain information, repeatedly emphasised that General Bozizé's

[945] **D55**: T-265, page 10, line 11 to page 11, line 7.
[946] **D55**: T-265, page 11, line 13 to page 12, line 8.
[947] **D55**: T-265-Conf, page 2, line 23 to page 10, line 7.
[948] *See*, *inter alia*, **D57**: T-256, page 16, line 20 to page 17, line 21, page 29, line 24 to page 30, line 16; and T-257, page 16, line 20 to page 20, line 5, page 55, line 8 to page 59, line 19, and page 62, line 15 to page 63, line 3.
[949] **D57**: T-256, page 16, line 20 to page 17, line 21; and T-257, page 16, line 20 to page 18, line 25, page 62, line 15 to page 63, line 3.
[950] *See*, *inter alia*, **D57**: T-256, page 33, lines 9 to 16, and page 45, lines 2 to 21; T-257, page 61, line 16 to page 63, line 3; and T-258, page 40, line 20 to page 41, line 10, and page 54, line 21 to page 57, line 2. *See also* Section V(B)(2)(c).

rebels committed various crimes, and qualified earlier testimony on the matter when confronted with contradictory evidence.[951]

376. Accordingly, the Chamber considers that particular caution is required in analysing D57's evidence.

**xiv. D64**

377. D64's testimony was frequently illogical, improbable, and the basis of his assertions unclear.[952] For example, he testified that General Bombayake issued orders to Colonel Moustapha; however, he never actually heard General Bombayake giving Colonel Moustapha any orders.[953] D64 testified that Colonel Moustapha, speaking Lingala, transmitted General Bombayake's orders to MLC soldiers, yet he also testified he did not understand Lingala and could not understand the content of the conversations between MLC soldiers and Colonel Moustapha.[954] Likewise, D64 was inconsistent as to whether MLC soldiers, in particular Colonel Moustapha, could speak French, and when confronted with this contradiction, he denied and qualified his earlier testimony that MLC troops could not understand French.[955] He reacted in a similar manner when confronted with other contradictory evidence, qualifying his earlier testimony, indicating uncertainty.[956]

378. Accordingly, the Chamber considers that particular caution is required in analysing D64's evidence.

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[951] **D57**: T-256-Conf, page 41, lines 11 to 24; and T-258, page 12, lines 4 to 24, and page 51, line 22 to page 54, line 16.
[952] **D64**: T-159, page 40, line 2 to page 42, line 24, and page 44 line 2 to page 48, line 1; T-259-Conf, page 14, line 20 to page 17, line 22, page 24, line 1 to page 25, line 1, and page 35, line 13 to page 36, line 9; T-260, page 12, lines 3 to 21, page 24, line 22 to page 26, line 13, and page 49, line 20 to page 51, line 13; and T-260-Conf, page 16, line 20 to page 18, line 15, and page 20, line 14 to page 21, line 23.
[953] **D64**: T-259, page 24, line 1 to page 25, line 1; and T-260-Conf, page 20, line 14 to page 21, line 23. *See also* Section V(B)(2)(c).
[954] **D64**: T-260-Conf, page 16, line 20 to page 18, line 15.
[955] **D64**: T-260, page 12, lines 3 to 21, and page 49, line 20 to page 51, line 13.
[956] *See*, *inter alia*, **D64**: T-259, page 39, lines 7 to 19, page 45, line 1 to page 48, line 1; and T-260, page 24, line 22 to page 26, line 13.

# V. FACTS

379. General François Bozizé, the former FACA Chief of Staff, was dismissed from military service in October 2001; thereafter, various FACA troops deserted with him ("General Bozizé's rebels"[957]), and retreated behind the Chadian border, where they remained until October 2002.[958] After regrouping, and while General Bozizé was in Paris,[959] his forces advanced through the CAR, engaging FACA troops and capturing various towns before entering Bangui on 25 October 2002.[960] Upon arrival, they entered the northern neighbourhoods of Bangui, including Gobongo, Fouh, Boy-Rabé, Miskine, Dedengue, and the Eighth Arrondissement.[961] The FACA soldiers and other troops supporting President Patassé, the CAR President at the time, responded with armed force, including a bombing campaign beginning on 25 October 2002.[962]

380. As discussed in more detail below, on 25 October 2002, President Patassé requested from Mr Bemba the assistance of the MLC, in particular, the ALC, its military wing, in defending his government against General Bozizé's rebels.[963] In response, Mr Bemba, the MLC President and Commander-in-Chief of the ALC, deployed ALC troops from the DRC to the CAR to intervene in support of President Patassé.[964] Other troops supporting President Patassé included the

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[957] *See* Section V(B)(3).
[958] **D56**: T-313, page 16, line 1 to page 17, line 2; **EVD-T-OTP-00401/CAR-OTP-0004-0409**, at 0417; and **EVD-T-OTP-00831/CAR-OTP-0069-0148**, at 0164.
[959] **D56**: T-315, page 21, line 24 to page 22, line 32; **EVD-T-OTP-00401/CAR-OTP-0004-0409**, at 0429; **EVD-T-OTP-00831/CAR-OTP-0069-0148**, at 0168 and 0188; and **EVD-T-OTP-00438/CAR-OTP-0011-0293**, at 0294.
[960] **P151**: T-175, page 25, line 23 to page 26, line 25, and page 31, lines 1 to 7; **CHM1**: T-353-Conf, page 62, lines 6 to 13; **P6**: T-95, page 65, lines 4 to 10; **V2**: T-223, page 30, lines 16 to 17; and T-224, page 3, line 19 to page 4, line 1; **P9**: T-107, page 18, line 17 to page 20, line 25; **EVD-T-OTP-00446/CAR-OTP-0013-0082**; **EVD-T-OTP-00401/CAR-OTP-0004-040**9, at 0418; and **EVD-T-OTP-00831/CAR-OTP-0069-0148**, at 0164.
[961] **D56**: T-313, page 30, line 3 to page 31, line 1; **P151**: T-175, page 30, lines 2 to 25; **EVD-T-OTP-00446/CAR-OTP-0013-0082**; **EVD-T-OTP-00827/CAR-DEF-0002-0108**, at 0163; and **EVD-T-OTP-00849/CAR-OTP-0013-0320**, at 0327.
[962] **P31**: T-183, page 14, lines 9 to 17; **P178**: T-150, page 17, lines 11 to 17; **P6**: T-95, page 29, lines 1 to 5, and page 54, line 17 to page 57, line 1; **CHM1**: T-353, page 43, lines 13 to 20; **P79**: T-76, page 52, lines 10 to 25; **P178**: T-152, page 56, lines 1 to 19; and **P119**: T-82, page 23, line 23 to page 24, line 20, page 25, lines 14 to 15, and page 26, line 15 to page 27, line 2; T-83, page 4, line 18 to page 5, line 1; T-84, page 20, lines 1 to 12; and T-85, page 17, lines 20 to 23.
[963] *See* Section V(C)(1).
[964] *See* Sections V(B)(2) and V(C)(1).

FACA, the USP, and various militias.[965] Over the course of approximately four and a half months, beginning on 26 October 2002, the MLC troops advanced through Bangui, to PK12 and PK22, and along the Damara-Sibut and Bossembélé-Bossangoa axes, attacked Mongoumba, and, on 15 March 2003, withdrew back to the DRC ("2002-2003 CAR Operation").[966] Throughout the 2002-2003 CAR Operation, the MLC troops allegedly committed crimes of murder, rape, and pillaging against the civilian population.[967]

381. In this section, the Chamber sets out the facts relevant to the conduct of, and the crimes allegedly committed during, the 2002-2003 CAR Operation, as well as Mr Bemba's alleged knowledge of and responsibility for those crimes. In doing so, the Chamber addresses (i) the general structure of the MLC; (ii) the forces present in the CAR during and involved in the 2002-2003 CAR Operation; (iii) the events as they unfolded over the course of the 2002-2003 CAR Operation; and (iv) the measures taken by Mr Bemba in reaction to allegations of crimes. Unless stated otherwise, the Chamber considers, on the basis of the entire evidentiary record, the facts set out in this section to be established and to constitute the Chamber's factual findings. Where necessary, the Chamber discusses and resolves discrepancies in, and other issues relating to, the evidence.

## A. GENERAL STRUCTURE OF THE MLC

382. The MLC was a movement based in Gbadolite, the capital of the Équateur Province, in the northwest of the DRC.[968] Mr Bemba established the MLC in 1998 with the goal of overthrowing the government in Kinshasa.[969] The MLC

[965] *See* Section V(B)(1).
[966] *See* Section V(C).
[967] *See* Section V(C).
[968] **P15**: T-207, page 25, lines 4 to 23; **P33**: T-157, page 69, lines 8 to 24; and T-160, page 37, lines 8 to 17; and **P45**: T-201, page 25, lines 3 to 12.
[969] **P33**: T-157, page 70, lines 22 to 24; and T-158, page 3, line 23 to page 5, line 9, and page 13, lines 9 to 24; **P44**: T-205, page 14, lines 10 to 16; and **P45**: T-202, page 48, lines 2 to 14, and page 49, lines 2 to 16.

gradually transformed from a rebel movement into a political party. It adopted a Statute on 30 June 1999 ("MLC Statute")[970] and was a party to a ceasefire agreement reached in Lusaka in July 1999.[971] Thereafter, the MLC took part in various negotiations concerning the disarmament of the factions in the DRC, and reorganization of the DRC government and military. By November 2002, the MLC was involved in negotiations held in Sun City, South Africa.[972] The MLC Statute declared that the organization's goal was "to establish a democratic state in the DRC based on free and transparent elections and respect for individual human rights and liberties".[973]

383. The MLC was comprised of four organs: the President, the Political and Military Council, the General Secretariat, and its military branch, the ALC.[974] Throughout the period relevant to the charges, Gbadolite was the MLC military and political headquarters.[975]

### 1. Mr Bemba

384. Mr Bemba was the President of the MLC, the leader of the political branch, and the Commander-in-Chief of the ALC from its creation and throughout the period of the charges.[976] He also held the military rank of Divisional General, or

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[970] **EVD-T-OTP-00808/CAR-OTP-0069-0363**.
[971] **P15**: T-207, page 28, lines 24 to 25, and page 29, line 1; and T-210, page 18, lines 3 to 21; and **EVD-T-D04-00048/CAR-D04-0003-0527**, at 0532.
[972] **EVD-T-OTP-00824/CAR-OTP-0010-0471**. *See also* **P33**: T-158, page 11, lines 11 to 15, and page 13, lines 12 to 18; and **P44**: T-205, page 15, lines 20-24.
[973] **EVD-T-OTP-00808/CAR-OTP-0069-0363**, at 0363.
[974] **EVD-T-OTP-00808/CAR-OTP-0069-0363**, at 0364; **P15**: T-207, page 34, lines 3 to 10; **P36**: T-213-Conf, page 23, lines 16 to 24; and **P44**: T-205, page 17, lines 5 to 15, and page 23, lines 7 to 11.
[975] **P44**: T-205, page 31, lines 16 to 18; **P36**: T-213, page 33, lines 16 to 17, and page 34, lines 19 to 20; and T-213-Conf, page 58, lines 4 to 15; and **P45**: T-201, page 23, lines 24 to 25, page 24 lines 8 to 17, and page 25 lines 13 to 23.
[976] **EVD-T-OTP-00808/CAR-OTP-0069-0363**, at 0364 to 0365, and 0367; **P33**: T-158, page 14, line 23 to page 15, line 9; **P44**: T-205, page 17, line 7 to page 19 line 5, and page 23, line 7 to page 24, line 4; **P45**: T-201, page 28, lines 6 to 8, and page 32, line 18 to page 33 line 2; and T-202, page 18, lines 12 to 15, and page 26, lines 6 to 11; **P213**: T-186, page 50, lines 5 to 9; and T-187, page 66, lines 18 to 24; **P15**: T-207, page 34, lines 13 to 15, and page 38, lines 7 to 9; and T-208, page 7, line 25 and page 8, line 1; **P36**: T-213, page 17, lines 1 to 6, and page 22, lines 14 to 21; and T-213-Conf, page 15, line 19 to page 16, line 3; **P169**: T-136, page 37, line 22; and T-138-Conf, page 23, lines 1 to 2; **P32**: T-165, page 13, lines 6 to 7, page 28, line 20 to page 29, line 7, and page 62, lines 18 to 20; **D19**: T-290, page 71, lines 8 to 16, and page 72, lines 13 to 14; **D49**: T-271, page 41, lines 20 to 23; **D39**: T-308, page 17, lines 11 to 18; **D18**: T-317, page 58, lines 11 to 21; **D48**: T-269, page 27, lines 20 to 23; and **D21**: T-301, page 31, lines 10 to 13; and T-304, page 6, line 4. *See also* Defence Closing Brief, para.

*Général de Division*.[977] Mr Bemba founded the MLC[978] and was the organization's figurehead and source of its funding, goals, and aims.[979] Under Article 12 of the MLC Statute, Mr Bemba held broad functions and powers,[980] including over internal organization and policy in the MLC's military and political wings.[981]

385. Mr Bemba ensured a clear division between the political and military wings. Political members of the MLC had no involvement or authority in military decisions, rendering him the primary authority covering both spheres.[982] While not always involved in the implementation of administrative decisions, Mr Bemba held ultimate authority over the decision-making and took, in general, the most important decisions.[983] Once Mr Bemba had taken a decision, it was not debatable.[984] The Secretary General, who coordinated the General Secretariat, and the administrative apparatus of the MLC implemented Mr Bemba's decisions.[985]

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676, acknowledging that Mr Bemba was the President of the MLC, and that pursuant to Article 12 of the MLC Statute, the President of the MLC was the head of the political wing and the Commander-in-Chief of the ALC.

[977] **P15**: T-208, page 7, line 25 to page 9, line 3, and page 15, line 18 to page 16, line 7; **EVD-T-OTP-00368/CAR-OTP-0032-0167**, at 0168; **EVD-T-OTP-00695/CAR-D04-0002-1499**; **EVD-T-OTP-00724/CAR-OTP-0046-0084**; **P45**: T-202, page 26, lines 6 to 23; and **P36**: T-213, page 16, lines 7 to 22; and T-213-Conf, page 20, lines 21 to 22, and page 24, lines 9 to 21.

[978] **P44**: T-205, page 13, lines 6 to 9; **P36**: T-213, page 22, lines 17 to 19; **P178**: T-157, page 70, lines 22 to 24; and **P33**: T-158, page 4, lines 2 to 7.

[979] *See*, *inter alia*, **P15**: T-207, page 21, lines 15 to 22, testifying that relations with other heads of state were exclusively under Mr Bemba's purview; **P44**: T-205, page 24, line 17 to page 26, line 23, and page 27, lines 12 to 20; and **P45**: T-201, page 11, line 22 to page 12, line 10; and T-202, page 47, line 23 to page 48, line 14. *See also* Sections V(D)(3), V(D)(4), V(D)(7), and V(D)(8).

[980] **EVD-T-OTP-00808/CAR-OTP-0069-0363**, at 0364.

[981] **P15**: T-207, page 21, lines 9 to 15, page 26, lines 16 to 17, page 30, line 22 to page 31, line 15, page 34, lines 21 to 23, and page 36, lines 13 to 19; T-208, page 36, lines 15 to 21, and page 37, lines 23 to 25; and T-210, page 13, lines 19 to 25; **P36**: T-213, page 22, lines 24 to 25, and page 23, lines 14 to 15; and **EVD-T-OTP-00808/CAR-OTP-0069-0363**, at 0364.

[982] **P44**: T-205, page 23, lines 12 to 23; **P36**: T-213, page 23, lines 3 to 6; **P33**: T-158, page 11, lines 17 to 20, page 12, lines 7 to 12, and page 33, line 22 to page 34, line 8; and **P15**: T-207, page 21, line 25 to page 22, line 5, page 33, lines 5 to 6, and page 33, lines 13 to 24; and T-210, page 31, lines 12 to 20.

[983] *See*, *inter alia*, **P45**: T-201, page 30, line 19 to page 31, line 6; and T-202, page 37, lines 1 to 10; **P15**: T-207-Conf, page 26, lines 13 to 23, page 29, line 20 to page 31, line 20, and page 32, lines 10 to 13; **D18**: T-317, page 30, line 19 to page 31, line 1, noting that Mr Bemba would take action if "something rose to his particular level"; and **D48**: T-269, page 8, lines 8 to 15.

[984] **P44**: T-206, page 4, line 25 to page 5, line 2; **P15**: T-208, page 36, line 22 to page 37, line 22; **P36**: T-213-Conf, page 41, line 25 to page 42, line 11; and T-218, page 80, line 17 to page 81, line 11; **P45**: T-202, page 18, lines 4 to 10, and page 45, lines 9 to 16; and **P178**: T-151, page 56, lines 11 to 15.

[985] **P15**: T-207, page 29, line 19 to page 31, line 20; and T-207-Conf, page 26, lines 13 to 23, and page 32, lines 14 to 17; **P45**: T-201, page 30, line 19 to page 31, line 6; and **D49**: T-273, page 7, line 24 to page 8, line 2. *See also* **EVD-T-OTP-00808/CAR-OTP-0069-0363**, at 0365.

386. The Political and Military Council also assisted Mr Bemba.[986] It was formally responsible for defining the general political orientation of the MLC.[987] Mr Bemba convened and chaired the Political and Military Council's meetings and designated its nine members.[988] The Political and Military Council discussed military or political issues with Mr Bemba, but did not take any decisions, instead merely endorsing and "rubber-stamping" those taken by Mr Bemba.[989]

387. According to Articles 12 and 16 of the MLC Statute, after consulting the Political and Military Council,[990] Mr Bemba could appoint and dismiss "members of the MLC",[991] as well as the Chief and other members of the General Staff.[992] In practice, and although others, such as the Chief of General Staff, played an advisory role, Mr Bemba had primary authority for appointing, promoting, and dismissing officers and high-ranking members of the MLC.[993]

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[986] **EVD-T-OTP-00808/CAR-OTP-0069-0363**, at 0364; **P36**: T-213, page 17, lines 9 to 17, page 18, lines 6 to 17, and page 21, lines 1 to 8; and **P33**: T-158, page 9, line 13 to page 10, line 2.
[987] **EVD-T-OTP-00808/CAR-OTP-0069-0363**, at 0364.
[988] **EVD-T-OTP-00808/CAR-OTP-0069-0363**, at 0364; **P33**: T-158, page 10, lines 7 to 13; T-159, page 53, line 23 to page 55, line 10; and T-160, page 41, lines 18 to 25; **P36**: T-213, page 17, lines 9 to 17, page 18, lines 6 to 17, and page 21, lines 1 to 8; **P15**: T-207-Conf, page 36, line 21 to page 37, line 10; **D18**: T-317, page 30, lines 19 to 20; **EVD-T-OTP-00360/CAR-OTP-0009-0141**; and **EVD-T-OTP-00368/CAR-OTP-0032-0167**, at 0168 and 0172.
[989] *See*, *inter alia*, **P15**: T-207, page 36, lines 2 to 9, page 40, line 20 to page 41, line 12, and page 45, lines 18 to 24; T-208, page 13, line 20 to page 14 line 1, and page 18, lines 11 to 22; T-210, page 26, lines 18 to 25; and T-211, page 20, lines 6 to 15, and page 21, lines 15 to 19; **P36**: T-213, page 17, lines 14 to 17, page 18, lines 16 to 17, and page 21, lines 6 to 15; T-215, page 43, lines 6 to 7; T-215-Conf, page 41, line 10 to page 42, line 2; and T-218, page 6, lines 9 to 19; and **P33**: T-158, page 10, lines 2 to 6; and T-158-Conf, page 19, lines 15 to 21.
[990] **EVD-T-OTP-00808/CAR-OTP-0069-0363**, at 0364 to 0365.
[991] **EVD-T-OTP-00808/CAR-OTP-0069-0363**, at 0364.
[992] *See* Section V(A)(2), para. 390.
[993] *See*, *inter alia*, **P36**: T-213-Conf, page 27, lines 19 to 20; **P45**: T-201, page 28, lines 9 to 11, page 29, lines 6 to 18, page 33, lines 7 to 11, and page 42, lines 11 to 12; and T-201-Conf, page 13, lines 7 to 9, page 15, line 17 to page 16, line 8, and page 21, lines 12 to 23; **P33**: T-158, page 10, lines 2 to 5, page 15, line 18 to page 16, lines 5, and page 52, lines 11 to 15; T-158-Conf, page 50, line 20 to page 51, line 8, and page 61, line 3 to page 63, line 13; T-159, page 56, lines 1 to 6; and T-160, page 51, line 19 to page 52, line 24, and page 54, lines 9 to 16; **EVD-T-OTP-00727/CAR-OTP-0046-0111**; **EVD-T-OTP-00725/CAR-OTP-0046-0090**; **EVD-T-OTP-00729/CAR-OTP-0046-0170**; **P15**: T-208, page 25, lines 3 to 5, page 27, lines 14 to 16, page 33, line 6 to page 34, line 8, and page 36, lines 18 to 21; **P32**: T-165, page 32, line 16 to page 33, line 4; **D49**: T-273, page 10, lines 1 to 9; **D18**: T-317, page 58, lines 19 to 21; **P15**: T-207, page 31, lines 16 to 20; T-207-Conf, page 28, lines 11 to 17; T-208, page 18, lines 3 to 22, and page 36, lines 18 to 21; and T-211, page 21, lines 8 to 19; **P44**: T-205, page 24, lines 13 to 15; and T-205-Conf, page 12, lines 8 to 9; **EVD-T-OTP-00357/CAR-OTP-0009-0134**; **EVD-T-OTP-00709/CAR-OTP-0009-0140**; and **EVD-T-OTP-00368/CAR-OTP-0032-0167**, at 0168 and 0172.

388. Mr Bemba's authority also extended to military logistics including acquiring and distributing weapons and ammunition within the MLC,[994] as well as the organization's means of transport, a number of which he owned.[995] As one of the main sources of the MLC's funds, Mr Bemba exercised close control over its finances and expenditure.[996] Mr Bemba paid all expenses for satellite telephones and Thurayas,[997] and held authority over decisions as to food, fuel, medication, and clothing.[998]

389. Mr Bemba (i) often wore military attire, whether for practical or symbolic reasons;[999] (ii) carried a command baton or "swagger stick";[1000] (iii) addressed

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[994] *See*, *inter alia*, **P33**: T-159, page 21, line 15 to page 22, line 4; **P45**: T-201, page 38, lines 7 to 15; **P15**: T-207, page 31, lines 5 to 10, page 65, line 3 to page 66, line 22, page 67, lines 4 to 12, and page 68, lines 11 to 14; **EVD-T-CHM-00007/CAR-OTP-0032-0096**; **P36**: T-213, page 29, line 22 to page 30, line 5, page 69, lines 6 to 11, and page 73, lines 1 to 11; T-213-Conf, page 32, lines 8 to 25; T-217, page 37, lines 2 to 11; and T-217-Conf, page 36, lines 3 to 15; and **EVD-T-OTP-00808/CAR-OTP-0069-0363**, at 0365.

[995] **P36**: T-213, page 32, lines 24 to 25, page 34, lines 15 to 20, page 35, lines 6 to 15, and page 36, line 15 to page 37, line 22; **P32**: T-165, page 40, line 22 to page 41, line 1, and page 57, lines 1 to 22; **P15**: T-207, page 59, line 22 to page 61, line 12; **P33**: T-159, page 30, line 20 to page 31, line 24; and T-165, page 40, line 22 to page 41, line 1; **P45**: T-201, page 39, line 11 to page 40, line 4, page 68, lines 15 to 19, and page 69, lines 3 to 9; and T-202, page 26, line 24 to page 27, line 16, and page 30, lines 7 to 20; and **P44**: T-205, page 36, lines 6 to 10; and T-206, page 11, lines 16 to 20.

[996] *See*, *inter alia*, **P15**: T-207, page 31, lines 21 to 23, page 61, line 18 to page 62, line 16, page 64, lines 8 to 23, page 66, lines 15 to 22, and page 67, lines 5 to 10, testifying that the MLC's finances were comprised of funds obtained from Uganda, donations from various persons, a small amount of taxes, and Mr Bemba's own resources; **P45**: T-201, page 38, lines 1 to 15; **P36**: T-213, page 30, lines 11 to 25, and page 73, lines 1 to 11, testifying that all the funds to supply the troops came from Mr Bemba; **P44**: T-205, page 34, line 4 to page 35, line 13, and page 38, line 7 to page 39, line 2; and **EVD-T-OTP-00361/CAR-OTP-0032-0097**.

[997] **P36**: T-213, page 48, lines 5 to 10; and T-213-Conf, page 48, lines 11 to 14; and **P15**: T-211, page 37, lines 10 to 14.

[998] **P36**: T-213, page 30, lines 11 to 25, and page 72, lines 14 to 25; T-214, page 18, line 22 to page 20, line 20; and T-217, page 37, lines 12 to 18; **P45**: T-201, page 42, lines 7 to 13; T-205, page 34, line 17 to page 35, line 13; and **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1628.

[999] **P15**: T-208, page 11, line 10; **EVD-T-OTP-00718/CAR-OTP-0046-0064**; **EVD-T-OTP-00719/CAR-OTP-0046-0073**; **EVD-T-OTP-00720/CAR-OTP-0046-0075**; **EVD-T-OTP-00722/CAR-OTP-0046-0081**; **EVD-T-OTP-00724/CAR-OTP-0046-0084**; **EVD-T-OTP-00725/CAR-OTP-0046-0090**; **EVD-T-OTP-00727/CAR-OTP-0046-0111**; and **EVD-T-OTP-00728/CAR-OTP-0046-0116**. *See also* **P15**: T-208, page 8, line 22 to page 9, line 3, page 9, lines 14 to 18, and page 10, line 25 to page 11, line 1; **D21**: T-304, page 25, lines 7 to 24; **P47**: T-176, page 59, lines 14 to 20; and **EVD-T-OTP-00835/CAR-OTP-0069-0369**, at, *inter alia*, 00:33:02 to 02:19:22, 03:54:14 to 04:12:14, 06:00:00 to 23:43:24, 26:32:14 to 27:28:03, 28:04:17 to 28:43:00, and 34:19:02 to 35:58:13.

[1000] *See* **EVD-T-OTP-00718/CAR-OTP-0046-0064**; **EVD-T-OTP-00719/CAR-OTP-0046-0073**; **EVD-T-OTP-00722/CAR-OTP-0046-0081**; and **P15**: T-208, page 10, lines 3 to 11, and page 11, lines 6 to 7. *See also* **P38**: T-34, page 29, lines 14 to 23; **P47**: T-176, page 59, lines 4 to 20; and **EVD-T-OTP-00835/CAR-OTP-0069-0369** at, *inter alia*, 00:42:02 to 01:37:47, 06:19:03 to 06:24:12, 11:02:15 to 11:13:04, 11:25:06 to 12:36:00, 12:52:12 to 13:22:24, 13:53:23 to 14:13:09, 14:32:19 to 15:15:23, 16:52:15 to 18:07:10, 19:38:06 to 19:52:07, 21:01:20 to 21:07:00, 26:52:22 to 27:28:03, and 28:04:17 to 28:25:23.

the MLC troops on several occasions;[1001] and (iv) had a large personal security force.[1002] MLC troops knew and recognised Mr Bemba as their president.[1003]

### 2. ALC

390. The ALC was comprised of approximately 20,000 soldiers.[1004] It had the same structure as the DRC military and other armies.[1005] It was divided into sectors, brigades, battalions, companies, and platoons, with brigades ranging from 1,500 to 2,500 men and battalions from 400 to 700.[1006] The ALC had a General Staff (*État-Major*) composed of a Chief of General Staff (*Chef d'État-major*), who, at the time of the events, was General Amuli; a G1 in charge of personnel and discipline; a G2 in charge of intelligence and military security; a G3 in charge of operations; a G4 in charge of logistics; and a G5 in charge of political and civil affairs.[1007] At the brigade level, the G positions had corresponding subordinates designated S1 to S5, with corresponding offices at the sector, battalion and other levels.[1008]

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[1001] *See* **EVD-T-OTP-00718/CAR-OTP-0046-0064**; **EVD-T-OTP-00720/CAR-OTP-0046-0075**; **P15**: T-208, page 10, lines 2 to 4, and page 11, lines 21 to 23; and **P38**: T-34, page 29, lines 4 to 23; and T-36, page 23, line 25 to page 24, line 13. *See also* Section V(D)(4).

[1002] **EVD-T-OTP-00718/CAR-OTP-0046-0064**; **P38**: T-34, page 29, lines 17 to 23; and **P213**: T-186, page 17, lines 13 to 24, page 18, lines 16 to 18, and page 19, line 9 to page 20, lines 3.

[1003] **P47**: T-176, page 51, lines 5 to 7; **P178**: T-151, page 43, line 21 to page 44, line 10; **P36**: T-213, page 22, lines 14 to 25; and T-214, page 41, line 24 to page 42, line 2; **P15**: T-207, page 17, lines 17 to 20, page 21, lines 15 to 22, and page 28, lines 16 to 19; and T-210, page 13, lines 19 to 25; **P213**: T-187, page 67, lines 14 to 20; and T-188, page 28, line 9; **P44**: T-205, page 17, lines 5 to 15; and **D18**: T-317, page 30, lines 18 to 2. *See also* Prosecution Closing Brief, paras 510 to 519; and Defence Closing Brief, para. 237.

[1004] **P36**: T-213, page 25, line 3 to page 26, line 2; and **P15**: T-207, page 47, lines 21 to 24.

[1005] **P36**: T-217-Conf, page 23, lines 3 to 25; **P15**: T-207, page 37, lines 20 to 25; and **D39**: T-308, page 15, lines 4 to 10.

[1006] **P36**: T-213, page 26, lines 3 to 11, testifying that the MLC soldiers were organized into approximately seven brigades, each comprised of three battalions; **D49**: T-270, page 30, lines 9 to 24, testifying that the MLC had seven or eight brigades ranging from 1,200 to 2,500 troops, and that battalions were comprised of 400 to 700 troops; **D39**: T-308, page 15, lines 4 to 10; **D21**: T-301, page 29, line 25 to page 30, line 6; **P33**: T-158, page 48, lines 1 to 11; and T-161, page 12, lines 1 to 22; **P45**: T-201, page 32, line 18 to page 33, line 2; **P169**: T-136, page 29, lines 22 to 25; **P173**: T-144, page 15, line 24 to page 16, line 11, and page 42, lines 1 to 5; and **D19**: T-292, page 20, lines 1 to 11.

[1007] **EVD-T-OTP-00808/CAR-OTP-0069-0363**, at 0365; **P36**: T-213, page 17, lines 6 to 8, and page 23, lines 20 to 24; and T-217, page 23, lines 7 to 14, and page 24, lines 3 to 6; **P32**: T-165, page 29, lines 3 to 7; **P33**: T-158, page 15, lines 11 to 17, page 24, line 25 to page 25, line 8, and page 26, line 14 to page 27, line 3; **P45**: T-201, page 32, line 18 to page 33, line 2; **D21**: T-301, page 29, line 25 to page 30, line 11, and page 33, lines 1 to 10; **D18**: T-317, page 23, lines 17 to 21; **D49**: T-270, page 14, lines 9 to 13; and T-270-Conf, page 15, lines 14 to 23; and **D39**: T-308, page 22, lines 22 to 25, and page 23, line 12 to page 24, line 18.

[1008] **P36**: T-213, page 29, lines 18 to 21; and **D49**: T-270-Conf, page 26, lines 21 to 25.

391. Prior to deployment, most MLC soldiers received rapid military training.[1009] However, some soldiers received no or minimal training by the MLC; for example, those recruited from other armed forces.[1010] Some evidence suggests that soldiers received training according to one's prior experience and/or rank.[1011] The training did not follow a consistent or clear rubric, and could touch upon various military matters, such as weapons, tactics, discipline, ideological information, and/or the Code of Conduct.[1012]

392. The Code of Conduct, which was in force and used in ALC training, at least formally, throughout the time period relevant to the charges,[1013] was drafted by "the higher officers of the ALC".[1014] In relevant part, it provides, *inter alia*, that a number of "*infractions*", including "murder of a civilian or of some other person" and "abduction and rape" "may be punishable by death".[1015] The Code of Conduct does not provide further details as to these "*infractions*", for example, the meaning of the phrase "some other person", the distinction between civilians and combatants, or the concept of protected persons. Further, it contains no provision prohibiting the crime of pillaging. Rather, in a section

[1009] **P15**: T-207, page 48, lines 5 to 13; **P32**: T-165, page 62, line 21 to page 63, line 1; **P33**: T-159, page 61, lines 8 to 24; and **P36**: T-213, page 50, lines 12 to 24.
[1010] **P33**: T-159, page 61, lines 8 to 24, testifying that former officers from the Zairean armed forces did not need training as they had already been trained; **P36**: T-213, page 50, lines 12 to 24, testifying that former Zairean soldiers only received a "re-education or awareness" training; and **P45**: T-202, page 32, lines 15 to 21, and page 33, lines 3 to 11. *See also* **P33**: T-159, page 33, lines 13 to 18; and **D19**: T-284-Conf, page 11, line 12 to page 12, line 1.
[1011] *See, inter alia*, **P15**: T-207, page 53, lines 6 to 20, doubting that the rank and file soldier received training on "strategy, humanitarian law, [and] drills"; **P36**: T-213, page 50, lines 12 to 24, testifying that, when a civilian decided to join the MLC, he or she would spend four to five months receiving training before joining a battalion; **P33**: T-158, page 11, lines 20 to 23; **P32**: T-165, page 42, lines 18 to 25, stating that MLC soldiers received collective training as a unit on ideological information, but others, such as drivers and body guards, received specialised training, and page 62, line 21, to page 62, line 8, testifying that new recruits received "rapid training" in the locations where they were recruited; **D19**: T-285-Conf, page 35, lines 8 to 20; **D49**: T-274-Conf, page 37, lines 18 to 24, noting that some officers received military training in Uganda, without describing the curriculum; and **D39**: T-308, page 36, line 19 to 24, testifying that the units sent to the CAR received "a normal training course" and the officers "followed a normal officer training course".
[1012] *See, inter alia*, **P45**: T-201, page 42, line 20 to page 43, line 11; **P213**: T-187, page 51, lines 7 to 10; **P33**: T-159, page 61, line 8 to page 63, line 16; **P32**: T-165, page 42, lines 18 to 25; and T-167, page 36, lines 6 to 13; **D19**: T-289, page 44, lines 17 to 23; **D49**: T-270, page 41, line 2 to page 43, line 7; **D16**: T-275, page 23, line 15 to page 24, line 6; **D21**: T-301, page 43, lines 6 to 19; and **P36**: T-213, page 51, lines 8 to 20.
[1013] **EVD-T-OTP-00700/CAR-DEF-0001-0161**, at 0161 to 0165. *See also* **P36**: T-213, page 55, lines 1 to 9; **D49**: T-270, page 43, line 8 to page 44, line 9; and **D19**: T-285, page 37, lines 5 to 18.
[1014] **P33**: T-159, page 61, line 25 to page 62, line 4. *See also* **P213**: T-187, page 58, lines 12 to 21, implying that Mr Bemba drafted the Code.
[1015] **EVD-T-OTP-00700/CAR-DEF-0001-0161**, at 0164.

entitled "Disciplinary offences and infractions", it lists, under the heading "Endangering the Operation", the offence of "Failure to verify and safeguard the spoils of war in the camp".[1016] The Code of Conduct contains no definition of what may be taken as "spoils of war" ("*butin de guerre*").

393. The Code of Conduct was written in French only, and the commanders had the responsibility of translating it into Lingala for dissemination, usually orally, to lower ranked soldiers.[1017] Political commissioners – whose purpose was to teach the Code of Conduct and to ensure that there was a good relationship between the ALC and the civilian population – also popularised the Code of Conduct among the MLC soldiers.[1018] However, some MLC troops, including at least one high ranking officer who participated in the 2002-2003 CAR Operation, either did not receive training in or were not familiar with the Code of Conduct.[1019]

### 3. Communications

394. The ALC had a long-range, high-frequency radio communication system referred to as the "phonie" network.[1020] It was organized by the General Staff, with a transmissions centre in Gbadolite managing the network and the units in the field having the necessary apparatus and operators.[1021] Generally, brigade

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[1016] **EVD-T-OTP-00700/CAR-DEF-0001-0161**, at 0163.

[1017] *See, inter alia*, **P33**: T-159, page 61, line 25 to page 63, line 16; **P45**: T-201, page 43, lines 12 to 25; **P15**: T-207, page 38, line 22 to page 39, line 19; **P36**: T-213, page 52, line 24 to page 53, line 24; and **D16**: T-275, page 23, lines 3 to 22. *See also* **P33**: T-159, page 62, lines 23 to 25, testifying that the Code of Conduct was usually just stored "in the bottom of a drawer".

[1018] **D21**: T-301, page 43, lines 9 to 19; **D49**: T-270, page 43, lines 1 to 7; **P213**: T-187, page 51, lines 1 to 10; **P36**: T-217, page 23 lines 7 to 14; **P45**: T-202, page 39, lines 9 to 24; **D49**: T-274, page 38, lines 6 to 18; and **D19**: T-288, page 51, lines 15 to 20.

[1019] **P33**: T-159, page 62, lines 5 to 21, and page 63, lines 2 to 16; **P213**: T-187, page 53, lines 2 to 10; **P45**: T-201, page 43, lines 12 to 25; T-202, page 32, line 15 to page 33, line 11, and page 40, lines 6 to 7; and **D19**: T-285, page 37, lines 12 to 25; T-288, page 50, line 21 to page 51, line 10; page 53, line 24 to page 54, line 5, and page 55, lines 1 to 12; T-289, page 33, line 19 to page 36, line 19; and T-289-Conf, page 39, lines 6 to 25, demonstrating evasiveness in his in-court explanations for his lack of knowledge of the Code of Conduct despite being a high ranking MLC officer.

[1020] **P15**: T-207, page 46, line 20 to page 47, line 4; **P32**: T-165, page 38, lines 17 to 20, and page 39, lines 3 to 21; **P36**: T-213, page 28, lines 17 to 25; and **D39**: T-309, page 46, lines 19 to 25, testifying that it was also called a Very High Frequency or VHF radio.

[1021] **P33**: T-158, page 41, line 25 to page 42, line 4; **P36**: T-213, page 38, lines 7 to 14; **P45**: T-202, page 5, lines 15 to 25, and page 28, lines 6 to 14; and **D49**: T-271, page 40, lines 10 to 18.

and battalion commanders had phonies.[1022] The phonie system allowed constant oral or written communication between Gbadolite and commanders in the field, and between such commanders, except when there was bad weather or the radio equipment, some of which was second-hand, broke down.[1023] There was no written record of oral communications.[1024] However, operators in the transmissions centre of the General Staff and the units in the field recorded all written operational messages in logbooks.[1025]

395. Two of Mr Bemba's *cahiers de communication* or logbooks are in evidence.[1026] The first, entitled "Messages in c/man", contains messages sent and received between 4 September 2002 and 1 November 2002.[1027] The second covers communications sent and received between 21 December 2002 and 7 February 2003.[1028] Mr Bemba and other members of the General Staff sent messages through the Chief of General Staff who would transmit it, and give Mr Bemba a copy.[1029] Messages were encoded by the operators, sent by phonie, decoded by the addressee commander's operator, written in a logbook, and then read by the relevant commander who would transmit any response in the same manner.[1030] Messages arriving from the units in the field were sent to the transmissions centre, decoded, transcribed into the logbooks, and the logbooks

[1022] **P36**: T-213, page 29, lines 1 to 10; and T-217, page 52, lines 11 to 13; and **D49**: T-271, page 24, lines 8 to 10.
[1023] **P45**: T-202, page 5, lines 15 to 25, and page 28, lines 6 to 14; **P36**: T-213, page 28, line 24 to page 29, line 10; and T-217, page 52, lines 5 to 13, and page 54, lines 3 to 19; and **P33**: T-161-Conf, page 34, line 5 to page 35, line 1.
[1024] **P36**: T-213, page 40, lines 16 to 18, page 43, lines 2 to 8; and **P33**: T-161, page 34, lines 17 to 20. *See also* **P169**: T-137, page 42, lines 3 to 8; and **D19**: T-286-Conf, page 20, lines 1 to 6.
[1025] **P36**: T-213, page 43, line 3 to page 45, line 18; and T-214, page 41, lines 2 to 5; and **P15**: T-207, page 33, lines 8 to 12.
[1026] The logbooks in evidence (**EVD-T-OTP-00702/CAR-D04-0002-1514**; and **EVD-T-OTP-00703/CAR-D04-0002-1641**) do not cover the period from 1 November 2002 to 21 December 2002 or the period from 8 February to 15 March 2003. Only two logbooks were submitted to the Court by the Defence, which stated that the other logbooks were destroyed in a fire. *See* T-170, page 12, line 9 to page 15, line 12.
[1027] **EVD-T-OTP-00702/CAR-D04-0002-1514**. *See also* **P36**: T-217, page 62, lines 6 to 8.
[1028] **EVD-T-OTP-00703/CAR-D04-0002-1641**.
[1029] **P36**: T-213, page 38, line 22 to page 39, line 12; and **D49**: T-270, page 35, lines 11 to 25; and T-270-Conf, page 38, lines 16 to page 39, line 23.
[1030] **P36**: T-213, page 38, lines 4 to 12, page 43, lines 1 to 8, and page 44, lines 7 to 17; and T-217, page 55, lines 3 to 11; and **D49**: T-270, page 34, lines 11 to 20.

were immediately taken to Mr Bemba.[1031] Codes were used because the phonies were not very secure.[1032]

396. In addition to the phonie system, the MLC also commonly used Thuraya satellite telephones for communication.[1033] They could be used to make calls in areas without network coverage.[1034] Thuraya telephones could be used to call both other Thuraya devices, as well as normal telephones.[1035] Senior military and political persons generally used Thuraya devices.[1036]

397. With respect to Mr Bemba's personal communication means, in his residence in Gbadolite, Mr Bemba had a phonie, one or two satellite telephones, a Thuraya, and a Motorola walkie-talkie connected to a local network within Gbadolite.[1037] Mr Bemba could, with the assistance of an operator,[1038] directly contact commanders in the field in the DRC by phonie, either using the phonie in his

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[1031] **P36**: T-213, page 44, lines 11 to 25; and **D49**: T-270, page 34, lines 23 to 25.
[1032] **P36**: T-213, page 39, lines 4 to 7, and page 44, lines 7 to 10; and T-217, page 54, line 3 to page 55, line 11; and **D49**: T-270, page 34, lines 16 to 20.
[1033] **P178**: T-150, page 41, lines 9 to 18; **P36**: T-213, page 46, lines 2 to 12; **P32**: T-165, page 38, lines 17 to 20; **P45**: T-201, page 33, lines 16 to 21; and **P15**: T-207, page 46, lines 3 to 6.
[1034] **P219**: T-197, page 66, lines 8 to 23; and **P36**: T-213, page 47, lines 6 to 11; and T-214-Conf, page 41, lines 20 to 23.
[1035] **P36**: T-218, page 72, lines 3 to 7; and **EVD-T-OTP-00591/CAR-OTP-0055-0893**.
[1036] *See*, *inter alia*, **P15**: T-207, page 46, lines 6 to 13, stating that only important political or military people used satellite communication as it was expensive; **P45**: T-202, page 5, lines 23 to 25, testifying that the major commanders had satellite telephones to stay in permanent contact with Mr Bemba, page 16 lines 1 to 7, stating that Commander Moustapha, Commander Alongaboni, Commander Mondonga, Commander Alegbia, Commander Samba, Commander Ndima, Commander Widi, and the Chief of General Staff had satellite telephones; **P33**: T-158, page 39, lines 16 to 19, page 42, lines 16 to 24, and page 60, lines 5 to 15; T-158-Conf, page 40, lines 1 to 18; and T-161, page 39, line 19 to page 40, line 9, testifying that satellite telephones were only given to brigade commanders; and **P36**: T-213-Conf, page 46, line 7 to page 47, line 9; T-214, page 41, lines 12 to 17; and T-217, page 48, line 16 to page 50, line 1. *See also* **P32**: T-165, page 38, lines 21 to 25, testifying that Mr Bemba, the Secretary-General, and one other person had satellite telephones; and **P44**: T-205, page 49, lines 5 to 12, stating that several troops at the battlefronts had satellite devices.
[1037] **P15**: T-207, page 46, line 19 to page 47, line 4; **P33**: T-158, page 39, lines 10 to 20, and page 41, lines 9 to 13; **P44**: T-205, page 49, lines 6 to 16; **P36**: T-213, page 38, lines 15 to 21; and **EVD-T-OTP-00835/CAR-OTP-0069-0369**, from 06:00:00 to 06:04:00 and from 09:15:21 to 10:20:15, showing Mr Bemba in his residence, surrounded by a wide range of communication devices that he appears to operate himself, at 06:42:05 to 06:51:20, depicting Mr Bemba in what appears to be the MLC's headquarters speaking through a hand-held communication device, and at 10:38:16 to 10:54:00, and 35:34:11 to 35:38:07, showing Mr Bemba using a communication device outside a building.
[1038] **P36**: T-213, page 39, lines 13 to 21, and page 40, lines 9 to 11; and T-217, page 52, lines 17 to 25, and page 56, lines 6 to 22; **P45**: T-202, page 28, lines 6 to 11; and **P33**: T-161, page 33, line 24 to page 34, line 13; and T-161-Conf, page 36, line 12 to page 37, line 9. *See also* **P213**: T-188, page 14, lines 16 to 20.

residence or one in the transmissions centre beside his residence.[1039] Mr Bemba could contact commanders in the field with satellite or Thuraya devices without going through the transmissions centre.[1040]

### 4. Military operations and strategy

398. In considering Mr Bemba's authority over military operations and strategy in the MLC generally, the Chamber first notes that MLC troops were involved in military operations in the CAR in 2001[1041] and in the DRC before and during the 2002-2003 CAR Operation.[1042] Evidence concerning such operations has been relied upon in this section insofar as it is relevant to Mr Bemba's general authority over military operations and strategy, which, in turn, contextualises the Chamber's specific findings relating to the MLC contingent in the CAR.[1043]

399. As President of the MLC and Commander-in-Chief of the ALC, Mr Bemba had authority over strategic military decisions, such as commencing military operations.[1044] Mr Bemba also commanded military operations, issuing orders to the units in the field, such as to attack or to progress to a certain location, and followed the progress of operations closely.[1045] Mr Bemba could, and often did,

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[1039] *See*, *inter alia*, **P36**: T-213, page 38, line 25 to page 40, line 2, and page 41, lines 9 to 18; T-214, page 39, lines 13 to 20; and T-214-Conf, page 8, line 16 to page 9, line 7; T-217, page 56, line 13 to page 57, line 7; **P33**: T-158, page 39, lines 10 to 20; **P45**: T-201, page 34, line 21 to page 35, line 15; T-202, page 6 lines 1 to 7; T-203, page 23, line 12 to page 25, line 5; and T-203-Conf, page 19, lines 11 to 17; **P15**: T-207, page 33, lines 8 to 11 and page 42, line 17 to page 43, line 3; and T-211-Conf, page 30, lines 5 to 11; and **P213**: T-188, page 16, lines 8 to 10.

[1040] *See*, *inter alia*, **P36**: T-213-Conf, page 46, lines 2 to 18; **P44**: T-205, page 49, lines 13 to 16; **P33**: T-158, page 39, line 10 to page 40, line 7, page 42, lines 16 to 24, and page 60, lines 5 to 15; **D39**: T-309, page 44, line 25 to page 46, line 11, and page 51, line 5 to page 52, line 25; **P15**: T-209, page 6, lines 6 to 13; **P213**: T-188, page 6, line 14 to page 7, line 6; and **P45**: T-201, page 33, lines 16 to 21; and T-202, page 6, lines 4 to 10.

[1041] *See*, *inter alia*, **P32**: T-165, page 34, line 24 to page 36, line 8, page 38, lines 2 to 16, page 58, line 22 to page 59, line 8, and page 60, lines 1 to 7; and T-167, page 10, lines 1 to 4; **P45**: T-201, page 52, lines 16 and 22; **P213**: T-186, page 50, lines 16 to 17; **P63**: T-115, page 4, line 13; and **P9**: T-107, page 21, lines 4 to 19.

[1042] *See*, *inter alia*, **P44**: T-205, page 60, line 25, page 61, lines 1 to 2, and page 63, lines 11 to 18; and **P36**: T-214, page 15, lines 23 to 25, and page 16, lines 1 to 7; and T-215, page 29, lines 18 to 25, and page 30, lines 1 to 22.

[1043] *See* Section V(B)(2).

[1044] **EVD-T-OTP-00808/CAR-OTP-0069-0363**, at 0364; **P36**: T-215, page 63, lines 15 to 23, and page 65, lines 16 to 23; **P33**: T-158, page 31, lines 1 to 19; and **P45**: T-201, page 37, lines 3 to 6. *See also* Section V(A)(1).

[1045] *See*, *inter alia*, **P36**: T-213, page 28, lines 5 to 11, page 41, lines 9 to 14; T-213-Conf, page 41, line 25 to page 42, line 23; T-214, page 11, line 20 to page 12, line 14; T-215, page 38, lines 14 to 19; T-216, page 21, line 25 to page 23, line 3; T-217, page 31, lines 2 to 17, page 35, lines 5 to 16, and page 37, line 22 to page 38, line 9; T-217-Conf, page 39, line 17 to page 40, line 6; and T-218-Conf, page 61, lines 10 to 19; **P32**: T-165, page 57,

communicate orders or instructions directly to commanders in the field without going through the hierarchy, with the General Staff usually being informed and following-up afterwards, if required.[1046] Generally, however, Mr Bemba did not direct operations at the tactical level or issue orders regarding the specific manoeuvres of the various units in the field.[1047]

400. Although not specifically related to the 2002-2003 CAR Operation, a series of phonie messages from the logbooks provides an example of Mr Bemba exercising his general operational command powers. A commander of an ALC unit reported operational information directly to Mr Bemba and sought his authorisation to attack.[1048] In response, Mr Bemba sought logistical and operational information and then instructed the commander not to move and to hold ready to advance towards Mambasa.[1049]

401. The General Staff, including the Chief of General Staff, gathered military intelligence, formed operational plans, advised Mr Bemba on operational and

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lines 1 to 16; **P15**: T-207, page 31, lines 2 to 15, page 32, lines 4 to 6, page 33, lines 8 to 12, and page 38, lines 10 to 16; **P45**: T-201, page 33, lines 6 to 15, page 34, line 24 to page 35, line 10, page 37, lines 3 to 23, and page 56, lines 3 to 8; **P33**: T-158, page 29, lines 14 to 23, page 31, line 1 to page 32, line 1, page 38, lines 9 to 13, and page 59, lines 9 to 24; **D18**: T-319bis, page 40, lines 14 to 25; and **P213**: T-188, page 12, line 22 to page 13, line 20. *See also* **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1550, 1556, 1565, 1574, 1577 to 1578, 1580, 1593, 1595, 1599, and 1612; and **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1646, 1705, 1708, and 1742.

[1046] *See*, *inter alia*, **P45**: T-201, page 33, line 9 to page 35, line 15, and page 37, lines 7 to 17; T-203, page 22, lines 15 to 22, and page 23 line 8 to page 25, line 5; and T-203-Conf, page 19, lines 11 to 17; **P33**: T-158, page 28, line 2 to page 29, line 23, and page 31, line 1 to page 32, line 1; and T-159-Conf, page 50, lines 14 to 25, testifying that the Chief of General Staff complained that Mr Bemba issued orders without him having been involved; **P36**: T-213, page 39, line 22 to page 40, line 2; T-214-Conf, page 16, lines 8 to 18; T-216, page 22, lines 3 to 5; T-217-Conf, page 56, line 25 to page 57, line 7; and T-218-Conf, page 21, lines 5 to 14, and page 77, line 19 to page 78, line 2; **P44**: T-205, page 51, line 21 to page 52, line 17; and T-206, page 8, line 14 to page 9, line 18; **P15**: T-207, page 38, lines 10 to 16, and page 42, line 7 to page 43, line 3; and T-210, page 22, lines 2 to 15, and page 23, line 18 to page 24, line 2; **D39**: T-308, page 22, lines 2 to 9; and T-309, page 51, line 5 to page 52, line 25; and **D18**: T-320, page 7, line 18 to page 8, line 7. *See also* **P219**: T-197, page 65, lines 6 to 18, testifying that the only way for a division commander to ensure that his orders and instructions are followed is to use the chain of command and that, while skipping the hierarchy can work if the commander ensures that intermediate commanders are kept informed, it can create indiscipline and cause problems; and **P36**: T-214-Conf, page 16, line 22 to page 17, line 7; and T-217-Conf, page 56, line 23 to page 57, line 7, stating that it would have been more normal, simple, and secure for Mr Bemba to send orders through the General Staff. *See contra* **D49**: T-271, page 23, line 17 to page 24, line 7, testifying that, "generally speaking", all communication went through the General Staff.

[1047] **P36**: T-217, page 31, lines 2 to 17; **D49**: T-270, page 27, line 15 to page 29, line 1; and T-270-Conf, page 29, lines 9 to 20; and **D18**: T-317, page 31, lines 2 to 13; and T-318, page 5, lines 20 to 24.

[1048] **P36**: T-214, page 10, lines 5 to 17, and page 11, line 8 to page 12, line 3; and **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1571.

[1049] **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1574, 1577, and 1579 to 1580; and **P36**: T-214, page 13, line 3 to page 14, line 13.

technical matters, and coordinated operations by implementing Mr Bemba's "orders", "initiatives", "instructions", "directives", and/or "intentions".[1050] The General Staff and commanders in the field reported to Mr Bemba frequently, either directly or via the Chief of General Staff.[1051]

### 5. Discipline

402. In the MLC, there existed (i) a court-martial, convened to deal with crimes when required; (ii) "disciplinary councils" within the units which could reprimand breaches of the military rules; and (iii) the pre-existing court-system in the territory of the DRC that the MLC adopted and controlled.[1052] Mr Bemba had the power to set up courts-martial and other judicial organs within the MLC.[1053] He also appointed officials to the courts-martial, such as judges,[1054] and

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[1050] *See*, *inter alia*, **P36**: T-213, page 28, lines 2 to 16, and page 38, lines 4 to 6; T-213-Conf, page 41, line 23 to page 42, line 23; T-214, page 8, line 16 to page 9, line 7 and page 39, lines 13 to 20; T-215, page 38, line 14 to page 39, line 3; T-216, page 22, lines 3 to 25; and T-217-Conf, page 35, lines 19 to 23; **P15**: T-207, page 31, lines 2 to 15, page 32, lines 4 to 6, and page 38, lines 10 to 16; **P32**: T-165, page 29, lines 10 to 22, and page 57, lines 1 to 16; **EVD-T-OTP-00808/CAR-OTP-0069-0363**, at 0365; **P45**: T-201, page 33, lines 12 to 15, page 37, lines 3 to 23, and page 56, lines 3 to 8; **P33**: T-158, page 29, lines 14 to 23, page 31, line 1 to page 32, line 1, and page 37, line 9 to page 38, line 1; **D49**: T-270, page 19, lines 7 to 13, and page 22, line 8 to page 26, line 8; T-270-Conf, page 52, line 17 to page 53, line 15; and T-271, page 42, line 18 to page 43, line 1, testifying that, when giving orders, Mr Bemba would articulate his "intentions" in civilian language and then the General Staff, in a separate meeting with the Chief of General Staff, would translate the civilian intent into military language and develop "operational directives"; and **D39**: T-308, page 15, line 11 to page 16, line 13, page 17, line 22 to page 18, line 2, page 19, line 21 to page 20, line 7, page 25, lines 14 to 23, and page 54, lines 3 to 13, testifying that Mr Bemba gave "intentions" or "operational directives" to the Chief of General Staff who, with the General Staff, turned these "directives" into "operational instructions" and "operational orders"; and T-309, page 34, lines 6 to 9, page 36, lines 15 to 23, avoiding using the term "order" to describe Mr Bemba's actions, and stating that "order" was a term that could encompass many things, instead Mr Bemba gave orders "expressed in the form of a directive within the framework of operations", page 37, line 11 to page 39, line 2, testifying that "[d]o not move" was an instruction, not an operational order, as it lacked necessary details, such as the time, the specifics of the locations, and the specific units, but Mr Bemba's "instructions" had to be followed. *See contra* **D21**: T-301, page 30, lines 7 to 18, page 31, lines 3 to 9, and page 33, lines 1 to 10, testifying that orders normally came from the Chief of the General Staff.

[1051] *See*, *inter alia*, **P33**: T-158, page 57, line 19 to page 58, line 22, testifying that the G2 often reported directly to Mr Bemba, and the G4 sometimes reported directly to Mr Bemba; **P36**: T-213, page 48, line 25 to page 49, line 9; and T-218-Conf, page 36, lines 10 to 24; **P32**: T-165, page 57, lines 1 to 22; **P45**: T-201, page 33, line 5 to page 34, line 7; and T-203, page 22, lines 15 to 22, and page 23, lines 8 to 9; and **P15**: T-207-Conf, page 32, lines 15 to 25; and T-211, page 32, lines 18 to 19.

[1052] **P33**: T-159, page 4, lines 2 to 25, and page 5, lines 11 to 22; **EVD-T-OTP-00697/CAR-DEF-0002-0580**, depicting a MLC decree, dated 25 March 2002, with Mr Bemba's signature and stamp, creating a court-martial in Gbadolite to try ALC officers and soldiers, including for acts specified in the Code of Conduct; and **D16**: T-275, page 15, line 5 to page 16, line 11, and page 17, lines 3 to 10; and T-276, page 25, lines 14 to 22. *See also* Section V(D)(5).

[1053] **P32**: T-165, page 50, line 9 to page 51, line 8; **D48**: T-267, page 12, line 3 to page 13, line 2, and page 14, line 16 to page 15, line 13; and T-268, page 9, line 11 to page 10, line 7; **EVD-T-OTP-00594/DRC-OTP-0100-0314**; and **EVD-T-OTP-00737/DRC-OTP-0098-0005**.

had the ability to influence cases before the courts-martial.[1055] With respect to the pre-existing DRC court system, the MLC National Secretary for Justice appointed its magistrates, selecting only those favourable to the MLC and who followed instructions from Mr Bemba.[1056] At the unit level, disciplinary measures taken were reported to the Chief of General Staff.[1057]

403. Mr Bemba held ultimate authority over sanctioning, arresting, and dismissing senior political leaders and military officers, as well as soldiers, in the MLC and the ALC.[1058] The Chief of General Staff conveyed Mr Bemba's orders relating to, *inter alia*, disciplinary matters.[1059] For example, Mr Bemba responded to allegations of rape and murder in Mambasa in the DRC – during the same period as the 2002-2003 CAR Operation – by establishing an inquiry, which led to the trial of a number of soldiers before the MLC court-martial and the imposition of substantial prison sentences.[1060] However, P45 testified that the

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[1054] **P45**: T-202, page 12, lines 9 to 16; **P36**: T-216, page 19, lines 9 to 11; **P33**: T-162, page 7, line 11 to page 8, line 1; and **P32**: T-167, page 47, lines 8 to 16. *See also* **D16**: T-275, page 16, line 12 to page 17, line 18, and page 18, line 7 to page 21, line 3; and T-276, page 31, lines 6 to 15, testifying that members of the court-martial, magistrates, judges, prosecutors, registrars, and defence counsel were appointed by the "MLC executive" and the national secretary.

[1055] **P33**: T-162, page 7, line 11 to page 8, line 1; and **P32**: T-165, page 47, line 4 to page 51, line 8.

[1056] **P33**: T-158, page 65, lines 1 to 8; and T-159, page 4, lines 2 to 25, and page 7, line 24 to page 8, line 6.

[1057] **D49**: T-270, page 19, line 16 to page 20, line 15; **D16**: T-275, page 21, line 4 to page 23, line 7, page 25, lines 9 to 15, and page 26, lines 2 to 16; and T-276-Conf, page 16, line 13 to page 17, line 19; and **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1650.

[1058] **P45**: T-201, page 46, lines 7 to 17, page 57, line 12 to page 58, line 17, page 59, lines 3 to 6, and page 60, lines 2 to 14, providing a number of specific examples where senior political leaders and military officers were sanctioned, dismissed, arrested, and imprisoned at Mr Bemba's discretion with no possibility of appeal; **P33**: T-158, page 35, line 16 to page 36, line 10, testifying that Mr Bemba threatened Commander Alongaboni with arrest for disobeying an order, and page 38, line 12 to page 39, line 9, testifying that Mr Bemba arrested General Kibonge, ALC G2 at the time, for disobeying an order; **EVD-T-OTP-00691/CAR-D04-0002-1513**, depicting a document dated 31 May 2000, signed by Mr Bemba, ordering ALC brigade commanders to enforce the death penalty where applicable; and **P15**: T-210, page 43, line 21 to page 44, line 6, testifying that Mr Bemba's attitude to soldiers who committed the crimes of rape or murder was "extremely clear" and that he did not tolerate such abuses, demanding the death penalty. *See also* **P32**: T-165, page 13, lines 8 to 22, page 24, line 14 to page 25, line 18, page 26, line 23 to page 27, line 8, and page 50, line 9 to page 51, line 8; T-165-Conf, page 16, line 5 to page 17, line 17; T-166, page 34, lines 5 to 13, page 36, lines 11 to 16, and page 54, lines 20 to 24; T-166-Conf, page 43, line 10 to page 45, line 12; and T-167-Conf, page 29, line 12 to page 30, line 5.

[1059] **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1561; and **P36**: T-218, page 61, lines 10 to 16.

[1060] **P45**: T-202, page 8, lines 5 to 15, and page 13, line 23 to page 14, line 20; and T-205, page 59, lines 1 to 9, testifying that the Mr Bemba only created the commission of inquiry to investigate alleged abuses by the ALC troops because he was losing credibility with the international community; **EVD-T-OTP-00594/DRC-OTP-0100-0314**, at 0318, 0320, 0324 to 0328, 0330 to 0331, 0334 to 0336, 0341 to 0342, and 0344 to 0346; and **EVD-T-OTP-00737/DRC-OTP-0098-0005**, at 0005, 0007 to 0008, and 0010 to 0012. *See also* **P33**: T-163, page 52, lines 14 to 20; **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1523, 1550 to 1551, and 1561; **EVD-T-OTP-00425/CAR-OTP-0008-0409**, at 0409 to 0410; **EVD-T-OTP-00404/CAR-OTP-0004-0577**, at 0591 to

soldiers convicted were later reintegrated into the ALC and their commander, who was also convicted, received a promotion.[1061]

## B. FORCES PRESENT IN THE CAR DURING THE 2002-2003 CAR OPERATION

404. Having addressed the general structure of the MLC and before addressing the facts relevant to the 2002-2003 CAR Operation and the measures taken by Mr Bemba, the Chamber considers it necessary to first set out the structure of the relevant forces present in the CAR during and involved in the 2002-2003 CAR Operation. In this section, the Chamber sets out the structure of the forces aligned with President Patassé – namely, (i) the FACA, USP and various CAR militias, and (ii) the MLC contingent deployed to the CAR in support of President Patassé – and (iii) General Bozizé's rebels.

### 1. FACA, USP, and militias

405. President Patassé was the FACA Supreme Commander.[1062] The Chief of General Staff – which, at the time of the 2002-2003 CAR Operation, was General Mbeti-Bangui until his death and then, from January 2003, General Antoine Gambi – commanded the FACA, and took all operational decisions.[1063] The FACA was originally comprised of various regiments, totalling 4,000 to 5,000 troops, although it is unclear whether this number included General Bozizé's rebels before they defected.[1064] FACA units were based in the Camp Kassaï military base; some senior FACA officials and the Ministry of National Defence were based at Camp Béal; and the navy was located at Port Beach, along the

0592; and **P45**: T-202, page 8, lines 5 to 15; and T-205, page 59, lines 1 to 9. *See contra* Prosecution Closing Brief, paras 706 to 711, submitting that, prior to and at the time of the MLC's intervention in the CAR, "rape was rampant in the MLC", Mr Bemba knew "of allegations of rape" committed in the DRC, and Mr Bemba failed to convene courts-martial relating to the alleged crimes.

[1061] **P45**: T-202, page 17, lines 4 to 7, and page 42, lines 9 to 18; and T-203, page 65, lines 16 to 23.

[1062] **CHM1**: T-356, page 65, lines 23 to 25; and **P151**: T-173, page 21, lines 5 to 8.

[1063] **CHM1**: T-353, page 65, line 22 to page 66, line 4; and T-356-Conf, page 66, lines 4 to 7, and page 74, line 8; **P151**: T-174, page 33, lines 1 to 4; and **P36**: T-213, page 70, line 16 to page 71, line 2.

[1064] **CHM1**: T-353, page 46, lines 4 to 18; and T-354, page 48, lines 9 to 13; and **P173**: T-146, page 6, line 24 to page 8, line 17.

Oubangui River.[1065] During the 2002-2003 CAR Operation, the FACA troops were stationed in the residential southern neighbourhoods and the administrative centre of Bangui, as well as various other locations throughout the CAR.[1066] The FACA troops were disorganized, demoralised, underequipped, and distrusted by President Patassé.[1067]

406. FACA Colonel Thierry Lengbe (P31) set up the CAR CO in Camp Béal on 22 October 2002.[1068] Colonel Lengbe served as commander of the CAR CO until 25 November 2002; thereafter, Commander Bemondombi held command.[1069] During the 2002-2003 CAR Operation, the CAR CO consisted of a small office in which only five or six officers worked.[1070] As of, at least, 18 December 2002, the CAR CO had "cells" responsible for planning ("*Cellule Planification/Manoeuvre Future*"), situations ("*Cellule Situation/Synthèse*"), conduct ("*Cellule Conduite*"), information ("*Cellule Renseignement*"), logistics ("*Cellule Logistique*"), transmission ("*Cellule Transmission*"), and communication ("*Cellule Communication/VIP*").[1071] The CAR CO also contained liaison officers from

[1065] **CHM1**: T-355, page 44, line 24 to page 45, line 7. *See also* **P151**: T-172, page 14, lines 3 to 16 and page 39, lines 15 to 21.
[1066] **P151**: T-175, page 6, line 21 to page 7, line 2, and page 14, line 21 to page 15, line 2; and **CHM1**: T-353, page 47, line 20 to page 48, line 3; and T-355, page 46, lines 2 to 10, testifying that, during the conflict, FACA troops were deployed in places not much affected by the fighting, for example, in the east and south of Bangui, in Bouar, and in the eastern parts of the CAR.
[1067] **D39**: T-310, page 28, lines 8 to 16; **P15**: T-209, page 15, lines 18 to 20 and page 17, lines 2 to 3; and T-210, page 24, line 15 to page 25, line 7; **P36**: T-213-Conf, page 70, line 20 to page 71, line 2; and T-214, page 33, lines 5 to 8, and page 44, lines 16 to 19; **P63**: T-113, page 30, line 23 to page 31, line 24; **P31**: T-182, page 43, line 19 to page 45, line 7; and T-183, page 53, line 20 to page 54, line 3; **D19**: T-285, page 32, lines 3 to 6; and T-291, page 12, lines 3 to 11; **CHM1**: T-356, page 34, lines 10 to 15; **P42**: T-64, page 52, line 23 to page 53, line 7; and **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1637.
[1068] **P31**: T-182, page 9, line 25 to page 19, line 12; and T-183, page 16, lines 1 to 10, testifying that the CAR CO was initially called the *Centre des Opérations*, but later it was called the *Poste de Commandement Opérationnel* or PCO, and the *Centre de Commandement des Opérations* or CCOP; **P151**: T-172, page 12 lines 16 to 24, page 13, line 22, page 37, line 5, page 39, lines 11 to 13, and page 42, line 23 to page 43, line 7; **D49**: T-271, page 15, lines 11 to 12; **P9**: T-105, page 47, lines 6 to 15; and T-106, page 27 lines 1 to 6; and **P6**: T-96, page 14, lines 18 to 21, and page 63, lines 8 to 12; and T-97, page 45, lines 1 to 13.
[1069] **P151**: T-172, page 38, lines 3 to 4, page 43, lines 18 to 19, and page 44, lines 15 to 21; and T-173, page 60, line 3 to page 61, line 21; **P31**: T-182, page 10, lines 11 to 13; and **EVD-T-D04-00019/CAR-OTP-0042-0237**, at 0239.
[1070] **P151**: T-172, page 37, lines 3 to 11, page 38, lines 5 to 12, page 40, lines 14 to 23, page 42, lines 9 to 18, page 43, lines 9 to 14, and page 46, line 23 to page 47, line 2; T-173, page 14, lines 6 to 8, and page 57, lines 1 to 25; and T-174, page 10, line 4 to page 11, line 5; and **P31**: T-182, page 18, lines 7 to 8. *See also* **P9**: T-105, page 47, lines 6 to 15.
[1071] **EVD-T-D04-00019/CAR-OTP-0042-0237**.

various army units, including the USP, to monitor operations.[1072] While there was a USP liaison officer in the CAR CO, the CAR CO and USP had no authority or hierarchy over each other.[1073] The CAR CO was responsible for gathering information, co-ordinating operations, logistics, communications, and intelligence.[1074] There was a small radio transmissions office that received all information from radio operators in the field.[1075] These messages were then forwarded to the CAR General Staff to take decisions.[1076] The CAR CO had walkie-talkies, telephones, and radios allowing communication up to 500 km outside of Bangui.[1077]

407. In addition to the FACA, the loyalist forces included the USP, which consisted of the CAR President's personal guards; its mission was to protect President Patassé and the institutions of the CAR.[1078] Of the CAR military groups, President Patassé relied most upon the USP,[1079] which held permanent positions in Bangui.[1080] General Bombayake commanded the USP.[1081] It came under the direct and sole authority of President Patassé,[1082] and was independent of the

[1072] **EVD-T-D04-00019/CAR-OTP-0042-0237**; **P151**: T-172, page 37, lines 3 to 11, page 38, lines 5 to 12, page 40, lines 14 to 23, page 42, lines 9 to 18, page 43, lines 9 to 14, and page 46, line 23 to page 47, line 2; T-173, page 14, lines 6 to 8, and page 57, lines 1 to 25; and T-174, page 10, line 4 to page 11, line 5; and **P31**: T-182, page 18, lines 7 to 8. *See also* **P9**: T-105, page 47, lines 6 to 15.
[1073] **P151**: T-174, page 51, lines 7 to 9; and **P31**: T-183, page 63, lines 7 to 13. *See also* **P31**: T-182, page 19, lines 16 to 17, testifying that General Bombayake did not come to the CO.
[1074] **P151**: T-172, page 16, lines 19 to 22, and page 17, lines 5 to 25; and **P31**: T-182, page 18, lines 1 to 12; and T-183, page 61, lines 4 to 10. *See also* **P6**: T-96, page 15, lines 1 to 4.
[1075] **P151**: T-172, page 39, lines 8 to 21, and page 43, lines 1 to 2; and T-174, page 30, lines 13 to 21, page 31, lines 21 to 24, and page 51, lines 3 to 6.
[1076] **P151**: T-172, page 17, lines 3 to 4; T-173, page 12, lines 17 to 23, and page 14, lines 5 to 11; and T-175, page 13, lines 9 to 16.
[1077] **P31**: T-183, page 28, line 18 to page 29, line 5.
[1078] **P6**: T-95, page 38, lines 1 to 20; and **CHM1**: T-353, page 41, lines 19 to 25.
[1079] **CHM1**: T-356, page 33, lines 15 to 19, and page 69, line 19 to page 70, line 3; **P151**: T-175, page 6, lines 5 to 10; and **D49**: T-274, page 55, line 23 to page 56, line 5.
[1080] **P151**: T-175, page 2, line 21 to page 3, line 9, page 4, line 8 to page 5, line 16, page 8, lines 13 to 19, and page 21, lines 1 to 15, testifying that the USP held a limited number of posts in the CAR, but that they did hold several strategic positions to ensure the President's safety and the safety of national assets, such as the electricity company, the CAR radio station, and a power station in Boali; **P6**: T-95, page 39, lines 11 to 15; **P9**: T-107, page 5, lines 11 to 19; and **CHM1**: T-355, page 44, line 24 to page 45, line 2.
[1081] **CHM1**: T-353, page 46, line 19 to page 47, line 1; **P6**: T-95, page 38, line 19 to page 39, line 2; **P151**: T-172, page 19, lines 10 to 11; T-174, page 51, line 23 to page 52, line 1; and T-175, page 6, lines 14 to 18; **D19**: T-289, page 4, lines 11 to 14; and **D51**: T-262, page 14, lines 11 to 12; and T-263, page 41, line 24 to page 42, line 9.
[1082] **CHM1**: T-353, page 46, lines 21 to 24, and page 70, lines 22 to 24; and T-356, page 11, lines 6 to 8; and **P151**: T-174, page 52, line 23 to page 53, line 5; and T-175, page 13, lines 10 to 22.

FACA.[1083] The USP's headquarters were in a barrack at Camp De Roux near the Presidential Palace; the USP was based predominantly in Bangui to protect important national institutions or assets.[1084] The USP troops were better equipped than the FACA, controlling nearly all military equipment, including tanks and combat vehicles.[1085]

408. Several militias also fought on behalf of President Patassé,[1086] including a group of Central Africans and Chadians headed by Mr Abdoulaye Miskine;[1087] the Sarawi, the Balawa, and the Karako;[1088] a private security group called the SCPS;[1089] and a troop run by Captain Paul Barril.[1090] These militias, together with the USP, consisted of roughly 1,000 soldiers.[1091]

409. There were also around 100 Libyan soldiers acting on President Patassé's behalf and based in PK3.[1092] They were charged with protecting the Presidential residence and President Patassé,[1093] patrolling the Bangui airport, and providing

[1083] **CHM1**: T-353, page 70, line 24 to page 71, line 1; and T-356, page 38, lines 5 to 17; **P151**: T-175, page 13, line 25 to page 14, line 2; and **P31**: T-183, page 63, lines 10 to 11.
[1084] **P151**: T-175, page 2, line 21 to page 3, line 9, page 4, lines 11 to 21, page 5, lines 11 to 13, page 8, lines 1 to 19, page 15, line 10, and page 21, lines 3 to 5; **P6**: T-95, page 39, lines 13 to 15; and **P9**: T-107, page 5, lines 11 to 19.
[1085] **CHM1**: T-353, page 60, line 7 to page 61, line 3; T-354, page 45, lines 4 to 10, and page 62, lines 14 to 21; T-355, page 10, lines 21 to 24, page 11, lines 14 to 16, page 17, lines 8 to 20, and page 19, lines 18 to 25; T-357, page 53, line 23 to page 54, line 21; and T-357-Conf, page 10, lines 3 to 4; and **P6**: T-95, page 44, lines 16 to 21.
[1086] **P23**: T-53, page 5, line 4 to page 7, line 9; **P38**: T-37, page 11, line 12 to page 12, line 11; **P9**: T-102, page 40, lines 7 to 16; T-104, page 38, lines 4 to 22; and T-107, page 6, line 20 to page 7, line 23, page 22, line 24 to page 23, line 20, and page 65, lines 10 to 17; **P87**: T-46, page 36, lines 9 to 14; **P6**: T-95, page 28, lines 4 to 17; and T-98, page 53, lines 6 to 14; **CHM1**: T-356, page 71, line 25 to page 72, line 14; **P151**: T-174, page 45, lines 2 to 10; and **P173**: T-146, page 5, line 21 to page 6, line 22, and page 21, lines 10 to 15.
[1087] **P6**: T-95, page 28, lines 5 to 6, and page 32, line 3 to 9; **P9**: T-107, page 7, lines 19 to 23, and page 22, line 24 to page 23, line 20; **P31**: T-183, page 12, line 4; **P81**: T-55, page 49, lines 22 to 25; and **P23**: T-53, page 5, lines 12-14.
[1088] **P6**: T-95, page 28, lines 13 to 18, and page 54, lines 2 to 7, testifying that the Karako were near Boy-Rabé, the Sarawi were in the Sara neighbourhood, and the Balawa were in a neighbourhood near Galabadja; **CHM1**: T-356, page 71, lines 3 to 8, and page 72, lines 1 to 14, testifying that the Karako were a militia belonging to President Patassé; **P23**: T-53, page 6, lines 10-14; and **P31**: T-183, page 58, line 19 to page 59, line 13.
[1089] **P6**: T-95, page 28, lines 6 to 8, and page 47, line 23 to page 49, line 23.
[1090] **P6**: T-95, page 28, lines 10 to 12, and page 49, line 24 to page 53, line 4; and **P9**: T-107, page 23, lines 8 to 20.
[1091] **CHM1**: T-356, page 5, line 25 to page 6, line 22; and **P6**: T-95, page 44, lines 5 to 15.
[1092] **P31**: T-183, page 14, lines 18 to 19; **P6**: T-95, page 56, line 9 to page 57, line 1; and T-98, page 38, lines 15 to 25; **P9**: T-106, page 21, lines 11 to 22; **P151**: T-173, page 33, line 19 to page 34, line 1; and **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0038 and 0040.
[1093] **P169**: T-139, page 43, lines 3 to 15, and page 48, lines 1 to 7; and **P45**: T-204, page 72, lines 1 to 5.

air cover,[1094] including a bombing campaign against General Bozizé's rebels in late October 2002.[1095] These Libyan forces did not coordinate with the MLC.[1096] A small *Communauté des Etats Sahélo-Sahariens* ("CEN-SAD") force was confined to its base near the Bangui airport and was not deployed to the field.[1097] Finally, Central African Economic and Monetary Community ("CEMAC") troops were present to ensure President Patassé's security.[1098]

### 2. MLC contingent in the CAR

410. The MLC contingent deployed to the CAR was comprised of three battalions totalling around 1,500 men; initially two battalions crossed to the CAR,[1099] while the third deployed around the end of January 2003.[1100] Colonel Moustapha commanded the 2002-2003 CAR Operation in the field.[1101] He was the highest

[1094] **P73**: T-70, page 14, lines 20 to 22; **P173**: T-145, page 30, lines 23 to 25; and **P45**: T-204, page 70, line 13 to page 72, line 5.
[1095] **P119**: T-82, page 24, lines 10 to 20; and T-85, page 17, lines 20 to 23; **P79**: T-76, page 52, lines 8 to 25; **P6**: T-95, page 54, line 21 to page 56, line 8; and **P31**: T-183, page 38, line 13 to page 39, line 17.
[1096] **P178**: T-152, page 43, lines 2 to 8; and **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1637, depicting a 30 October 2002 message in the MLC's logbook, sent to the Chief of General Staff and copied to Mr Bemba, in which Colonel Moustapha writes that "there is no coordination with the Libyans".
[1097] **P6**: T-95, page 29, lines 4 to 10, and page 57, line 2 to page 58, line 5; **P73**: T-73, page 59, line 16 to page 60, line 22; **P9**: T-104, page 34, lines 8 to 15; and T-107, page 16, lines 9 to 25; and **P31**: T-183, page 14, line 12 to page 15, line 7.
[1098] **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1680. *See also* **P45**: T-204, page 72, lines 1 to 5.
[1099] *See* Section V(C)(2).
[1100] **CHM1**: T-353, page 56, lines 12 to 20; and T-354, page 40, line 12 to page 41, line 4; **P36**: T-213, page 64, line 24 to page 65, line 5; T-215, page 27, line 4 to page 28, line 18; and T-218, page 11, lines 4 to 9; **P47**: T-179, page 36, lines 3 to 6; **P169**: T-136, page 26, lines 2 to 8, page 28, line 24 to page 29, line 3, and page 33, lines 15 to 20; T-137, page 3, lines 22 to 23, page 5, lines 13 to 19, page 6, lines 1 to 16, and page 7, lines 1 to 2; T-141, page 13, lines 1 to 16, and page 14, lines 19 to 25; and T-141-Conf, page 12, lines 4 to 15; **P6**: T-96, page 19, lines 11 to 24; **P173**: T-144, page 11, lines 4 to 18; **P178**: T-150, page 37, lines 14 to 21; **D19**: T-284, page 18, line 23 to page 19, line 10; T-285, page 6, lines 17 to 21; and T-290-Conf, page 29, lines 3 to 7, and page 61, lines 8 to 10; **D39**: T-308, page 36, lines 7 to 15; and T-309, page 47, line 14 to page 48, line 9; and **EVD-T-OTP-00824/CAR-OTP-0010-0471**, at 0471. *See also* Prosecution Closing Brief, para. 123; and Defence Closing Brief, paras 291, 333, and 369.
[1101] **P23**: T-51, page 10, lines 20 to 25; and T-53, page 14, lines 4 to 9; **P63**: T-109, page 4, line 24 to page 5, line 6; and T-113, page 55, lines 17 to 20; **P173**: T-144, page 15, lines 19 to 23; and T-145, page 4, lines 20 to 24, and page 33, lines 9 to 21; **CHM1**: T-353, page 47, lines 12 to 15, and page 57, lines 3 to 17; and T-357, page 50, line 24 to page 51, line 3; **P169**: T-138, page 27, lines 14 to 15; and T-140, page 43, lines 6 to 9; **D39**: T-308, page 36, lines 9 to 12; **P36**: T-213, page 63, lines 16 to 18; and T-216, page 22, lines 11 to 13; **P15**: T-208, page 27, lines 22 to 25; **P44**: T-205, page 31, lines 8 to 13; **P45**: T-202, page 16, lines 8 to 10; **P213**: T-186, page 54, line 5; **P31**: T-182, page 27, lines 3 to 4; and T-183, page 31, line 15 to page 32, line 3; **P33**: T-158, page 27, lines 4 to 6; and **P6**: T-96, page 14, lines 12 to 13, and page 16, lines 13 to 20.

ranking MLC officer in the CAR and the senior officer at the brigade level.[1102] Major Dikunduakila – or "co-ordinator Diku" – acted as co-ordinator of operations in the CAR, and as a liaison officer between the MLC and the CAR authorities.[1103] Other MLC officers deployed to the CAR included Captain René, Colonel Moustapha's deputy commander of operations;[1104] Coup-par-Coup;[1105] Major Senge François (also known as "Seguin" and "Sege");[1106] Major Kamisi;[1107] Major Yves (also known as "Ibiza");[1108] and Mapao.[1109]

411. A relatively small number[1110] of CAR troops supported the MLC during its operations, *inter alia,* acting as guides and providing intelligence.[1111] Over the

[1102] **P169**: T-136, page 24, lines 3 to 5, and page 37, lines 3 to 25; and T-140, page 43, lines 8 to 9; **P173**: T-144, page 15, line 19 to page 16, line 6, and page 42, lines 1 to 5; and **D19**: T-287, page 21, lines 13 to 16; T-287-Conf, page 22, lines 14 to 16; and T-290, page 45, lines 10 to 14.
[1103] **P36**: T-214, page 34, line 20 to page 35, line 6; T-215, page 48, lines 23 to 24; T-215-Conf, page 49, lines 6 to 9; and T-218, page 56, line 17 to page 57, line 2; **D39**: T-308, page 44, lines 2 to 9; and T-309, page 7, lines 1 to 4, and page 8, lines 5 to 18; and **D19**: T-285, page 26, line 19 to page 27, line 9; T-289, page 50, lines 9 to 15; and T-292, page 20, lines 4 to 11.
[1104] **P178**: T-150, page 35, lines 24 to 25, and page 64, line 23 to page 65, line 5; and T-150-Conf, page 30, lines 14 to 22; **D19**: T-284, page 43, line 24; and T-292, page 47, lines 10 to 16; **D39**: T-308, page 44, lines 2 to 9; and **P173**: T-144, page 15, line 24 to page 16, line 11, and page 42, lines 1 to 5.
[1105] **D19**: T-286, page 27, lines 1 to 20; **P169**: T-136, page 29, lines 11 to 18; and T-137, page 8, line 19 to page 9, line 5; **P173**: T-144, page 15, line 24 to page 16, line 11; and **P178**: T-150, page 36, lines 12 to 16; and T-152, page 13, line 12.
[1106] **P169**: T-136, page 27, lines 1 to 11, and page 28, line 3; **P178**: T-150, page 36, line 1; and T-152, page 12, line 23; and **D19**: T-290-Conf, page 30, line 19 to page 32, line 13.
[1107] **P169**: T-136, page 24, lines 10 to 15, page 27, lines 1 to 25, and page 29, lines 8 to 13; and T-137, page 3, lines 9 to 14; **P178**: T-150, page 35, line 17 to page 36, line 11; and T-152, page 12, lines 20 to 25; and **D19**: T-290-Conf, page 30, line 19 to page 32, line 13.
[1108] **P169**: T-136, page 24, lines 10 to 24; **P178**: T-150, page 35, line 25 to page 36, line 1; and T-152, page 12, lines 20 to 25; and **D19**: T-290, page 30, line 19 to page 32, line 13.
[1109] **P38**: T-33, page 39, line 20 to page 40, line 11.
[1110] **P45**: T-204, page 71, line 24; **P31**: T-183, page 7, line 18 to page 9, line 6, page 9, lines 11 to 18, page 31, lines 5 to 14, page 53, line 20 to page 54, line 3, and page 61, lines 23 to 25, testifying that the number of MLC combat troops was much greater than the minimal number of FACA troops involved in the operation, and that there was only one joint operation, namely the initial operation to push General Bozizé's rebels beyond PK13; **P36**: T-214, page 43, lines 19 to 22, and page 46, lines 5 to 24, testifying that a MLC company of between 150 and 200 troops was typically accompanied by a maximum of 30 CAR soldiers; **CHM1**: T-353, page 48, lines 8 to 20, and page 52, lines 4 to 14; T-354, page 42, lines 16 to 17; and T-356, page 19, lines 10 to 19, page 33, lines 22 to 24, and page 74, line 23 to page 75, line 14, testifying that only the USP cooperated with the MLC and that MLC troops were mostly involved in combat, while the USP provided support on two of the three roads where the MLC were involved in operations; and **D19**: T-285, page 21, lines 9 to 11; and T-290-Conf, page 64, line 8 to page 65, line 6, and page 66, line 16 to page 67, line 11.
[1111] **P31**: T-182, page 38, line 13, and page 43, line 2 to page 44, line 19; **P173**: T-144, page 17, lines 21 to 23; T-145, page 12, lines 10 to 20, page 14, lines 14 to 16, page 37, line 8 to page 38, line 1, page 49, line 23 to page 50, line 5, and page 59, line 1 to page 62, line 20; and T-146, page 3, line 7 to page 4, line 25, and page 7, line 23 to page 10, line 24, testifying that, at least from January 2003 onwards, the MLC troops did all the fighting, with only some USP troops providing intelligence and helping as guides in unfamiliar territory; **D19**: T-285-Conf, page 4, lines 19 to 23; T-285, page 21, lines 9 to 11; and T-290, page 10, lines 1 to 9, and page 64, line 8 to page 65, line 19; **P36**: T-213, page 71, lines 6 to 18, testifying that the CAR troops "were available simply to guide the MLC […] because they knew the terrain"; T-214, page 45, line 23 to page 46, line 6; T-217, page 40, lines

course of the 2002-2003 CAR Operation, with the exception of the initial operation to push General Bozizé's rebels from Bangui, the MLC troops and the small number of CAR troops frequently accompanying them, operated independently of other armed forces in the field.[1112]

### a) Logistics

412. When the MLC troops arrived,[1113] CAR officials received them and provided them with transport and initial accommodation.[1114] This arrangement continued throughout the 2002-2003 CAR Operation: Mr Bemba controlled the transport

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19 to 22; and T-218, page 45, line 4 to page 46, line 21; and **D51**: T-261, page 37, line 25 to page 38, line 5, page 42, lines 16 to 25, and page 65, line 25 to page 66, line 10; T-262, page 15, lines 10 to 22; and T-263, page 29, lines 7 to 11. *See also* **P151**: T-174, page 53, line 15 to page 54, line 24, testifying that a foreign force would need guidance, but was unsure of who, within the CAR hierarchy, provided it; and **P6**: T-95, page 40, lines 6 to 10; and T-96, page 56, lines 6 to 10, testifying that President Patassé asked some FACA officers to act as "trailblazers" and help the MLC troops advance on the ground.

[1112] **P151**: T-172, page 36, lines 4 to 15, testifying that, initially, the MLC were intended to be accompanied by the FACA, but in practice acted independently in their missions, page 45, lines 6 to 15, testifying that the Banyamulengué did not cooperate with the loyalist forces, and page 46, line 21 to page 47, line 3; and T-175, page 9, lines 19 to 25, page 10, line 3, and page 12, lines 3 to 24; and **P9**: T-104, page 17, lines 7 to 14, emphasising that the MLC troops operated in an "independent, autonomous manner". With respect to the fact that MLC troops fought alone and primarily engaged in the fighting, *see*, *similarly*, **P42**: T-66, page 9, lines 1 to 5; **P209**: T-120, page 21, line 21 to page 22, line 4; **P110**: T-128, page 46, lines 13 to 23; **P63**: T-110, page 14, lines 17 to 19; T-112, page 5, lines 1 to 13, and page 29, lines 12 to 14; T-113, page 10, lines 19 to 21, and page 31, lines 9 to 24; and T-114, page 15, lines 3 to 10, testifying that President Patassé disarmed the FACA troops when the MLC arrived; **P178**: T-152, page 18, lines 16 to 17, testifying that only the Banyamulengué soldiers participated in the attack, and page 46, lines 17 to 19, noting that the Central African soldiers did not fight alongside the MLC at Bossangoa, PK12, Damara, or the Cameroon axis; **D65**: T-247, page 27, line 23 to page 28, line 17, noting that there were no FACA soldiers at the Nguerengou checkpoint; **P6**: T-95, page 13, line 6 to page 14, line 4, testifying that, after taking the Fouh neighbourhood, only the MLC were present and not the Central African Army; and **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1637, depicting a logbook message dated 30 October 2002, sent by Colonel Moustapha to the Chief of General Staff and copied to Mr Bemba, stating that "we have been abandoned by the nationals", that there was no coordination with the Libyans, and that the MLC lacked means of communication for liaison among the operations. *See also* **P36**: T-214, page 33, lines 5 to 8; **P9**: T-107, page 6 line 20 to page 7 line 18, and page 8 line 5 to page 9, line 13; and **P169**: T-137, page 16, line 22 to page 17, line 23, and page 18, lines 19 to 22; T-138, page 38, lines 4 to 5; T-139, page 44, lines 10 to 16, and page 48, lines 1 to 7; and T-140, page 42, lines 3 to 15. *See also* Section V(C).

[1113] *See* Section V(C)(2).

[1114] **P36**: T-218, page 14, lines 13 to 15; **D39**: T-310, page 27, lines 19 to 25; **D19**: T-284, page 22, line 21 to page 23, line 5, page 28, lines 7 to 12, page 30, lines 6 to 23, and page 31, lines 10 to 22; and T-285, page 3, lines 15 to 17, testifying that, among others, Colonel Danjito, General Mazi, General Bombayake, and the Minister of Transport greeted the MLC troops and CAR soldiers drove them to Camp Béal; **P47**: T-176, page 27, lines 4 to 8, page 28, lines 2 to 7, page 36, lines 4 to 8, page 52, lines 5 to 18, and page 63, lines 15 to 20; T-177, page 45, lines 4 to 8; and T-181, page 3, lines 4 to 15, and page 4, lines 3 to 4, testifying that Colonel Danjito, the Deputy Chief of Staff of the FACA navy, commanded three CAR soldiers – Warrant Officer Odon, Chief Sergeant Ilemala, and a corporal – who were in control of the ferry and monitored and coordinated all MLC crossings; and **P31**: T-182, page 22, lines 4 to 19, and page 26, lines 18 to 20; and T-184, page 7, lines 8 to 16, testifying that he and Colonel Danjito coordinated the transport of the MLC troops across the river and to the support battalion at Camp Béal. *See also* **P9**: T-105, page 46, lines 11 to 18; and **P6**: T-95-Conf, page 39, lines 19 to 23; and T-98, page 9, lines 12 to 22.

of MLC troops to the DRC side of the Oubangui River, and the CAR authorities managed the crossing itself.[1115] The CAR authorities – in particular, the USP[1116] – also provided other support to the MLC over the course of the 2002-2003 CAR Operation,[1117] including weapons, ammunition,[1118] new uniforms similar to those worn by the CAR military,[1119] vehicles, fuel,[1120] food, money (primarily for the purpose of buying food),[1121] and various communications equipment, such as phonies, cell phones, walkie-talkies,[1122] and Thuraya devices.[1123]

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[1115] **P36**: T-218, page 14, lines 1 to 8; **P45**: T-202, page 27, lines 4 to 8; and **P9**: T-108, page 13, lines 24 to page 14, line 3. *See also* Sections V(A)(1) and V(A)(4).

[1116] **P36**: T-213, page 69, line 25 to page 70, line 10, testifying that the CAR authorities did not have any weapons or ammunition to give to the MLC; and **CHM1**: T-353, page 60, lines 2 to 4; T-354, page 58, line 11 to page 59, line 1; and T-355, page 9, lines 15 to 21, and page 17, lines 13 and 16, testifying that, during the events, the FACA was not able to provide the MLC troops with weapons or ammunition as the FACA did not even have enough supplies for its own troops. *See also* **P6**: T-95, page 44, lines 16 to 21, testifying that nearly all equipment in the CAR, including that of the FACA, such as tanks, heavy weapons mounted on pick-up trucks, and combat vehicles, was with the USP. *See also* Section V(B)(1).

[1117] **P45**: T-202, page 3, lines 18 to 19; **P6**: T-96, page 56, lines 6 to 10; **P9**: T-107, page 58, lines 4 to 11; **D19**: T-284, page 34, lines 8 to 20, page 35, line 16 to page 36, line 1, and page 44, lines 8 to 12; and T-292, page 15, lines 18 to 24, and page 20, line 14 to page 21, line 13; and **P213**: T-190, page 16, lines 13 to 16. *See also* **P219**: T-199, page 59, lines 9 to 10, page 60, lines 14 to 22, and page 62, lines 2 to 20.

[1118] **P178**: T-150, page 47, lines 3 to 13; **P63**: T-113, page 31, lines 19 to 20; **D49**: T-271, page 13, lines 22 to 23; **P31**: T-183, page 41, line 23 to page 42, line 3; **P173**: T-146, page 9, lines 7 to 22; and **D51**: T-261, page 37, lines 5 to 21; and T-262, page 16, lines 14 to 19. *See also* **P6**: T-95, page 39, line 23 to page 40, line 5, and page 41, lines 5 to 6, testifying that General Bombayake confirmed during an interview that weapons were requisitioned by Mr Martin Ziguele, the former Prime Minister, provided to the USP, and General Bombayake was then responsible for providing the MLC troops with these materials.

[1119] **P63**: T-114, page 15, line 14; **D39**: T-308, page 41, lines 4 to 6; **D49**: T-271, page 13, lines 23 to 25; **P36**: T-215, page 48, lines 14 to 16; and T-218, page 14, lines 19 to 23; **CHM1**: T-353, page 52, line 24 to page 53, line 4; and T-354, page 45, lines 6 to 7; **P178**: T-150, page 18, lines 22 to 25, page 47, lines 3 to 6, and page 47, line 16 to page 48, line 16; and T-152, page 72, line 23 to page 73, line 11; **P31**: T-182, page 32, line 22 to page 35, line 9; **D51**: T-261, page 34, lines 11 to 14, page 53, lines 23 to 24, and page 65, lines 22 to 24; **P173**: T-144, page 58, line 2 to page 59, line 4; and T-146, page 9, lines 7 to 22 and page 11, lines 5 to 19; **P47**: T-176, page 39, lines 4 to 8; T-177, page 40, lines 22 to 25; and T-179, page 33, line 19, and page 34, lines 2 to 6; **P169**: T-140, page 5, lines 5 to 23; **P22**: T-41, page 16, line 3 to page 17, line 2; and **D19**: T-284, page 34, lines 11 to 12, and page 36, lines 4 to 11; T-288, page 37, line 7 to page 40, line 8; and T-292, page 43, lines 1 to 22, and page 44, lines 4 to 14. *See also* **P9**: T-105, page 46, line 24 to page 47, line 5; T-107, page 11, lines 8 to 13; and T-108, page 17, line 13.

[1120] **P31**: T-182, page 28, line 20 to page 29, line 2, and page 29, lines 16 to 22; and T-184, page 11, line 6 to page 13, line 1; **D19**: T-284, page 34, lines 12 to 13, page 37, lines 2 to 4, and page 44, lines 8 to 9; and T-292, page 20, lines 14 to 24; **P178**: T-152, page 74, line 20 to page 75, line 1, and page 76, lines 4 to 12; **P63**: T-109, page 4, lines 10 to 18, page 23, lines 7 to 15, and page 24, lines 18 to 19; T-110, page 28, lines 16 to 22; T-111, page 10, lines 20 to 21, and page 20, lines 1 to 6; and T-112, page 42, lines 10 to 14; **P169**: T-140, page 10, line 8 to page 11, line 8; **P173**: T-145, page 15, lines 4 to 9; T-146, page 9, lines 7 to 22, and page 10, line 2 to page 12, line 15; and T-149, page 59, lines 21 to 22; **CHM1**: T-355, page 10, lines 18 to 24, and page 14, lines 8 to 15; and **D66**: T-279-Conf, page 51, lines 16 to 23. A number of photographs depict MLC troops with FACA vehicles. *See* **EVD-T-OTP-00617/CAR-OTP-0035-0150**; **EVD-T-OTP-00624/CAR-OTP-0035-0178**; **EVD-T-OTP-00627/CAR-OTP-0035-0199**; and **EVD-T-OTP-00642/CAR-OTP-0035-0277**. *See also* **P6**: T-95, page 39, line 23 to page 40, line 5, and page 47, lines 1 to 5; and **P9**: T-105, page 45, line 25 to page 46, line 10; and T-106, page 53, line 18 to page 56, line 2, page 57, lines 5 to 24, and page 67, line 17 to page 69, line 4.

[1121] **P36**: T-213, page 72, lines 18 to 23; and T-215, page 48, lines 5 to 13; **D19**: T-284, page 34, line 11, and page 44, lines 15 to 23; T-285, page 36, lines 1 to 6; T-289, page 13, line 18 to page 14, line 1; T-290, page 71,

413. As to the equipment that the MLC contingent brought to the CAR, several witnesses, as corroborated by photographic and contemporaneous documentary evidence, testified that the MLC troops brought, *inter alia*, communications equipment, such as radio devices and at least one Thuraya;[1124] individual weapons and ammunition, as well as support weapons;[1125] and heavy weapons, such as artillery.[1126] Recalling its concerns as to the general

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lines 4 to 5; and T-292, page 20, lines 18 to 19; **CHM1**: T-353, page 60, lines 15 to 18; T-354, page 45, lines 9 to 10, and page 62, lines 16 to 17; and T-355, page 68, line 20 to page 69, line 16; **P151**: T-174, page 48, lines 2 to 13; **P31**: T-182, page 29, line 24 to page 30, line 10; and T-184, page 9, lines 16 to 24; **P169**: T-140, page 23, lines 4 to 17, page 24, lines 7 to 8, and page 30, lines 11 to 13; **D66**: T-279, page 55, lines 14 to 19; **P173**: T-146, page 16, line 25 to page 22, line 16; **D51**: T-263, page 30, lines 16 to 25; and **P23**: T-53, page 9, lines 13 to 21. *See also* **P6**: T-96, page 16, lines 15 to 19, and page 17, line 15 to page 18, line 1; and T-97, page 55, lines 8 to 13; and **P9**: T-104, page 50, lines 12 to 20; T-106, page 50, lines, 10 to page 51, line 19, page 52, lines 5 to 21, and page 53, lines 5 to 13; and T-108, page 14, lines, 7 to 18, and page 20, lines, 14 to 21.

[1122] **P31**: T-182, page 31, lines 16 to 25; and T-183, page 8, line 11 to page 9, line 8, and page 29, line 10 to page 30, line 4; **D51**: T-261, page 44, lines 14 to 19; **P169**: T-137, page 50, lines 14 to 23; and T-140, page 11, lines 14 to 25, and page 12, lines 8 to 20; and **D19**: T-284, page 37, line 17 to page 38, line 24, and page 39, line 15 to page 40, line 3; and T-292-Conf, page 18, line 25.

[1123] **D51**: T-261, page 44, lines 14 to 19, testifying that, after initially being given a walkie-talkie by the CAR authorities, Colonel Moustapha was later given a Thuraya; **P36**: T-217, page 50, lines 3 to 17; and T-218-Conf, page 78, line 23 to page 79, line 5; **D19**: T-284, page 39, line 17 to page 40, line 10; and T-292-Conf, page 18, line 24 to page 19, line 2, and page 59, lines 14 to 22, testifying that General Bombayake provided Thuraya devices to Colonel Moustapha and other MLC leaders after they progressed past PK12, the point at which their cellular devices no longer worked; and **P178**: T-150, page 42, lines 16 to 18, and page 46, lines 8 to 12, testifying that the CAR government provided Thuraya sets to Colonel Moustapha and other MLC officers.

[1124] **P36**: T-214, page 6, lines 5 to 7; **P178**: T-150, page 40, line 25 to page 41, line 3; and T-152, page 16, line 22 to page 17, line 3; **P63**: T-109, page 4, lines 6 to 8; **CHM1**: T-354, page 45, lines 1 to 3; and **P31**: T-182, page 31, line 16; and T-183, page 8, lines 22 to 24, and page 9, lines 6 to 7. *See also* **P63**: T-113, page 28, lines 7 to 22; and **P169**: T-137, page 41, lines 20 to 22, page 42, lines 17 to 19, and page 43, lines 14 and 15; and T-140, page 11, lines 16 to 17.

[1125] **CHM1**: T-353, page 59, line 15 to page 60, line 4; T-354, page 44, lines 22 to 23, and page 59, lines 7 to 8; and T-355, page 17, lines 10 to 11; **P36**: T-213, page 65, lines 10 to 17, and page 66, lines 13 to 14; and T-215, page 47, line 24 to page 48, line 4; **P213**: T-186, page 47, line 12 to page 48, line 3; **P178**: T-150, page 56, lines 15 to 18; **P63**: T-114, page 15, lines 14 to 16; **P169**: T-137, page 3, lines 22 to 23; and T-141, page 14, lines 23 to 25; **P31**: T-182, page 28, lines 14 to 20, and page 29, lines 5 to 13; **P47**: T-176, page 34, lines 12 to 16, page 36, line 21 to page 38, line 18, page 42, lines 18 to 19, page 43, line 23 to page 45, line 15, and page 52, line 23 to page 53, line 17; and T-179, page 33, lines 12 to 14; **EVD-T-OTP-00384/CAR-OTP-0028-0399**; **EVD-T-OTP-00385/CAR-OTP-0028-0400**; and **D19**: T-284, page 34, lines 17 to 20; and T-288, page 13, line 8 to page 14, line 6, page 23, lines 10 to 23. *See also* Prosecution Closing Brief, para. 595; and Defence Closing Brief, paras 780 to 783.

[1126] **P36**: T-213, page 65, lines 10 to 17, and page 66, lines 13 to 14; and T-215, page 47, line 24 to page 48, line 4; **CHM1**: T-353, page 59, line 15 to page 60, line 2, testifying that the MLC troops brought heavy arms such as 12.7 mm and 14.5 mm cannons with them to the CAR; **P213**: T-186, page 47, line 12 to page 48, line 3; **P31**: T-182, page 28, lines 14 to 20, and page 29, lines 5 to 13, testifying that the MLC troops brought their own heavy weapons a few days after they first crossed to the CAR, including mortars and 12.5 mm or 14.5 mm machine guns; **P47**: T-176, page 34, lines 18 to 19, page 36, line 21 to page 38, line 17, page 42, lines 18 to 19, page 43, line 23 to page 44, line 1, page 44, line 5 to page 45, line 15, and page 52, line 23 to page 53, line 17; **EVD-T-OTP-00384/CAR-OTP-0028-0399**; **EVD-T-OTP-00385/CAR-OTP-0028-0400**; and **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1629, listing "equipment ready for the Echo Brigade to use in the Bangui operation" including a 60 mm mortar, three 82 mm mortars, and a 107 mm cannon.

credibility of P36, P169, P178, and P213 and the reliability of their evidence,[1127] the Chamber notes that their testimonies on this issue are (i) internally consistent and generally corroborate one another, and (ii) further corroborated, in various details, by photographic and contemporaneous documentary evidence and the testimonies of CHM1, FACA Colonel Thierry Lengbe (P31), P47, a mechanic for a river transport company that ferried MLC troops to the CAR, and P63. The Chamber is also satisfied that the relevant witnesses were all in a position to know about this issue. In these circumstances, the Chamber finds that this corroborated evidence concerning the equipment the MLC troops brought to the CAR is reliable.

414. Nevertheless, the Chamber notes D19's testimony that the MLC troops did not bring heavy weapons[1128] and only brought one phonie.[1129] D6, D57, and D64 further claimed that the MLC troops crossed with no communications equipment; according to D6, they were therefore unable to communicate with Gbadolite the first day they were in the CAR.[1130] However, the Chamber recalls its concerns as to the credibility of D19, D57, and D64 and the reliability of their evidence,[1131] and its doubts concerning related portions of D6's testimony.[1132] D19's testimony in relation to types of weapons taken by the MLC to the CAR is also inconsistent with D19's prior statement that the MLC did take some heavy weaponry.[1133] Further, D6's testimony that the MLC troops in the CAR were initially unable to communicate because they did not bring communications equipment is contradicted by messages from the MLC contingent in the CAR

[1127] *See* Section IV(E)(7)(a).
[1128] **D19**: T-284, page 34, line 17 to page 36, line 1; and T-288-Conf, page 23, lines 10 to 23.
[1129] **D19**: T-284, page 37, line 7 to page 38, line 24.
[1130] **D6**: T-328, page 16, lines 12 to 20; and T-328bis, page 4, line 24 to page 8, line 19; **D64**: T-259, page 22, line 24 to page 24, line 15, page 44, lines 17 to 25, and page 46, line 19 to page 48, line 1; T-259-Conf, page 19, line 5 to page 20, line 8; and T-260, page 60, line 20 to page 62, line 18; and **D57**: T-256, page 32, lines 1 to 12.
[1131] *See* Section IV(E)(7)(c).
[1132] *See* Section V(B)(2)(c), para. 430.
[1133] **D19**: T-288, page 14, line 12 to page 15, line 19; and **EVD-T-OTP-00755/CAR-OTP-0020-0215_R02**, at 0222 to 0223.

recorded in the MLC logbook.[1134] Finally, the basis of D64's conclusions on this issue is unclear, as he was not present when the MLC troops arrived in the CAR and does not otherwise indicate the source of his knowledge.[1135] In these circumstances, although they corroborate one another, the Chamber is unable to rely on the testimonies of D6, D19, D57, and D64 on this issue, absent corroboration by other credible and reliable evidence.

415. Accordingly, the Chamber finds, on the basis of the corroborated and reliable evidence set out above, that the MLC contingent deployed to the CAR brought communications equipment, such as radio devices and at least one Thuraya; individual weapons and ammunition, as well as support weapons; and heavy weapons, such as artillery.[1136]

416. Several witnesses, as corroborated by contemporaneous documentary evidence, also testified that, while they were in the CAR, the MLC provided its troops with, *inter alia*, weapons and ammunition,[1137] including (i) support and heavy weaponry and ammunition supplied to the MLC by Libya and then transported to the CAR;[1138] and (ii) around the end of January or beginning of February 2003, weapons, ammunition, supplies, and troop reinforcements.[1139] Recalling its concerns as to the general credibility of P36, P45, and P213, the Chamber notes, in particular, that their testimonies on this issue (i) are internally consistent and generally corroborate one another, and (ii) are further

[1134] *Compare* **D6**: T-328bis, page 4, line 24 to page 8, line 19; *with* **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1631 to 1633, 1635, and 1637.
[1135] **D64**: T-259, page 22, line 24 to page 24, line 15, page 44, lines 17 to 25, and page 46, line 19 to page 48, line 1; T-259-Conf, page 19, line 5 to page 20, line 8; and T-260, page 60, line 20 to page 62, line 18.
[1136] *See* para. 413.
[1137] **P36**: T-213, page 65, line 14 to page 66, line 3, and page 69, lines 14 to 24; T-214, page 24, line 19 to page 26, line 7, page 27, line 17 to page 28, line 4, and page 40, lines 15 to 21; T-215, page 27, line 21 to page 28, line 18; T-216, page 23, line 1 to page 24, line 15; and T-217, page 41, lines 6 to 8; **P33**: T-159, page 35, line 18 to page 36, line 6; and **P47**: T-180, page 4, lines 7 to 24. *See also* **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1635; and **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1658.
[1138] **P45**: T-204, page 71, lines 11 to 17; **P36**: T-213, page 66, lines 13 to 24, and page 67, lines 5 to 9; and T-215, page 47, line 24 to page 48, line 4; **P213**: T-186, page 36, line 15 to page 37, line 22, and page 47, lines 16 to 19; and T-190, page 18, lines 9 to 25, page 21, line 13 to page 22, line 6, and page 22, lines 9 to 13; and **D66**: T-279, page 46, line 11 to page 46, line 3.
[1139] **CHM1**: T-356-Conf, page 13, lines 20 to 22, and page 16, lines 2 to 9; and T-357-Conf, page 43, lines 20 to 23, and page 44, lines 3 to 4; and **P36**: T-213-Conf, page 70, line 16 to page 71, line 2. *See also* Section V(C)(8).

corroborated, in various details, by contemporaneous documentary evidence and the testimonies of P33, P47, CHM1, and D66. The Chamber is also satisfied that the relevant witnesses were all in a position to know about this issue. In these circumstances, the Chamber finds that the corroborated evidence set out above is reliable.

417. On the other hand, the Chamber notes that D15, D19, D39, and D49 testified that, after the arrival of the MLC contingent in the CAR, the MLC either did not or could not provide equipment or supplies to the troops.[1140] However, although these testimonies corroborate one another, the Chamber notes (i) its concerns regarding the general credibility of D15, D19, and D49 and the reliability of their evidence;[1141] (ii) the contradictions between D19's testimony on this issue and MLC logbook entries,[1142] and his unsatisfactory and inconsistent explanations for such discrepancies;[1143] (iii) the confusing, evasive, qualified and inconsistent nature of D39's testimony, particularly, as to the relationship between CAR and MLC troops;[1144] and (iv) the fact that this evidence is not corroborated by other credible and reliable evidence. In these circumstances, the Chamber is unable to rely on the testimony that the MLC did not or could not provide logistics to its troops in the CAR.

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[1140] **D49**: T-273, page 38, line 24 to page 39, line 1, testifying that the CAR authorities provided logistics and that the MLC did not need to send any further logistics to the CAR; **D39**: T-308, page 45, lines 4 to 6, testifying that, in light of the available transport and the distance, it was very difficult for the MLC to supply the units in the CAR from Gbadolite; **D15**: T-343, page 83, line 11 to page 87, line 20; and **D19**: T-290-Conf, page 61, lines 8 to 10, testifying that the only request Colonel Moustapha made to Gbadolite that was carried out was for reinforcements.

[1141] *See* Section IV(E)(7)(c).

[1142] **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1712, depicting a message in which Colonel Moustapha asked the ALC Chief of General Staff whether the 12.7 mm repairs were finished and asked for magazines of 12.7 mm, saying that intervention would be of assistance; and at 1726, depicting a message dated 20 January 2003, sent from Colonel Moustapha to the ALC Chief of General Staff, copying Mr Bemba, referring to a previous request for equipment on 11 January and requesting specific weapons and equipment. *See also* **D19**: T-288, page 26, lines 12 to 24.

[1143] **D19**: T-285, page 31, line 3 to page 32, line 24; T-288, page 27, line 7 to page 28, line 3, testifying, after being non-responsive, that he did not remember; page 33, line 5 to page 34, line 22, and page 35, lines 1 to 15; T-290, page 57, lines 5 to 20; T-290-Conf, page 61, lines 8 to 10; and T-292-Conf, page 13, lines 5 to 13, testifying that the message was sent due to problems with the CAR authorities, with a view to getting the MLC command to intervene with President Patassé to ensure the equipment was provided, and testifying inconsistently that the equipment was both received and not received at all.

[1144] *See* Section V(B)(2)(c), para. 437.

418. Accordingly, on the basis of corroborated and reliable evidence, the Chamber finds that the MLC provided its troops in the CAR with arms and ammunition, as set out above.[1145]

**b) Communications**

419. MLC officials could communicate with the troops in the CAR, down to the battalion level, by phonie from Gbadolite.[1146] Colonel Moustapha, the brigade commanders, and the battalion commanders could also use their Thurayas to directly call individuals in Gbadolite, including Mr Bemba.[1147] Mr Bemba could also contact Colonel Moustapha on his mobile phone when the latter was in Bangui, where he used the CELTEL mobile network.[1148]

420. Authenticated records of Thuraya numbers belonging to Mr Bemba[1149] and Colonel Moustapha[1150] indicate that Mr Bemba called Colonel Moustapha's

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[1145] *See* para. 416.

[1146] **P36**: T-213, page 73, lines 18 to 23; and T-214-Conf, page 4, line 14 to page 5, line 4, testifying that, from Gbadolite, it was possible to contact, orally or by written message, ALC troops by radio in Bangui and as far afield as Basankusu; **P213**: T-188, page 23, lines 1 to 4; **P33**: T-159, page 67, line 20 to page 68, line 3; and **D19**: T-284, page 39, lines 4 to 12; and T-290, page 22, lines 3 to 19.

[1147] **D19**: T-290, page 22, lines 3 to 19; **P36**: T-214, page 41, lines 11 to 17; and T-217, page 48 line 16 to page 50, line 25, and page 51, lines 3 to 13; **P178**: T-151, page 61, line 15 to page 62, line 1; **P169**: T-137, page 41, line 19 to page 43, line 9; and T-140, page 11, lines 13 to 14; **P173**: T-145, page 5, lines 15 to 19; **P213**: T-188, page 7, lines 17 to 18; **D51**: T-263, page 36, lines 16 to 17; **P15**: T-208, page 50, lines 1 to 4; and T-210, page 21, lines 10 to 11; **CHM1**: T-356, page 29, line 19 to page 30, line 1; and **P45**: T-202, page 16, lines 3 to 7, and page 28, lines 18 to 23.

[1148] **P173**: T-145, page 5, line 11 to page 6, line 6; **P45**: T-201, page 33, lines 16 to 21; and **P36**: T-218, page 71, line 23 to page 72, line 7. *See also* **P36**: T-218-Conf, page 79, line 3; and **EVD-T-OTP-00591/CAR-OTP-0055-0893**.

[1149] **EVD-T-CHM-00018/CAR-OTP-0048-0383**, depicting an email sent to a Belgian national, who was identified as signing the contract for a Thuraya line in Mr Bemba's name, and three emails addressed to Mr Bemba concerning invoices for the Thuraya line; and **D21**: T-305-Conf, page 23, line 16 to page 29, line 10, page 30, lines 12 to 15, page 36, lines 21 to 22, and page 38, lines 7 to 14, testifying that the Belgian national identified in the emails above was living in Gbadolite and tried to contact Mr Bemba, including on the email address mentioned in **EVD-T-CHM-00018/CAR-OTP-0048-0383**, concerning invoices relating to his Thuraya line. The Thuraya record for the relevant number includes a number of calls made to numbers also listed in the analysis of Mr Bemba's GSM SIM card seized from him upon his arrest in 2008. *See* **EVD-T-OTP-00833/CAR-OTP-0047-1660**, at 1672 to 1674; and **EVD-T-OTP-00591/CAR-OTP-0055-0893**, at 0894, 0928, 0930, and 0933 to 0934.

[1150] **P178**: T-150-Conf, page 43, lines 12 to 22, and page 44, line 4 to page 45, line 7; and T-151, page 61, line 1 to page 62, line 16, testifying that the telephone number written in his diary (*see* **EVD-T-OTP-00733/CAR-OTP-0046-0387**, at 0396) and marked with the name "Wisky", was the number of the Thuraya that belonged to Colonel Moustapha; **D19**: T-290-Conf, page 23, lines 7 to 19 and page 29, lines 12 to 22, testifying that Colonel Moustapha had a Thuraya in the CAR and recalled providing the Prosecution with the relevant number during an interview; and **EVD-T-OTP-00797/CAR-OTP-0058-0566**, at 0569 to 0576, in a prior interview with the Prosecution, D19 identified the same number that was written in P178's diary.

number 126 times between 4 February 2003 and 15 March 2003.[1151] These records corroborate various testimonies that Colonel Moustapha and Mr Bemba regularly communicated by Thuraya and phonie, with Colonel Moustapha reporting the status of operations and the situation at the front.[1152] Recalling its general concerns about the credibility of P36, P169, P173, P178, and P213 and the reliability of their evidence, the Chamber notes that their testimonies are (i) consistent; (ii) corroborated, in various details, by authenticated Thuraya records and the testimonies of CHM1, P15, P33, P44, and Mr Pamphile Oradimo (P9), an investigating judge in Bangui who investigated crimes committed during the 2002-2003 CAR Operation; and (iii) corroborated by the Chamber's findings concerning communications within the MLC generally.[1153] In these circumstances, the Chamber is satisfied that this corroborated evidence is reliable.

421. However, D19 testified that Mr Bemba never asked to be kept informed, and that, throughout the 2002-2003 CAR Operation, Colonel Moustapha communicated with Mr Bemba only two or three times.[1154] He testified that

[1151] **EVD-T-OTP-00591/CAR-OTP-0055-0893**. Of these 126 calls, 42 lasted less than 7 seconds. Between 10 and 17 March 2003, the week of the MLC's withdrawal from the CAR, Mr Bemba called Colonel Moustapha 59 times. The Defence submits that, even if accepted as authentic, the phone record shows a gap in communication from 4 to 10 February 2003. *See* Defence Closing Brief, paras 747 and 806. However, this is inaccurate as there were in fact 30 calls to CAR telephone numbers and six calls to Colonel Moustapha, four of which only connected for a few seconds, but one which lasted 1 minute, 30 seconds and another which lasted 2 minutes, 30 seconds. *See* **EVD-T-OTP-00591/CAR-OTP-0055-0893**, at 0893 to 0897.

[1152] **CHM1**: T-353, page 57, lines 7 to 20; **P213**: T-188, page 6, lines 16 to 22, and page 7, lines 3 to 23; **P15**: T-209, page 6, lines 8 to 13; **P178**: T-150, page 41, lines 6 to 8; T-151, page 56, lines 16 to 18, page 57, lines 11 to 13, page 63, lines 3 to 7, and page 64, lines 7 to 12; and T-152, page 21, lines 14 to 19; **P36**: T-213-Conf, page 74, line 1; and T-214, page 4, lines 1 to 9; **P169**: T-137, page 44, lines 2 to 12; T-138, page 24, lines 10 to 23, page 25, lines 8 to 23, and page 26, lines 3 to 22; T-140, page 17, lines 2 to 17; T-141, page 6, lines 8 to 25, and page 8, lines 13 to 17; T-141-Conf, page 3, line 25 to page 4, line 4; and T-142, page 26, lines 12 to 18, and page 35, lines 15 to 19; **P33**: T-159-Conf, page 49, line 14 to page 50, line 13; and T-161, page 17, line 17 to page 18, line 17; **P173**: T-145, page 5, line 11 to page 7, line 6, page 15, lines 13 to 21, and page 18, lines 10 to 23; and T-146-Conf, page 44, lines 6 to 20. Various witnesses testified that Colonel Moustapha and Mr Bemba communicated frequently and often daily. *See, inter alia*, **P36**: T-214, page 41, line 20 to page 42, line 13; **P213**: T-188, page 6, lines 16 to 22, and page 7, lines 3 to 6; **P178**: T-151, page 68, lines 1 to 4; and **P169**: T-138, page 24, lines 12 to 23, page 25, lines 8 to 14, and page 26, lines 3 to 22; and T-140-Conf, page 17, lines 2 to 17. *See also* **P9**: T-104, page 23, line 6 to page 24 line 6, and page 30, line 25 to page 31, line 13; and **P44**: T-205, page 48, line 23 to page 50, line 25, page 51, lines 7 to 20, page 52, lines 2 to 10, and page 55 lines 1 to 2; and T-206, page 9, line 5 to page 10, line 2.

[1153] *See* Section V(A)(3).

[1154] **D19**: T-285-Conf, page 46, lines 1 to 4, and page 47, line 22 to page 48, line 16; T-290-Conf, page 29, lines 1 to 12; and T-292-Conf, page 55, lines 15 to 19.

Colonel Moustapha reported to the ALC Chief of General Staff on the situation, soldiers, casualties, and military activities, and that Mr Bemba might have received these messages.[1155] In this regard, the Chamber recalls that the General Staff reported to Mr Bemba, who had authority over, *inter alia*, military operations and strategy within the MLC generally.[1156]

422. In relation to direct communication between Mr Bemba and Colonel Moustapha, the Chamber recalls its overall concerns relating to D19's credibility and the reliability of his account.[1157] The Chamber further notes that D19 gave unclear and evasive testimony when confronted with four prior statements that Colonel Moustapha and Mr Bemba discussed operations daily, as frequently as four or five times a day.[1158] In response to one prior statement, D19 testified that *Colonel Moustapha called Mr Bemba* only two or three times, but that he could not remember how many times *Mr Bemba called Colonel Moustapha*.[1159] This calls into question his prior testimony that, in total, Mr Bemba and Colonel Moustapha only communicated two or three times. In light of the above considerations, in particular, the inconsistencies between D19's prior statements and testimony, the Chamber is unable to rely on his testimony that Colonel Moustapha and Mr Bemba only communicated two or three times during the 2002-2003 CAR Operation.

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[1155] **D19**: T-284, page 43, lines 6 to 15; T-285-Conf, page 28, lines 15 to 20; T-289-Conf, page 71, lines 9 to 21, page 73, lines 15 to 16, and page 74, lines 14 to 18; and T-290-Conf, page 19, line 20 to page 21, line 15. *See also* **D49**: T-273, page 38, lines 8 to 21, page 41, lines 9 to 23, page 59, lines 12 to 17, and page 60, lines 18 to 20, testifying, on the one hand, that the commanders in the CAR were required to report to the General Staff on the enemy situation, logistics, and the morale of the troops, and, on the other hand, that the commanders only provided information from time to time, but that this was not requested or required.

[1156] *See* Section V(A)(4).

[1157] *See* Section IV(E)(7)(c)(vi).

[1158] **EVD-T-OTP-00759/CAR-OTP-0020-0263_R02**, at 0274; **EVD-T-OTP-00775/CAR-OTP-0027-0607_R02**, at 0610; **EVD-T-OTP-00795/CAR-OTP-0058-0535**, at 0551; **EVD-T-OTP-00781/CAR-OTP-0027-0681_R02**, at 0695; and **D19**: T-289-Conf, page 74, line 19 to page 76, line 25, page 77, lines 18 to 20, and page 78, lines 23 to 25, testifying as to a distinction between providing information and "involvement in the fighting", questioning the figure of "four or five times" per day, and implying that the Prosecution or interpreter had erroneously translated or transcribed his prior statement; and T-290-Conf, page 42, line 17 to page 45, line 6, testifying that he did not remember Colonel Moustapha sending messages, that the Chief of General Staff was "free to contact Mr Bemba or not", and accusing the Prosecution of confusing the Chief of General Staff and Mr Bemba.

[1159] **D19**: T-290-Conf, page 32, line 21 to page 33, line 17, testifying that the information in his statement did not come from him.

423. Accordingly, on the basis of corroborated and reliable evidence, the Chamber finds that Colonel Moustapha and Mr Bemba regularly communicated by Thuraya and phonie, with Colonel Moustapha reporting the status of operations and the situation at the front.[1160] Between 4 February 2003 and 15 March 2003, Mr Bemba also made 129 calls to other Thuraya numbers and 137 calls to CAR numbers.[1161] Although other MLC officials in the CAR generally reported on operations to Mr Bemba and the MLC headquarters through Colonel Moustapha, some were also in direct contact with Mr Bemba by radio or Thuraya.[1162]

424. MLC logbooks from the relevant period contain numerous situation reports for "Ops Bangui".[1163] Some contain detailed information as to morale, logistics, and the location of MLC troops and officers, including Colonel Moustapha and the coordinator of operations.[1164] The logbooks also contain a number of other messages sent to or from the Chief of General Staff, and copied to Mr Bemba, relating to (i) the progress of operations and location of MLC troops;[1165] (ii) co-ordination with the CAR authorities;[1166] (iii) casualties;[1167] (iv) weapons and ammunition;[1168] (v) means of communication;[1169] (vi) the crossing of 151 soldiers

[1160] *See* para. 420.
[1161] **EVD-T-OTP-00591/CAR-OTP-0055-0893**.
[1162] **P173**: T-145, page 7, line 23 to page 9, line 22; **P36**: T-213, page 73, line 24 to page 74, line 1; T-214, page 3, line 24 to page 4, line 9; and T-216, page 23, lines 9 to 16; **CHM1**: T-356-Conf, page 20, line 25 to page 21, line 3; **D19**: T-289-Conf, page 49, lines 22 to 24, page 50, line 11 to page 51, line 20, and page 54, line 25 to page 55, line 8; and T-290-Conf, page 22, line 3 to page 23, line 3; and **P169**: T-138, page 28, lines 20 to 23.
[1163] **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1632 to 1633, 1635, and 1637; and **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1642, 1650, 1652, 1654, 1661, 1664, 1666, 1671, 1673 to 1674, 1678, 1681, 1683, 1685, 1688, 1691, 1693, 1695 to 1696, 1698 to 1699, 1703, 1706, 1708 to 1709, 1711, 1715, 1722, 1724, 1727, 1729, 1731, 1735 to 1736, 1740, 1745, 1749, 1753, 1755 to 1756, 1760, and 1762 to 1763.
[1164] **EVD-T-OTP-00702/CAR-D04-0002-1641**, at 1654, 1679, 1665 to 1666, 1679 to 1680, 1686, 1689, 1693, 1700, 1720, 1762, 1765, and 1767.
[1165] **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1637; and **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1747.
[1166] **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1637.
[1167] **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1637.
[1168] **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1637; and **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1712.
[1169] **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1637.

meeting the "requirements of a combatant";[1170] and (vii) enemy movements, intentions, and weaponry.[1171]

425. Mr Bemba also received information on the combat situation, troop positions, politics, and allegations of crimes via intelligence services, both military and civilian.[1172] The civilian intelligence unit, known as the Special Investigations Bureau or Internal Security Office ("BSI"), reported directly to Mr Bemba, while military intelligence services in Bangui reported to their commanders, who then reported daily to the General Staff.[1173] The General Staff, in turn, reported to and discussed this information directly with Mr Bemba.[1174] The intelligence reports referred to various acts by "Banyamulengués" and "MLC troops", including theft, pillaging, rape, the killing of civilians, harassment of persons, and the transportation of looted goods, including trucks for Colonel Moustapha, back to Gbadolite through Zongo and Libengue.[1175]

426. In addition to remote communication, Mr Bemba also visited the CAR on a number of occasions,[1176] including in November 2002 when he met with the MLC troops,[1177] travelling either by plane[1178] or ferry.[1179] The Chamber notes

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[1170] **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1631. *See also* **P36**: T-214, page 23, line 8 to page 26, line 20, testifying that the "requirements of a combatant" refer to the necessary equipment for combat including weapons, ammunition, and medication. *See also* Section V(C)(2).

[1171] **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1687, 1702, 1706 to 1707, 1743, 1746 to 1747, 1749, and 1752. *See also* **D49**: T-273, page 62, line 4, testifying that the language of one of these messages (at 1702) was the normal formula for issuing orders.

[1172] **P36**: T-214, page 17, line 18 to page 19, line 1; and **P33**: T-158, page 47, lines 4 to 15; and T-159, page 8, line 20 to page 9, line 6.

[1173] **P45**: T-201, page 40, lines 6 to 16; and **P33**: T-159-Conf, page 15, lines 16 to 21, and page 16, line 17 to page 17, line 18; and T-162, page 18, line 7 to page 19, line 6, and page 50, line 14 to page 51, line 3. *See also* **P36**: T-214, page 49, line 18 to page 50, line 21.

[1174] **P36**: T-214, page 52, lines 11 to 17; and **P33**: T-159, page 9, lines 6 to 10. *See also* Section V(A)(3).

[1175] **P36**: T-214, page 50, lines 10 to 21; and **P33**: T-159-Conf, page 15, line 22 to page 16, line 16, and page 51, lines 15 to 25; and T-162, page 41, lines 7 to page 42, line 2.

[1176] **P36**: T-215, page 25, line 6 to page 27, line 3; **P213**: T-187, page 28, lines 6 to 9; **P173**: T-144, page 37, lines 21 to 23, and page 79, line 3 to page 80, line 5; T-145, page 35, lines 4 to 12; and T-146, page 40, lines 1 to 10; **P47**: T-176, page 55, lines 12 to 14, page 57, lines 2 to 11, page 64, lines 9 to 12, and page 65, lines 23 to 24; and T-180, page 6, lines 14 to 25; **P31**: T-183, page 33, line 21 to page 34, line 6; and **P69**: T-193, page 47, lines 18 to 21, and page 50, line 24 to page 52, line 4. *See also* **D19**: T-286, page 16, line 19 to page 17, line 13; and T-290, page 47, line 21 to page 48, line 1.

[1177] **P38**: T-36, page 17, lines 18 to 23; **P23**: T-52, page 15, lines 19 to 25; **P81**: T-55, page 25, line 23 to page 26, line 15; **P42**: T-65, page 11, lines 15 to 17; **P112**: T-130, page 5, lines 11 to 18; **P36**: T-215, page 19, lines 1 to 5; **D49**: T-274, page 41, lines 8 to 23; **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0049; **EVD-T-OTP-00575/CAR-OTP-0031-0093**, track 5, from 00:02:55 to 00:03:04; **EVD-T-CHM-00019/CAR-OTP-0056-0278**,

P213's testimony that, during such visits, Mr Bemba saw dead bodies next to the Presidential Palace, along the roads to PK12 and PK22, and in Bossembélé and Mongoumba.[1180] However, in light of the particular caution with which the Chamber must approach P213's testimony,[1181] and absent corroboration, the Chamber does not rely on this part of his testimony.

**c) Military operations and strategy**

427. While there was cooperation and coordination between the MLC commanders and the CAR authorities,[1182] CHM1, P15, FACA Colonel Thierry Lengbe (P31), P33, P36, P151, P169, P173, P178, and P213 all testified that command, throughout the 2002-2003 CAR Operation, remained with the MLC hierarchy.[1183] Mr Bemba had authority over military operations and strategy,

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at 0280; **EVD-T-OTP-00444/CAR-OTP-0013-0053**, at 0054; **EVD-T-OTP-00400/CAR-OTP-0004-0345**, at 0348; and **EVD-T-OTP-00448/CAR-OTP-0013-0161**, at 0163. *See also* Prosecution Closing Brief, para. 617(f); Defence Closing Brief, para. 841; and Sections V(D)(3) and V(D)(4).

[1178] **P36**: T-218-Conf, page 15, lines 13 to 25; **P31**: T-183, page 35, line 20; **P213**: T-186-Conf, page 58, lines 11 to 13; **D50**: T-254, page 39, lines 18 to 24; and **P173**: T-144, page 79, lines 22 to 23.

[1179] **P47**: T-176, page 55, lines 12 to 14, page 57, lines 2 to 11, page 64, lines 9 to 12, and page 65, lines 23 to 24; and T-180, page 6, lines 14 to 16; **D51**: T-261, page 55, lines 7 to 17; and T-262, page 16, lines 22 to 23, and page 48, lines 1 to 5; and **D66**: T-279, page 40, line 21 to page 41, line 1; and T-280, page 52, lines 4 to 14.

[1180] **P213**: T-187, page 20, lines 7 to 16, page 22, line 3 to page 23, line 14, page 25, lines 4 to 23, page 28, lines 10 to 25, and page 29, line 4 to page 30, line 8; T-190, page 55, line 25 to page 56, line 2, page 57, line 24 to page 58, line 4, and page 62, lines 4 to 7; and T-191, page 8, lines 3 to 4.

[1181] *See* Section IV(E)(7)(vi).

[1182] **P36**: T-214, page 24, line 19 to page 25, line 9; T-217-Conf, page 40, line 23 to page 41, line 3; and T-218, page 45, line 4 to page 46, line 21, and page 64, lines 2 to 4; **P15**: T-209, page 28, lines 4 to 14; and T-210, page 25, line 20 to page 26, line 7; and T-211, page 37, lines 23 to 25; **P169**: T-140, page 21, lines 1 to page 22, line 3, and page 43, lines 20 to 23; T-140-Conf, page 15, lines 6 to 16; and T-142, page 25, lines 12 to 14, and page 26, lines 6 to 11; **CHM1**: T-353, page 70, lines 10 to 18; and T-356-Conf, page 33, lines 19 to 21; **P151**: T-173, page 29, lines 21 to 24, and page 59, lines 6 to 14; and T-174, page 38, lines 8 to 11, and page 53, lines 8 to 14; **P173**: T-144, page 75, lines 8 to 15; T-145, page 33, lines 12 to 17, and page 66, line 23 to page 67, line 13; and T-146, page 25, line 6 to page 26, line 11; **P178**: T-151, page 57, lines 11 to 13, and page 68, lines 1 to 4; T-152, page 21, lines 14 to 19; and T-152, page 61, lines 6 to 7, and page 62, lines 2 to 11; **P9**: T-106 page 28, line 18 to page 29, line 3; and **P6**: T-98, page 52, lines 17 to 22, and page 64, line 25 to page 65, line 14. *See also* Section V(B)(2), para. 411.

[1183] **P36**: T-213, page 71, lines 6 to 18, noting that orders for the MLC to advance came from the Commander-in-Chief; and T-215, page 29, lines 7 to 14, page 47, lines 18 to 20, and page 48, lines 15 to 16, stating that neither President Patassé nor the FACA Chief of General Staff could take decisions as to the movement or deployment of MLC troops, but only give advice or make suggestions to Moustapha who would then pass them onto Mr Bemba; **P33**: T-159, page 51, lines 3 to 20; **P213**: T-188, page 5, lines 16 to 18; and T-191, page 57, lines 18 to 19, stating that Colonel Moustapha only received orders from Mr Bemba, not President Patassé or the FACA Chief of General Staff; **P31**: T-182, page 43, lines 17 to 18; and T-183, page 31, line 5 to page 32, line 3, testifying that the first joint operation to push back General Bozizé's rebels was ordered by the CAR authorities, but that this was the only such operation, and that Mr Bemba was Colonel Moustapha's superior; **P173**: T-144, page 75, lines 8 to 15, stressing that President Patassé had no power over the MLC troops; **P169**: T-137, page 21,

taking decisions on troop movements and military operations and sometimes issuing orders directly to the units in the field.[1184] P36, P169, P173, and P178 testified that such orders were then relayed and implemented by Colonel Moustapha.[1185] Recalling its concerns as to the general credibility of P36, P169, P173, P178, and P213,[1186] the Chamber notes, in particular, that their testimonies on this issue are (i) internally consistent and generally corroborate one another; (ii) corroborated, in various details, by contemporaneous documentary evidence and the testimonies of CHM1, P15, P31, P33, and P151; and (iii) consistent with the Chamber's findings concerning Mr Bemba's general authority within the MLC,[1187] and his regular communications with Colonel Moustapha over the course of the 2002-2003 CAR Operation.[1188] The Chamber is

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lines 17 to 18; and T-138, page 28, lines 1 to 6, and page 35, line 24 to page 36, line 1, stating that Colonel Moustapha received orders from Mr Bemba alone; **P151**: T-172, page 36, lines 9 to 15, page 45, lines 10 to 15; and T-173, page 15, lines 17 to 20, page 20, line 25, page 21, lines 5 to 12, page 28, line 24 to page 29, line 9, and page 32, lines 12 to 15, testifying that, other than meeting with General Bombayake, Colonel Moustapha had no leader in the CAR and the MLC troops operated independently; **P178**: T-151, page 68, lines 5 to 8; T-152, page 59, line 14 to page 60 line 22, testifying that Colonel Moustapha referred to General Mazi as a "woman" because he was referred to as the Chief of Operations, but commanded no troops and rarely came to the field; and T-154, page 33, line 14 to page 34, line 12; **CHM1**: T-353-Conf, page 17, lines 9 to 19, page 58, line 18 to page 59, line 2, and page 68, line 11 to page 69, line 1; T-354-Conf, page 41, lines 19 to 20, page 59, lines 13 to 19, and page 70, lines 6 to 7; T-355, page 17, lines 5 to 8; and T-355-Conf, page 19, lines 11 to 14, and page 65, line 24 to page 66, line 12, testifying that the Chief of General Staff never issued an order to Colonel Moustapha, but instead Colonel Moustapha would brief the Chief of General Staff; and **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1637.

[1184] **P36**: T-213, page 71, lines 15 to 24; T-214, page 41, line 24 to page 42, line 13; T-214-Conf, page 6, lines 20 to 22; T-215-Conf, page 25, line 21 to page 26, line 2, and page 38, line 14 to page 39, line 3; T-216, page 22, line 11 to page 23, line 16; T-217-Conf, page 40, lines 9 to 17; T-218, page 69, lines 6 to 25, and page 71, lines 7 to 9; and T-218-Conf, page 20, line 23 to page 21, line 14, page 52, lines 11 to 16; **P33**: T-158, page 45, lines 21 to 25; and T-159-Conf, page 49, line 17 to page 50, line 13; **P213**: T-187, page 4, lines 5 to 23; page 67, lines 14 to 20; T-188, page 6, lines 12 to 25, page 8, lines 5 to 12, page 11, lines 14 to 16, page 12, line 8 to page 13, line 3, page 14, line 13 to page 15, line 6, page 18, lines 21 to 22, and page 28, line 9 to page 29, line 25; and T-191, page 52, line 15 to page 53, line 9; and **P45**: T-201, page 34, line 24 to page 36, line 3. *See also* **P169**: T-140, page 21, lines 1 to 4, testifying that military decisions sometimes came from Mr Bemba, from Colonel Moustapha, or in collaboration with members of the CAR government; **P6**: T-97, page 20, lines 21 to 25, testifying that "everything happened between Patassé and his son, Jean-Pierre Bemba, and this was then passed on out in the field"; and **P15**: T-208, page 32, lines 17 to 22, and page 49, lines 5 to 19, testifying that Mr Bemba was Colonel Moustapha's hierarchical superior and that he received orders from Mr Bemba.

[1185] **P36**: T-215, page 28, line 19, to page 29, line 6, testifying that Colonel Moustapha was unable to make decisions on troop movements without Mr Bemba's permission; and T-216, page 22, lines 8 to 25, testifying that Mr Bemba's personal control was even more pronounced during the 2002-2003 CAR Operation due to its sensitive nature; **P169**: T-137, page 21, lines 17 to 18; and T-138, page 28, lines 3 to 6, and page 35, line 24 to page 36, line 1; **P178**: T-150, page 40, lines 22 to 23; T-151, page 68, lines 1 to 4; T-152, page 61, lines 9 to 10; and T-154, page 56, line 18 to page 57, line 5; and **P173**: T-145, page 4, line 23 to page 5, line 8; T-145-Conf, page 19, lines 8 to 22; and T-146, page 22, line 19 to page 23, line 24.

[1186] *See* Section IV(E)(7)(a).

[1187] *See* Section V(A).

[1188] *See* Section V(B)(2)(b).

also satisfied that the relevant witnesses were all in a position to know about this issue. In these circumstances, the Chamber finds that the corroborated evidence set out above is reliable.

428. To the contrary, D2, D3, D4, D6, D13, D15, D19, D21, D25, D39, D49, D54, D57, and D64 testified that (i) the MLC troops were under the command of and were deployed in the field by the CAR authorities; (ii) Colonel Moustapha reported to the CAR authorities, in particular General Mazi, General Bombayake, and President Patassé; and/or (iii) Colonel Moustapha received operational orders, initially from General Mazi and the CAR CO,[1189] and then, as of the end of November 2002, primarily from General Bombayake.[1190] According to D19,

[1189] *See* Section V(B)(1).

[1190] **D2**: T-321bis-Conf, page 4, line 24 to page 10, line 21; and T-322-Conf, page 23, line 5 to page 25, line 25, page 35, line 12 to page 36, line 12, and page 37, lines 5 to 19; **D3**: T-330, page 17, line 16 to page 18, line 10; **D4**: T-325bis, page 15, lines 12 to 17, page 20, line 25 to page 22, line 9, and page 26, lines 21 to 25; T-326, page 28, line 20 to page 29, line 3, and page 32, line 5 to page 34, line 8; T-326bis, page 21, line 15 to page 24, line 14; and T-327, page 3, line 10 to page 4, line 3, page 26, line 18 to page 27, line 25, page 33, line 24 to page 34, line 2, page 38, line 12 to page 39, line 23, and page 53, line 23 to page 54, line 24; **D6**: T-328-Conf, page 11, line 18 to page 12, line 10, page 23, lines 3 to 14, and page 24, line 2 to page 26, line 21; T-328bis, page 8, line 20 to page 10, line 7; T-328bis-Conf, page 22, line 19 to page 26, line 14; T-329, page 12, line 6 to page 13, line 8; and T-329-Conf, page 6, line 19 to page 7, line 16; **D13**: T-352, page 3, line 1 to page 4, line 18; **D15**: T-343, page 74, lines 12 to 21, page 81, line 16 to page 83, line 10, and page 92, lines 7 to 17; T-344, page 14, lines 1 to 12, and page 15, line 21 to page 18, line 19; T-345, page 20, lines 2 to 13, and page 62, line 15 to page 63, line 10; and T-345-Conf, page 67, line 16 to page 68, line 18, and page 87, line 15 to page 88, line 4; **D19**: T-284, page 30, lines 7 to 12, page 32, line 7 to page 33, line 25, and page 40, lines 13 to 18; T-285, page 16, line 23 to page 17, line 6, page 21, lines 1 to 11, and 17 to 22, page 29, lines 4 to 23, and page 30, line 24 to page 31, line 2; T-285-Conf, page 3, line 15 to page 5, line 1, page 11, line 23 to page 12, line 10, and page 28, lines 10 to 20; T-289, page 6, lines 23 to 25; T-289, page 6, lines 23 to 25; T-289-Conf, page 57, lines 18 to 21, and page 61, lines 5 to 9; T-292, page 23, lines 2 to 3; T-292-Conf, page 22, lines 17 to 25, page 24, line 8 to page 25, line 5, and page 58, line 14 to page 60, line 1; and T-293-Conf, page 6, line 24 to page 7, line 1; **D21**: T-302, page 8, lines 1 to 19, page 9, line 8 to page 10, line 3, and page 11, lines 4 to 13; and T-306, page 53, lines 1 to 16, page 54, line 19 to page 55, line 8, and page 71, line 20 to page 73, line 6; **D25**: T-337, page 50, line 13 to page 51, line 20; **D39**: T-308, page 37, lines 12 to 25, page 40, lines 19 to 22, page 41, lines 7 to page 42, line 6, and page 47, line 23 to page 48, line 11; and T-309, page 42, lines 5 to 15; **D49**: T-270, page 53, lines 16 to 20; T-270-Conf, page 56, line 25 to page 57, line 3; T-271, page 14, lines 5 to 18; T-272, page 24, line 9 to page 25, line 2; T-273, page 38, lines 6 to 18; and T-274, page 13, lines 2 to 10, page 41, lines 3 to 6, and page 42, line 7 to page 43, line 2; **D54**: T-347, page 41, line 8 to page 42, line 5, and page 50, line 13 to page 51, line 3; T-348, page 76, line 7 to page 77, line 2; and T-349, page 66, lines 16 to 23; **D57**: T-256, page 30, lines 11 to 14, and page 32, line 13 to page 33, line 14; T-257, page 43, lines 15 to 23, and page 62, lines 19 to 24; and T-258, page 16, lines 5 to 10, and page 40, line 20 to page 41, line 10; and **D64**: T-259-Conf, page 24, lines 1 to 21; and T-260-Conf, page 16, line 20 to page 18, line 15. D19, D21, D39, and D51 also testified that Mr Bemba and the MLC hierarchy did not have the authority or ability to issue operational orders to the MLC troops, because they were placed under the command of the CAR authorities as the MLC troops did not know the CAR and had not previously operated in the country. *See* **D19**: T-285-Conf, page 4, line 19 to page 5, line 1, and page 28, lines 18 to 20; T-289, page 68, lines 22 to 25; T-290, page 10, lines 1 to 9; T-291, page 19, line 21 to page 20, line 6, and page 21, line 4; T-292, page 39, line 13 to page 40, line 5; T-293, page 18, lines 12 to 20; and T-293-Conf, page 16, line 11 to page 17, line 21; **D39**: T-308, page 47, lines 1 to 6; and T-310, page 37, lines 6 to 24; **D21**: T-302, page 9, line 8 to page 10, line 3, and page 14, line 25 to page 15, line 11; **D49**: T-270, page 53, lines 16 to 20; T-70-Conf, page 56, line 25 to page 57, line 3; T-272, page 24, line 9 to page 25, line 2; T-273, page 38, lines 6 to

there were on-going meetings between the MLC commanders and the CAR authorities in the CAR CO throughout the operations to assess conduct, receive orders, and collect information.[1191]

429. However, significant factors weigh against the reliability of the evidence supporting the proposition that the MLC troops fell under the operational control of the CAR authorities. The Chamber first recalls its doubts as to the general credibility of D2, D3, D15, D19, D25, D49, D54, D57, and D64 and the reliability of their testimony.[1192] Further, in relation to this specific subject – namely, operational command in the CAR – the testimonies of D2, D3, D4, D6, D13, D15, D19, D21, D25, D39, D49, D51, D54, D57, and D64 are all marked by various issues giving rise to further, significant doubts.

430. D2's source of knowledge concerning command over the MLC contingent in the CAR and communications between General Bombayake, General Mazi, and Colonel Moustapha is unclear and questionable. In this regard, the Chamber notes, in particular, D2's testimony that he had no first-hand knowledge of such orders and was unable to provide other, related information that a person in his position would be expected to know.[1193] Likewise, the basis for D3's assertion that the FACA issued instructions to the MLC is not clear; he testified that "I have no idea and I have nothing to tell you about that".[1194] Moreover, D3, D4, and D6 all testified that they were not in a position to know about communications between Mr Bemba and Colonel Moustapha or the internal

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18; and T-274, page 13, lines 2 to 10, page 41, lines 3 to 6, and page 42, line 7 to page 43, line 2; and **D51**: T-261, page 42, lines 16 to 25. *See also* **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1665, 1654, 1700, 1679, and 1697.

[1191] **D19**: T-285, page 15, line 4 to page 16, line 4; and T-285-Conf, page 11, line 20 to page 12, line 24. *See also* **D19**: T-284, page 40, lines 13 to 18; T-285, page 16, line 23 to page 17, line 6, page 18, lines 11 to 23, page 21, lines 1 to 22, and page 25, line 25 to page 26, line 16; T-285-Conf, page 5, lines 14 to 19; T-289-Conf, page 57, lines 12 to 21; and T-292, page 24, line 8 to page 25, line 5; and T-292-Conf, page 59, line 22 to page 60, line 1; and Defence Closing Brief, paras 637 to 643.

[1192] *See* Section IV(E)(7)(c).

[1193] **D2**: T-321bis-Conf, page 4, line 24 to page 10, line 21; and T-322-Conf, page 23, line 5 to page 25, line 25, page 35, line 4 to page 36, line 12, and page 37, lines 5 to 19.

[1194] **D3**: T-330, page 18, lines 3 to 10.

organization of the MLC contingent in the CAR.[1195] Accordingly, the Chamber doubts the ability of these witnesses to conclude that the CAR authorities had operational command over the MLC contingent in the CAR.

431. The Chamber also doubts the relevant portion of D13's testimony because he (i) admitted that he had no knowledge about communications by Thuraya, which he claimed were used after the MLC passed PK12, i.e. for the majority of the 2002-2003 CAR Operation;[1196] and (ii) testified that "I don't know who was superior to the other, higher level than the other, but I know that there was communication".[1197]

432. D15's testimony concerning operational control is also qualified and inconsistent. For example, he testified that Mr Bemba and the MLC did not have authority over the MLC contingent in the CAR, but also explained that daily reports to the MLC hierarchy were necessary because the "[MLC] command doesn't lose or hasn't lost administrative control over the unit".[1198] Likewise, when asked whether Mr Bemba could "force" Colonel Moustapha to execute an operational order on CAR territory, D15 indicated, albeit in a confused manner, that it was possible if "imposed […] with a view to its execution".[1199] His conclusions on the issue are also doubtful insofar as they were based on, *inter alia*, his belief that, as a matter of principle, Mr Bemba could not have "extraterritorial authority" over MLC troops.[1200] In this regard, the Chamber notes D15's testimony that, if the CAR troops did not have

[1195] **D3**: T-330, page 18, lines 3 to 10; **D4**: T-325bis, page 21, line 1 to page 22, line 9; T-326, page 28, line 20 to page 29, line 3, and page 32, line 5 to page 34, line 8; T-326bis, page 21, line 15 to page 24, line 14; and T-327, page 3, line 10 to page 4, line 3, page 26, line 18 to page 27, line 25, page 33, line 24 to page 34, line 2, page 38, line 12 to page 39, line 23, and page 53, line 23 to page 54, line 24; and **D6**: T-328bis-Conf, page 25, line 16 to page 26, line 14, and page 29, line 25 to page 30, line 5.
[1196] **D13**: T-350-Conf, page 49, lines 11 to 20, page 51, line 4 to page 53, line 11, and page 56, lines 11 to 25.
[1197] **D13**: T-351-Conf, page 43, line 24 to page 45, line 7.
[1198] **D15**: T-343, page 65, line 9 to page 66, line 16. *See also* **D15**: T-345, page 62, line 15 to page 63, line 10.
[1199] **D15**: T-343, page 75, lines 1 to 7, testifying that "[y]ou can't force somebody not to execute an operational order […] or to implement it unless that is imposed on somebody with a view to its execution. But if it hasn't been conceived to impose it on somebody, to imply it, to implement it, then I don't see how one can force somebody not to execute an operational order".
[1200] **D15**: T-344, page 14, lines 5 to 12; and T-345, page 20, lines 2 to 13, and page 62, lines 15 to 19.

authority over the MLC troops, "then the option would have been for another type of subordination relation whereby it may have been possible for the MLC to have power to monitor logistics and operations".[1201]

433. Moreover, D19's testimony on this issue is (i) inconsistent as to the timing of alleged negotiations concerning cooperation between the FACA and MLC and any resulting decision;[1202] (ii) seemingly contradictory insofar as D19 fails to provide a logical explanation for his testimony both that the CAR authorities had operational control, and that, at least as of January 2003, there was no longer contact between the MLC contingent and President Patassé, the FACA and General Mazi were not cooperating with the CAR hierarchy, and General Bombayake did not have the necessary logistics;[1203] (iii) contradictory with MLC logbook messages, which attribute coordination roles in Bozoum operations to Colonel Moustapha and Major Dikunduakila;[1204] and (iv) evasive, particularly when the witness was confronted with his prior statements, in which he asserted that Colonel Moustapha received orders from and reported to the MLC Chief of General Staff and Mr Bemba.[1205]

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[1201] **D15**: T-345, page 80, line 22 to page 81, line 21.

[1202] *Compare* **D19**: T-284-Conf, page 28, lines 13 to 18, testifying that, before the MLC troops crossed to the CAR, Mr Bemba told Colonel Moustapha that he and his troops would be under the command of the CAR authorities; *with* T-284, page 30, lines 7 to 12, page 32, line 7 to page 33, line 25, page 35, lines 9 to 13; T-285-Conf, page 3, line 15 to page 4, line 2, page 4, line 3 to page 5, line 1, and page 11, line 23 to page 12, line 10; T-287, page 14, lines 20 to 25, page 18, line 18 to page 19, line 1; T-289-Conf, page 47, line 25 to page 48, line 4; and T-292-Conf, page 4, line 20 to page 5, line 4, testifying that co-operation and its modalities were worked out *after* Colonel Moustapha crossed to the CAR; *and* T-290-Conf, page 69, line 17 to page 70, line 16, testifying that, in a meeting with a number of senior CAR officials, President Patassé offered to make Colonel Moustapha commander of operations, but Colonel Moustapha rejected the offer.

[1203] **D19**: T-285, page 31, line 3 to page 32, line 24; T-288-Conf, page 33, line 5 to page 35, line 15; and T-292, page 13, lines 5 to 13.

[1204] *Compare* **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1654, depicting a log-book, dated 22 to 23 December 2002, from the co-ordinator of the Bangui operations to the ALC Chief of General Staff, copying Mr Bemba, stating that Colonel Moustapha and the coordinator of Bangui operations went together to Bossembélé with a view to coordinating future action on Bozoum; *with* **D19**: T-289-Conf, page 66, line 4 to page 67, line 12.

[1205] *Compare* **EVD-T-OTP-00759/CAR-OTP-0020-0263_R02**, at 0282, asserting that Colonel Moustapha received orders from the ALC Chief of General Staff and Mr Bemba, as well as General Mazi; *and* **EVD-T-OTP-00761/CAR-OTP-0020-0283_R02**, at 0292, stating that Colonel Moustapha "reported" to the Chief of General Staff and Mr Bemba; *with* **D19**: T-290-Conf, page 13, line 13 to page 15, line 12, testifying that, when speaking of "orders" from the ALC Chief of General Staff and Mr Bemba, D19 was actually referring to a "briefing" or "objectives" provided before Colonel Moustapha crossed to the CAR; *and* T-293-Conf, page 16, lines 2 to 22, testifying that this was only a matter of "informing" them, not requesting their approval or a decision.

434. Further, D19's testimony that the MLC reported to and received orders from the CO[1206] contradicts other corroborated and reliable evidence that (i) the CAR CO did not issue operational military orders to the MLC;[1207] and (ii) the MLC was generally unrepresented on the CO, at least after the initial few days of the 2002-2003 CAR Operation,[1208] although General Bombayake reported on their progress to the other CAR authorities.[1209]

435. D21's testimony – which was generally evasive, lacking spontaneity, and qualified[1210] – concerning the agreement reached between the CAR and MLC on operational command before the MLC arrived[1211] contradicts D19's testimony that such agreement was reached after the crossing.[1212]

436. The Chamber also has doubts about D25's testimony that the CAR authorities had operational authority over the MLC troops in the CAR: he did not explain

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[1206] **D19**: T-284, page 40, lines 13 to 18; T-285, page 16, line 23 to page 17, line 6, page 18, lines 11 to 23, and page 25, line 25 to page 26, line 16; T-285-Conf, page 5, lines 14 to 19, and page 21, lines 1 to 22; T-289-Conf, page 57, lines 12 to 21; T-292, page 24, line 24 to page 25, line 5; and T-292-Conf, page 59, line 22 to page 60, line 1. *See also* Defence Closing Brief, paras 637 to 643.

[1207] **CHM1**: T-353, page 30, lines 2 to 19; T-357, page 69, line 18 to page 71, line 1; T-357-Conf, page 29, line 21 to page 31, line 1, testifying that the CAR CO issued orders "in particular to logistical support", discussing exclusively the provision of food; and **P151**: T-172, page 46, line 21 to page 47, line 3, and page 48, lines 13 to 22; and T-173, page 6, lines 18 to 20, testifying that the CAR CO did not have any way to communicate with the MLC troops by radio, and that the MLC rarely contacted the CO. *See also* Defence Closing Brief, para. 645; **EVD-T-D04-00034/CAR-ICC-0001-0076**; **P31**: T-182, page 43, lines 2 to 13; T-183, page 7, line 24 to page 8, line 6, page 16, lines 11 to 14, page 62, line 4 to page 68, line 7, testifying that the MLC officers only contacted the CAR CO when they had difficulties, needed food or money, or when they arrived at certain locations, and that there was only one joint MLC-FACA operation; and **P151**: T-172, page 41, lines 8 to 17, and page 46, lines 4 to 10; T-173, page 16, lines 13 to 25; and T-174, page 3, lines 12 to 17, page 4, lines 11 to 12, page 5, lines 6 to 18, page 7, lines 5 to 25, page 8, lines 5 to 10, page 27, line 24 to page 28, line 20, page 29, lines 1 to 19, page 30, lines 4 to 6, and page 35, lines 1 to 10, testifying that Colonel Moustapha's deputy frequently came to an office in the same building as the CAR CO to collect information received from the field, but did not visit the CO.

[1208] **P31**: T-183, page 27, line 12 to page 28, line 16, testifying that the MLC had a representative to the CAR CO but that he stopped coming to the CAR CO after the troops passed PK13; **P9**: T-105, page 47, lines 6 to 15; **CHM1**: T-353, page 33, lines 3 to 6; and **P151**: T-172, page 38, lines 5 to 17, page 39, line 6, and page 41, lines 1 to 18.

[1209] **CHM1**: T-357-Conf, page 69, lines 2 to 17.

[1210] *See* Section V(B)(2)(d), para. 448.

[1211] **D21**: T-302, page 8, lines 1 to 19, and page 11, lines 4 to 24; and T-306, page 53, lines 1 to 16, page 54, line 19 to page 55, line 8, and page 71, line 20 to page 73, line 6. *See also* **D21**: T-302, page 9, line 8 to page 10, line 3, testifying that the coordination and planning of operations was placed in the hands of the CAR authorities, because there needed to be coordination between the FACA, the presidential guard, and the various militias, and the locals knew the terrain, whereas the MLC commander had never experienced operations in the CAR.

[1212] **D19**: T-284, page 30, lines 7 to 12, page 32, line 7 to page 33, line 25, page 35, lines 9 to 13; T-285-Conf, page 3, line 15 to page 4, line 2, page 4, line 3 to page 5, line 1, and page 11, line 23 to page 12, line 10; T-287, page 14, lines 20 to 25, page 18, line 18 to page 19, line 1; T-289-Conf, page 47, line 25 to page 48, line 4; and T-292, page 4, line 20 to page 5, line 4.

the basis for this knowledge and his testimony concerning Mr Bemba's interactions with the MLC contingent in the CAR is qualified and inconsistent.[1213] In particular, he acknowledged that he had no reason to know whether Mr Bemba issued orders to the MLC troops in the CAR[1214] and conceded that Mr Bemba could have also directed the operations through the General Staff.[1215]

437. D39's testimony that the CAR authorities had operational command over the MLC in the CAR was also inconsistent and qualified. For example, D39 testified that (i) the CAR authorities issued operational orders to the MLC contingent unless they were contradicted by the command in the field;[1216] (ii) the MLC contingent was to receive orders from the CAR authorities "at least with regard to major activities"; and (iii) the MLC also sent people to control the operations.[1217] D39's testimony also contradicts other credible and reliable evidence, for example, as to Colonel Moustapha's position as a commander,[1218] and, as noted elsewhere, was confusing and evasive.[1219]

438. Likewise, when shown evidence contradicting his testimony,[1220] D49 (i) repeatedly and without being questioned on the topic, offered explanations as to why certain messages did not mean that the MLC hierarchy was involved in commanding the operations in the CAR; and (ii) gave unclear and evasive responses directly contrary to the evidence presented to him, but without any satisfactory explanation for such discrepancy.[1221]

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[1213] *See* Section IV(E)(7)(c)(vii).
[1214] **D25**: T-336, page 18, line 20 to page 19, line 24, page 23, lines 2 to 6, and page 68, line 19 to page 71, line 8.
[1215] **D25**: T-336, page 68, line 19 to page 71, line 8.
[1216] **D39**: T-308, page 46, lines 17 to 22.
[1217] **D39**: T-308, page 37, line 25 to page 38, line 4.
[1218] *Compare* Section V(B)(2), para. 410; *with* **D39**: T-308, page 41, lines 13 to 16, page 42, lines 7 to 12, and page 43, lines 6 to 20.
[1219] *See* Section V(B)(2)(a), para. 417.
[1220] *See*, *for example*, **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1702, 1706, 1707, and 1712.
[1221] **D49**: T-273, page 64, line 18 to page 66, line 12; and T-274, page 9, line 2 to page 10, line 16, page 14, line 9 to page 15, line 1, page 61, line 6 to page 62, line 2, page 62, lines 18 to 24, and page 63, lines 5 to 13.

439. D51, when asked how he knew that General Bombayake issued orders to Colonel Moustapha, testified that he had once heard General Bombayake talk to Colonel Moustapha over the Thuraya regarding the provision of money to the MLC troops for buying food,[1222] but failed to further explain the basis for his knowledge or substantiate his assertion that General Bombayake issued orders to Colonel Moustapha. Further, while D51 testified that Colonel Moustapha and General Bombayake communicated in French,[1223] the Chamber notes that Colonel Moustapha spoke "weak" or no French.[1224]

440. D54's testimony is also questionable on the specific issue of operational command, insofar as he admitted that he was not in a position to (i) know whether Mr Bemba issued orders to Colonel Moustapha, or (ii) identify some of those among the CAR authorities he alleged to actually exercise authority over the MLC contingent in the CAR.[1225]

441. Further, D57 concluded that the CAR authorities had operational control over the MLC contingent in the CAR because (i) MLC troops were stationed at Camp Béal, (ii) CAR authorities provided logistics to the MLC troops, (iii) Mr Bemba instructed his soldiers to obey the CAR authorities during a speech at PK12, and (iv) Colonel Moustapha met with CAR authorities two or three times.[1226] However, D57 did not attend any of the meetings he testified about, was not aware of the topics of discussion, and had no first-hand knowledge of any of Colonel Moustapha's communications,[1227] in particular, whether Colonel Moustapha reported to Mr Bemba.[1228]

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[1222] **D51**: T-262, page 10, line 5 to page 12, line 8.
[1223] **D51**: T-261, page 44, lines 14 to 19.
[1224] **P151**: T-172, page 48, lines 2 to 4; **P31**: T-182, page 41, lines 16 to 22; **P169**: T-142, page 26, lines 15 to 18, and page 35, lines 15 to 19; and **P209**: T-117, page 23, lines 6 to 15; and T-118, page 16, line 2 to page 18, line 23. *See also* **D19**: T-284-Conf, page 23, lines 8 to 17; T-287, page 34, lines 1 to 6; and T-292-Conf, page 22, lines 17 to 25.
[1225] **D54**: T-348-Conf, page 77, line 3 to page 80, line 4. *See also* Section IV(E)(7)(c)(xi).
[1226] **D57**: T-256, page 33, lines 9 to 16, and page 45, lines 2 to 21; T-257, page 61, line 6 to page 63, line 3; and T-258, page 40, line 20 to page 41, line 10 and page 54, line 21 to page 57, line 2.
[1227] **D57**: T-257, page 61, line 16 to page 63, line 3; and T-258, page 54, line 21 to page 57, line 2.
[1228] **D57**: T-258, page 16, line 11 to page 18, line 5.

442. The Chamber has similar doubts in relation to the evidence provided by D64. He drew conclusions that General Bombayake issued orders because he never heard anyone else giving Colonel Moustapha orders,[1229] and D64 "know[s] how it works", and "[w]hen there's important communication to be made […] that is how it occurs because it was [*sic*] simple orders".[1230] However, D64 testified that he could not hear or understand the content of communications between Colonel Moustapha and General Bombayake.[1231]

443. In addition to the above, D19 and D51 also testified that the CAR command chain was "hazy", with sometimes differing and conflicting orders coming from General Bombayake in the USP, on the one hand, and from the FACA and the CO, on the other.[1232] Noting the testimony of Lt. General (rtd) Daniel Ishmael Opande (P219), a military expert witness, that "[i]t is absolutely unusual [for] one individual to receive two orders on the same operation",[1233] the Chamber considers that the CAR authorities' "hazy" command structure, issuance of conflicting orders, and general disorganization and demoralisation[1234] weighs against the proposition that the MLC agreed to, or did, transfer operational command over any MLC troops to the CAR authorities.

444. Finally, the Chamber notes corroborated and reliable evidence that the relationship between the CAR and MLC troops was often tense, as the MLC

[1229] **D64**: T-260-Conf, page 18, line 21 to page 20, line 7.
[1230] **D64**: T-260-Conf, page 21, lines 9 to 23.
[1231] **D64**: T-259-Conf, page 24, lines 1 to 21; and T-260-Conf, page 16, line 20 to page 18, line 15. He was also not present at related meetings. *See* **D64** T-260-Conf, page 20, line 14 to page 21, line 23.
[1232] **D19**: T-284, page 40, lines 13 to 18; T-285, page 5, lines 5 to 13, and page 16, line 23 to page 17, line 6; T-284-Conf, page 21, lines 1 to 22, and page 28, lines 15 to 20; and T-292-Conf, page 24, line 8 to page 25, line 5; and **D51**: T-261, page 44, lines 8 to 14, page 51, lines 2 to 13, page 53, lines 23 to 25, and page 69, line 11 to page 70, line 21; T-261-Conf, page 56, lines 11 to 21; T-262, page 9, line 12 to page 10, line 3, and page 20, lines 9 to 18; and T-263, page 43, lines 6 to 10, and page 47, lines 12 to 20. *See also* **P9**: T-106, page 27, line 23 to page 28, line 14; and **P6**: T-98, page 46, line 11 to page 47, line 4, and page 64, lines 18 to 22: P9 and P6 each confirming that General Mazi told them that while President Patassé initially placed an operation cell and the MLC troops under his orders, General Bombayake took command of the operations following a loss of trust in General Mazi and the FACA.
[1233] **P219**: T-200, page 2, lines 12 to 15. *See contra* **D19**: T-285, page 5, lines 5 to 13, and page 16, line 23 to page 17, line 6; and T-285-Conf, page 28, lines 15 to 22.
[1234] *See* Section V(B)(1).

soldiers intimidated their CAR counterparts.[1235] Their poor relationship is evidenced by various incidents. For example, MLC troops threatened and used force against CAR soldiers in order to obtain supplies;[1236] disarmed and humiliated FACA soldiers, including senior officers, in Bangui and PK12;[1237] and looted offices of CAR authorities,[1238] including at Camp Béal.[1239] Further, FACA forces in Mongoumba seized goods being taken by MLC troops to Dongo, detaining the MLC soldiers.[1240] The Chamber considers that, like the lack of organization in the CAR military, the poor relationship between the MLC and CAR forces weighs against the proposition that the MLC agreed to, or did, transfer operational command over MLC troops to the CAR authorities.

445. Accordingly – considering (i) the Chamber's general concerns as to the credibility of D2, D3, D15, D19, D25, D49, D54, D57, and D64 and the reliability

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[1235] **P63**: T-110, page 30, lines 2 to 6; T-111, page 33, lines 13 to 14; and T-113, page 4, lines 19 to 24, page 10, lines 13 to 17, page 57, lines 12 to 20, and page 58, lines 11 to 17, testifying that MLC soldiers would frequently strip the CAR soldiers of everything they were wearing and take their uniforms and berets; **EVD-T-OTP-00635/CAR-OTP-0035-0242**; **EVD-T-OTP-00653/CAR-OTP-0035-0321**; **P178**: T-154, page 39, line 3 to page 40, line 5; **EVD-T-OTP-00806/CAR-OTP-0042-0255**, describing that, on 3 March 2003, approximately 40 to 50 Congolese men on board a vehicle coming from Bangui towards Bossangoa or Bozoum opened fire on USP troops based at Boali check-point and taking one USP soldier's clothes, ranger boots, and a rocket; and **P151**: T-172, page 25, lines 4 to page 26, line 7, page 28, line 23 to page 29, line 7, page 30, lines 5 to 10, and page 47, lines 8 to 25; and T-173, page 4, lines 3 to 12, page 17, line 23 to page 18, line 14, and page 31, line 1 to page 32, line 1, testifying that CAR army officers were distrustful of the MLC due to the MLC's behaviour, specifically the disarmament of loyalist troops. *See also* **P151**: T-172, page 26, lines 2 to 22, page 27, lines 1 to 24, and page 29, lines 23 to 25; and T-173, page 32, lines 17 to 22, stating that he regularly received orders to go to PK12 on behalf of the USP to discuss complaints from FACA soldiers with the MLC leaders because the USP was assumed to have good relations with the MLC troops, and the discussions were conducted in a good atmosphere.

[1236] **EVD-T-OTP-00800/CAR-OTP-0042-0235**, reporting hunger among MLC troops at PK12 who were warning that they would use force to obtain subsistence; **EVD-T-OTP-00805/CAR-OTP-0042-0253**, stating that Mr Bemba's soldiers were calling for 500,000 CFA francs each, otherwise they would cause disorder before leaving the CAR then return back to the DRC, return their weapons to Mr Bemba, and follow DRC President Kabila; and **EVD-T-OTP-00806/CAR-OTP-0042-0255**, reporting that 40 to 50 Congolese men stripped two USP rangers, stole a rocket, and attacked a USP checkpoint. *See contra* **D19**: T-289, page 6, lines 4 to 15, and page 12, line 19 to page 14, line 4, denying that the MLC troops ever demanded anything.

[1237] **P31**: T-182, page 16, line 25 to page 17, line 8, page 35, line 11 to page 41, line 25; and T-183, page 6, line 19 to page 7, line 1; **P42**: T-64, page 52, line 23 to page 53, line 7; and T-66, page 9, lines 6 to 17; **P6**: T-95, page 14, lines 6 to 21; **D51**: T-263, page 28, lines 11 to 23; and **P151**: T-172, page 25, lines 15 to 25, and page 28, line 23 to page 29, line 7; and T-173, page 18, lines 2 to 10.

[1238] **EVD-T-OTP-00802/CAR-OTP-0042-0242**, reporting that Mr Bemba's troops broke into the office of the technical advisers of the fire brigade, taking the printer, photocopier, emergency medication, and cooperation documents.

[1239] **P31**: T-182, page 37, line 24 to page 38, line 10; **P151**: T-173, page 9, lines 11 to 24, page 51, lines 5 to 8, page 52, lines 10 to 16, page 53, lines 7 to 25, and page 54, line 3 to page 55, line 1; and **D51**: T-261, page 34, lines 15 to 19; and T-263, page 46, lines 6 to 20.

[1240] *See* Section V(C)(11).

of their testimonies; (ii) the inconsistent, confused, evasive, unsubstantiated, and/or non-spontaneous nature of the evidence supporting the proposition that the CAR authorities had operational command over MLC troops in the CAR; (iii) the witnesses' demeanour; (iv) the fact that their evidence is not corroborated by any other credible or reliable evidence, but instead contradicts other corroborated and reliable evidence; (v) the overall disorganization of the CAR military; and (vi) the poor relationship between the CAR and MLC troops – the Chamber is unable to rely on these testimonies, even though they corroborate each other, that the MLC troops in the CAR fell under the operational control of the CAR authorities.

446. Accordingly, on the basis of the corroborated and reliable evidence set out above, the Chamber finds that Mr Bemba had operational control over the MLC contingent in the CAR throughout the 2002-2003 CAR Operation.[1241] The MLC General Staff, although not significantly involved in planning operations, issuing orders, or intelligence, also had a role in coordinating operations, monitoring the situation in the CAR, and reporting to Mr Bemba, and had the ability to discuss with Mr Bemba or make comments or observations.[1242]

**d) Discipline**

447. P36, P45, P173, and CHM1 testified that Mr Bemba, not the CAR authorities, had primary authority to decide whether to sanction MLC troops or launch an investigation related to their activities in the CAR.[1243] Recalling its concerns

[1241] *See* para. 427.
[1242] **P36**: T-218-Conf, page 21, line 15 to page 22, line 13, and page 77, lines 14 to 16. This testimony is corroborated by the evidence concerning the general role of the General Staff in the MLC structure. *See* Section V(A).
[1243] **P45**: T-202, page 21, line 16 to page 22, line 5; **P173**: T-144, page 75, lines 8 to 15; **CHM1**: T-353, page 56, lines 21 to 25; T-354-Conf, page 41, lines 19 to 20, and page 70, lines 6 and 7; T-355, page 17, lines 5 to 8, page 20, lines 13 to 18, and page 65, line 24 to page 66, line 12; and T-356-Conf, page 74, line 5 to page 75, line 5; and **P36**: T-216, page 8, line 5 to page 9, line 23. *See also* **P36**: T-215, page 18, lines 2 to 15; and Defence Closing Brief, para. 696. This evidence is further corroborated by the disciplinary and investigative measures Mr Bemba did in fact take, as well as the Chamber's findings concerning authority over operations and strategy within the MLC generally and over the MLC contingent in the CAR. *See* Sections V(A), V(B)(2)(c), and V(D).

about the general credibility of P36, P45, and P173 and the reliability of their evidence,[1244] the Chamber notes that their testimonies on this issue are (i) internally consistent and generally corroborate each other; (ii) further corroborated by the testimony of CHM1, and by the disciplinary and investigative measures Mr Bemba and the MLC hierarchy did in fact take over the course of the 2002-2003 CAR operation;[1245] and (iii) consistent with the Chamber's findings concerning Mr Bemba's authority over discipline within the MLC generally.[1246] In these circumstances, the Chamber is satisfied that the corroborated evidence that Mr Bemba held primary disciplinary authority over the MLC contingent in the CAR is reliable.

448. D19, D21, D39, D48, D49, and D54 all testified that the CAR authorities had disciplinary authority over the MLC troops.[1247] However, certain issues cast substantial doubt upon the reliability of this evidence, including (i) the demeanour of D21[1248] and D39[1249] and their unclear, vague, and evasive

[1244] *See* Section IV(E)(7)(a).
[1245] *See* Section V(D).
[1246] *See* Sections V(A)(5).
[1247] **D54**: T-347-Conf, page 21, line 14 to page 22, line 10, page 23, line 5 to page 24, line 7, page 77, line 23 to page 79, line 11, and page 81, line 24 to page 82, line 5; and T-349-Conf, page 6, line 3 to page 10, line 4 and page 69, lines 3 to 6; **D49**: T-274, page 43, lines 3 to 22, stating that the MLC soldiers were still Congolese and subject to ALC military rules of conduct, but as they were under the command of the CAR authorities, soldiers accused of grave misconduct were arrested by CAR authorities and then turned over to the MLC; **D21**: T-302, page 8, lines 1 to 19 and page 10, line 10 to page 11, line 3; and T-306, page 34, line 24 to page 36, line 10, page 53, lines 1 to 16, page 54, line 19 to page 55, line 8, and page 71, line 20 to page 73, line 6, testifying that the CAR authorities had responsibility for the management of discipline of the troops, because of the agreement between the MLC and the CAR authorities committing MLC troops to the CAR; **D39**: T-310, page 6, line 3 to page 7, line 5, stating that the CAR authorities, not Mr Bemba, had the authority to arrest persons, identifying General Mazi as the commander of operations; **D48**: T-267, page 47, line 7 to page 48, line 20, testifying that the Zongo Commission could not investigate rape and murder since the MLC had no jurisdiction to investigate in the CAR; T-268, page 15, line 14 to page 16, line 5, and page 18, line 6 to page 19, line 13, explaining that conducting an investigation in the CAR, which had its own system of justice, is only available to the CAR authorities and the MLC could be asked to assist; and T-269, page 10, lines 7 to 14, testifying that the Zongo inquiry focussed only on pillaging because looted items could be seen and the veracity of the claims could be investigated within the DRC; and **D19**: T-285, page 40, lines 3 to 18.
[1248] *See, inter alia*, **D21**: T-301, page 31, line 16 to page 33, line 18; T-302, page 9, line 8 to page 10, line 3, page 11, line 25 to page 12, line 25, and page 14, line 25 to page 15, line 11; T-304, page 5, lines 3 to 16, and page 5, lines 21 to 25, and page 6, lines 4 to 8; and T-306, page 84, line 16 to page 85, line 11, giving vague, confusing, and inconsistent testimony concerning the decision to withdraw and Mr Bemba's official titles and powers, directly contradicting the wording of the MLC Statute, as well as repeatedly and consistently using phrases such as "I believe", "to my mind", "as far as I could understand", and "based on the information I had at the time" when answering questions. *See also* **EVD-T-OTP-00808/CAR-OTP-0069-0363**, at 0364 to 0365.
[1249] *See*, *inter alia*, **D39**: T-308, page 15, line 11 to page 18, line 2, page 19, line 21 to page 21, line 5, page 25, lines 14 to 23, page 26, line 9 to page 28, line 5, page 35, line 18 to page 36, lines 23, page 37, line 12 to page

testimony, in particular, in relation to the 2002-2003 CAR Operation and Mr Bemba's position and role in the MLC; (ii) the inconsistencies in D48's testimony, as well as his apparent lack of knowledge of matters relating to the 2002-2003 CAR Operation and functioning of the MLC, which a person in his position could be expected to know;[1250] and (iv) the Chamber's overarching concerns as to the credibility of D19, D49, and D54 and the reliability of their evidence.[1251] In such circumstances, absent corroboration by other credible and reliable evidence, the Chamber is unable to rely on these testimonies, even though they appear to corroborate each other, insofar as they suggest that Mr Bemba and the MLC did not have primary disciplinary authority over the MLC contingent in the CAR. However, the Chamber accepts that, insofar as this evidence supports the proposition that the CAR authorities had some, but not primary or exclusive, ability to take disciplinary or investigative measures relating to the MLC troops in the CAR, it is not inconsistent with the corroborated and reliable evidence that Mr Bemba and the MLC had ultimate disciplinary authority.

449. In light of the above, on the basis of corroborated, credible, and reliable evidence, the Chamber finds that Mr Bemba held primary disciplinary authority over the MLC contingent in the CAR.[1252] Colonel Moustapha and the other MLC commanders also had some disciplinary authority in the field.[1253]

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42, line 4, and page 54, lines 3 to 13; T-309, page 34, lines 6 to 9; and T-310, page 16, lines 3 to 13, being generally non-responsive to questions, evasive, and spontaneously volunteering to discuss issues without having been questioned on them. *See* **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1572, 1574, and 1580.

[1250] **D48**: T-268, page 19, lines 14 to 20, page 24, lines 21 to page 25, line 25, page 26, lines 18 to 25, page 34, lines 1 to 18, page 83, lines 10 to 13, and page 88, lines 18 to 23; T-268-Conf, page 20, lines 18 to 24, page 21, lines 3 to 21, and page 84, lines 9 to 11; and T-269, page 40, line 25 to page 41, line 3, page 46, line 24 to page 48, line 18, and page 53, lines 15 to 16; and **EVD-T-OTP-00392/CAR-DEF-0001-0155**, at 0155.

[1251] *See* Section IV(E)(7)(c).

[1252] *See* para. 447.

[1253] **P31**: T-183, page 18, lines 1 to 23, and page 19, lines 9 to 19; **D19**: T-285-Conf, page 38, line 4 to page 39, line 12; and T-292, page 5, lines 14 to 23; **P209**: T-118, page 8, line 6 to page 12, line 8; T-119, page 4, lines 18 to 20, page 9, lines 14 to 21, page 13, lines 15 to 17, and page 37, lines 19 to 24; and T-120, page 26, line 18 to page 28, line 4, and page 39, lines 3 to 10; **P169**: T-137, page 28, line 24 to page 29, line 17; T-138, page 5, line 22 to page 6, line 14, page 6, line 25 to page 7, line 5, and page 39, lines 17 to 25; T-141, page 37, lines 9 to 19, and page 39, lines 8 to 9; and T-142, page 7, lines 9 to 10; **P38**: T-33-Conf, page 59, line 19 to page 60, line 4;

### 3. General Bozizé's rebels

450. General Bozizé's rebels consisted of approximately 500 to 600 troops,[1254] including former FACA soldiers, as well as Chadian fighters and recruits.[1255] They were divided into command units and each had a commanding officer.[1256] General Bozizé's son, Mr Francis Bozizé, handled logistics and Mr Parfait Mbay acted as the group's spokesperson.[1257] General Bozizé's rebels possessed military equipment, such as communications devices and weapons – some of which were taken from the FACA – and vehicles.[1258] Although some had military uniforms, many dressed in civilian clothing.[1259] General Bozizé's rebels were not paid, were undisciplined, and received minimal, if any, training.[1260]

451. According to contemporaneous media and NGO reports, President Patassé and others accused the Chadian government of territorial aggression and of assisting General Bozizé's rebels.[1261] P173 and D56 testified that Chadian

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T-34, page 21, line 5 to page 22, line 7; and T-34-Conf, page 17, line 25 to page 19, line 24; and **P75**: T-92, page 11, lines 9 to 13, and page 22, lines 12 to 20.

[1254] **D56**: T-313, page 19, lines 10 to 11; **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0041; and **EVD-T-OTP-00401/CAR-OTP-0004-0409**, at 0419. *See also* Defence Closing Brief, paras 258 to 259, and 262; and Prosecution Closing Brief, paras 122 and 166.

[1255] **P38**: T-35, page 22, lines 13 to 21; **P68**: T-49, page 10, line 18 to page 11, line 4; **P173**: T-145, page 12, lines 1 to 7, and page 41, lines 1 to 9; **P151**: T-175, page 27, lines 16 to 25; **P178**: T-156, page 9, lines 16 to 19; **D56**: T-313, page 20, lines 1 to 13 and page 27, line 25 to page 28, line 2; **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0043; **EVD-T-OTP-00446/CAR-OTP-0013-0082**, at 0084; and **EVD-T-OTP-00443/CAR-OTP-0013-0005**, at 0007. *See also* Prosecution Closing Brief, para. 122; and Defence Closing Brief, paras 258, 261, and 263.

[1256] **D56**: T-313, page 19, lines 21 to 25, page 22, lines 20 to 22, and page 23, lines 14 to 15; T-314, page 45, lines 4 to 24; and T-315, page 17, line 18 to page 18, line 3, testifying that, under General Bozizé, the Chief of General Staff was Mr Sabate, Mr Francis Bozizé (General Bozizé's son) was in charge of logistics, and Mr Otenge was in charge of operations; **D65**: T-245, page 38, lines 17 to 19; and T-246, page 16, lines 23 to 24; and **EVD-T-OTP-00827/CAR-DEF-0002-0108**, at 0223.

[1257] **D56**: T-313, page 19 line 23 to 24; and T-315, page 18, lines 24 to 25; **P23**: T-51, page 7, lines 7 to 10; **EVD-T-OTP-00583/CAR-OTP-0031-0136**; and **EVD-T-OTP-00734/CAR-OTP-0056-0300**, at 0308.

[1258] **CHM1**: T-354, page 58, lines 10 to 19; T-355, page 9, lines 15 to 21; and T-356, page 29, lines 12 to 18; **P38**: T-35, page 23, line 21 to page 24, line 4; **V2**: T-224, page 10, lines 9 to 10, and page 50, line 23 to page 51, line 24; **D56**: T-313, page 23, line 21 to page 24, line 6, and page 28, lines 6 to 7; and T-315, page 20, lines 7 to 13; and **D65**: T-245, page 34, lines 15 to 16.

[1259] **D56**: T-313, page 20, lines 7 to 13, page 21, lines 9 to 14, and page 27, line 20 to page 28, line 2; **P209**: T-121, page 23, lines 7 to 16; **P87**: T-46, page 46, lines 4 to 6; **V2**: T-223, page 31, line 25 to page 32, line 1; and T-224, page 10, lines 9 to 10; and **P178**: T-151, page 22, line 16.

[1260] **D56**: T-313, page 21, lines 15 to 16, and page 22, lines 22 to 23; T-314, page 10, lines 10 to 11, and page 12, lines 18 to 22; and T-315, page 39, lines 14 to 18, and page 58, lines 7 to 11; **D65**: T-245, page 38, lines 16 to 17; and **P73**: T-73, page 50, lines 22 to 23, and page 55, lines 1 to 15.

[1261] **EVD-T-OTP-00398/CAR-OTP-0004-0336**; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0670, 0673, and 0678; **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0042 to 0044 and 0081; **EVD-T-OTP-00401/CAR-**

government troops acted with General Bozizé's rebels, in particular, during the operation that resulted in the withdrawal of the MLC from the CAR by 15 March 2003.[1262] D56 testified that the Chadian government troops comprised one company, totalling up to 30 soldiers.[1263] P173 and D56 emphasised that these Chadian troops were assisting and reinforced General Bozizé's rebels.[1264] Likewise, although D19 did not expressly identify the Chadians with General Bozizé's rebels as Chadian government soldiers, he did clarify that the Chadians were allies, which "had not infiltrated General Bozizé's army".[1265] The Chadian government also provided some logistical support, including uniforms, arms, ammunition, and vehicles.[1266]

## C. THE 2002-2003 CAR OPERATION

452. In this section, the Chamber addresses the MLC's decision to intervene in the CAR; the arrival of the MLC contingent; the conduct of, and the crimes allegedly committed by the MLC during, the 2002-2003 CAR Operation; the MLC's decision to withdraw from the CAR; the resulting withdrawal; and general evidence of a MLC *modus operandi* and motivations behind the conduct of the MLC soldiers over the course of the 2002-2003 CAR Operation.

### 1. Decision to intervene

453. On 25 October 2002, the same day General Bozizé's rebels arrived in Bangui, President Patassé's requested Mr Bemba's assistance.[1267] In response, Mr Bemba

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**OTP-0004-0409**, at 0417, 0443, and 0434; **EVD-T-OTP-00411/CAR-OTP-0004-1096**, at 1117; and **EVD-T-OTP-00442/CAR-OTP-0011-0503**, at 0509.

[1262] **P173**: T-144, page 18, lines 4 to 6; and T-145, page 12, lines 6 to 7, and page 41, lines 3 to 7; and **D56**: T-313, page 23, lines 10 to 15.

[1263] **D56**: T-313, page 23, lines 10 to 15.

[1264] **P173**: T-144, page 18, lines 4 to 6; and T-145, page 41, line 7; and **D56**: T-313, page 23, lines 5 to 7. *See also* **P36**: T-214, page 29, lines 2 to 3; and **P178**: T-152, page 47, lines 16 to 25.

[1265] **D19**: T-290, page 5, line 21 to page 6, line 2.

[1266] **D56**: T-313, page 21, lines 13 to 22, and page 28, lines 1 to 2; T-314, page 47, lines 22 to 25; and T-315, page 21, lines 2 to 4; and **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1637.

[1267] *See*, *inter alia*, **P44**: T-205, page 32, lines 3 to 4; **P45**: T-201, page 54, lines 13 to 16; **P15**: T-208, page 47, lines 5 to 17; **P38**: T-33, page 15, lines 20 to 25, and page 18, lines 1 to 9; **P33**: T-159, page 22, lines 20 to 23;

took the decision to intervene in the CAR.[1268] Mr Bemba had a number of reasons for intervening in the CAR,[1269] including (i) strategic military and logistical reasons related to having a "rear base";[1270] and (ii) his relationship with President Patassé.[1271]

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**P6**: T-94, page 27, line 24 to page 28, line 2; **P36**: T-215, page 45, lines 8 to 12; T-215-Conf, page 64, lines 10 to 15; and T-218-Conf, page 2, line 24 to page 3, line 1; **P151**: T-172, page 32, line 19 to page 35, line 25; **P213**: T-186, page 52, lines 13 to 15; **P169**: T-141, page 3, lines 15 to 16, page 15, lines 21 to 24, and page 16, lines 9 to 21; **D39**: T-310, page 33, lines 21 to 22, and page 38, lines 6 to 11; **D65**: T-247, page 17, lines 2 to 8; **D51**: T-262, page 48, lines 15 to 22; and T-263, page 25, lines 16 to 17, and page 26, lines 1 to 8; and **D48**: T-267, page 23, lines 11 to 20. *See also* **P44**: T-205, page 44, lines 15 to 25, and page 45, line 24 to page 46, line 2; and T-206, page 10, line 18 to page 11, line 1, testifying that Mr Bemba's ego was flattered by President Patassé's request and he was proud that a Head of State was appealing to him.

[1268] *See, inter alia*, **P36**: T-213, page 61, lines 1 to 4, and page 62, lines 3 to 6; T-213-Conf, page 62, lines 3 and 7 to 12; T-215, page 27, lines 13 to 14; T-215-Conf, page 45, lines 3 to 12, and page 64, lines 10 to 15, testifying that the decision was not discussed with other members of the MLC, page 65, lines 16 to 23, testifying that only Mr Bemba could take such a decision; T-217-Conf, page 60, lines 14 to 18, and page 62, line 11 to page 63, line 10; and T-218-Conf, page 2, line 18 to page 3, line 1, page 6, lines 1 to 6, and page 78, lines 3 to 5, testifying that Mr Bemba did not need the help or advice of the Chief of General Staff before giving the order to engage in hostilities in the CAR; **P33**: T-158, page 32, lines 1 to 25, page 33, lines 1 to 9 and page 33, line 21 to page 34, line 2; **P213**: T-186, page 50, lines 7 to 9; **P44**: T-205, page 31, line 20 to page 32, line 2, and page 58, lines 19 to 22, testifying that only Mr Bemba could take such a decision; **P45**: T-201, page 53, lines 1 to 3, page 56, lines 3 to 15, and page 56, line 19 to page 57, line 6; T-202, page 25, line 17 to page 26, line 1; T-203, page 60, lines 5 to 12, testifying that the Chief of General Staff complained about the decision to intervene in the CAR; and T-204, page 68, line 14 to page 70, line 2, testifying that the decision was not discussed with other members of the MLC; **P32**: T-165, page 57, lines 1 to 16; and **P15**: T-208-Conf, page 29, lines 1 to 4, and page 47, line 25 to page 48, line 3, testifying that the senior political members of the MLC heard of the decision and understood that they were not to challenge it, as the decision was left to Mr Bemba. *See also* **D39**: T-308-Conf, page 33, lines 14 to 21, testifying that he learnt from members of the General Staff that "senior leaders within the movement had decided to provide assistance to CAR authorities".

[1269] **EVD-T-D04-00049/CAR-DEF-0001-0102**; **EVD-T-D04-00050/CAR-DEF-0001-0096**; **EVD-T-OTP-00807/CAR-OTP-0064-0265**, at 0266; and **D19**: T-286, page 8, lines 13 to 18; and T-290, page 3, lines 10 to 12. *See also* **D19**: T-290-Conf, page 4, line 22 to page 5, line 18; T-292, page 41, line 21 to page 42, line 6; and T-292-Conf, page 42, lines 9 to 24, testifying that the objective of the 2002-2003 CAR Operation was to assist President Patassé and liberate and protect the CAR population; **EVD-T-OTP-00755/CAR-OTP-0020-0215_R02**, at 0219; and Defence Closing Brief, para. 722, *citing* **EVD-T-D04-00048/CAR-D04-0003-0527**, at 0532, the Lusaka Agreement, signed in 1999 by government officials and representatives of two armed groups, one of them the MLC, was a cease-fire agreement, among the provisions of which a 180-day period for the disarmament of the armed groups, including the MLC, was provided for. However, the MLC still possessed an army and weapons in October 2002, demonstrating that the Lusaka Agreement was never implemented or *de facto* entered into force. *See also* Defence Closing Brief, paras 273 to 276.

[1270] *See, inter alia*, **P36**: T-213, page 59, line 1 to page 60, line 17, and page 61, lines 21 to 25; T-217-Conf, page 63, lines 11 to 16; T-218, page 7, lines 15 to 19; and T-218-Conf, page 3, lines 4 to 14; **P213**: T-186, page 22, lines 21 to 22, and page 23, lines 10 to 11; and T-190-Conf, page 14, line 25 to page 15, line 1; **P32**: T-165, page 30, lines 4 to 15; **P45**: T-201, page 54, lines 5 to 12, and page 54, line 22 to page 55, line 2; **P33**: T-159, page 22, lines 15 to 21, page 27, lines 13 to 15, and page 28, line 10 to page 29, line 6; **P44**: T-205, page 45, lines 17 to 23; and **P173**: T-144, page 14, lines 3 to 10, page 44, line 22 to page 45, line 6, and page 70, lines 15 to 20; and T-145, page 30, line 25 to page 31, line 3. *See also* **P169**: T-141-Conf, page 15, lines 6 to 10, page 15, lines 21 to 24, and page 16, lines 9 to 21; and **P213**: T-186, page 22, line 25 to page 23, line 4, page 26, lines 4 to 14, and lines 24 to 25; and page 53, lines 16 to 20; T-186-Conf, page 27, lines 12 to 23; and T-190-Conf, page 12, lines 9 to 24, page 13, lines 2 to 4, and page 14, line 7 to page 16, line 16.

[1271] **P45**: T-201, page 53, line 8 to page 54, line 18; **P36**: T-213, page 59, line 25 to page 60, line 7; **P44**: T-205, page 42, lines 20 to 25; **P38**: T-33, page 16, lines 11 to 18, and page 17, lines 1 to 18; **P23**: T-51, page 5, lines 3 to 16; and T-53, page 8, lines 5 to 6; **P6**: T-94, page 27, line 24 to page 28, line 2; **P209**: T-122, page 37, lines 18 to 25; and T-122-Conf, page 60, lines 16 to 24; **P178**: T-150, page 22, lines 11 to 17; and **P169**: T-139, page 41,

454. D49 testified that it was the G3 and the Chief of General Staff, not Mr Bemba, who decided, in a meeting on 26 October 2002, to send a company over to Bangui, and that subsequently a company of between 80 and 120 troops crossed the river.[1272] However, he later allowed that the company may have crossed prior to the meeting.[1273] In this regard, the Chamber also notes that a message in a MLC logbook, sent at 06.30 on 26 October 2002, reports that a company of soldiers had already crossed to Bangui.[1274] D15 partially corroborated D49's account, claiming that the decision to intervene in the CAR was a collegial decision made at a meeting on 27 October 2002.[1275] The Chamber recalls its general concerns about the credibility of D15 and D49 and the reliability of their evidence,[1276] as well as its findings, based on corroborated and reliable evidence, that Mr Bemba had authority over military operations and strategy.[1277] In light of the above, the Chamber finds the evidence of D15 and D49 on this point to be unreliable and, in turn, it does not impact on its findings that Mr Bemba decided to send troops to the CAR.[1278]

### 2. MLC arrival

455. On 25 October 2002, the same day that Mr Bemba decided to send troops to the CAR, the MLC started its preparations.[1279] Mr Bemba held multiple meetings in

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line 4 to page 42, line 7. *See also* **P33**: T-159, page 28, lines 6 to 17. The Defence concedes that MLC troops initially entered the CAR for the purposes of driving General Bozizé's rebels out of Bangui and protecting President Patassé's regime. *See* Defence Closing Brief, paras 282, 305, and 309 to 310.

[1272] **D49**: T-270-Conf, page 29, lines 23 to 25, and page 48, lines 10 to 22; T-270, page 48, line 22 to page 49, line 10, and page 50, lines 1 to 14; T-271, page 55, lines 19 to 23; and T-272, page 53, lines 12 to 18.

[1273] **D49**: T-270-Conf-FRA, page 53, line 23; and T-272-FRA, page 45, line 5, testifying first that the meeting happened "*vers le soir ou quelque chose comme ça*", but later said that it started at 16.00; T-270-Conf, page 48, line 14; and T-272, page 40, lines 22 to 23, testifying first that the meeting took place in the evening, and then that it started at 14.00.

[1274] **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1631.

[1275] **D15**: T-343, page 44, line 14 to page 47, line 4.

[1276] *See* Section IV(E)(7)(c).

[1277] *See* Sections V(A)(4) and V(B)(2)(c).

[1278] *See* para. 453.

[1279] **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1628, depicting an "extremely urgent" message, dated 25 October 2002 and sent from Colonel Moustapha to Mr Bemba with the MLC Chief of General Staff copied, Colonel Moustapha suggests that his troops travel from Imese to Dongo on foot; **P36**: T-214, page 18, line 22 to page 21, line 20, testifying that the message of 25 October 2002 meant that Colonel Moustapha and his troops

Gbadolite with the Chief of General Staff, other members of the General Staff, and senior MLC members to issue instructions on the commencement of the 2002-2003 CAR Operation.[1280] Mr Bemba controlled the selection of the units and commanders sent to the CAR,[1281] with the General Staff involved in making proposals,[1282] and then implementing and monitoring the deployment of troops

were moving towards the CAR; and **D19**: T-284, page 47, line 13 to page 49, line 24, and page 51, lines 16 to 23.

[1280] **P213**: T-186, page 26, lines 2 to 7, page 30, line 8 to page 31, line 18, page 32, lines 1 to 14, page 33, lines 5 to 25, page 34, lines 11 to 19, page 36, lines 2 to 4, page 39, lines 12 to 23, page 40, lines 10 to 15, page 41, line 1, and page 50, lines 14 to page 57, line 6; T-190, page 24, line 16, and page 31, line 19 to page 32, line 2; and T-190-Conf, page 25, lines 15 to 25, page 26, lines 10 to 24, and page 27, lines 3 to 7, recalling a meeting, prior to the 2002-2003 CAR Operation, where Mr Bemba was the only person who spoke, ordering the Chief of General Staff to assemble his troops, the G1 to make up lists, the G2 to prepare men in intelligence, the G3 to prepare an operational plan, the G4 to prepare ammunition, weapons, money, medication, and fuel, and the G5 to take care of morale; **D49**: T-270-Conf, page 51, lines 10 to 22, and page 52, lines 4 to 24; and T-272-Conf, page 36, lines 12 to 16, and page 43, lines 18 to 20; and **D39**: T-308, page 37, lines 1 to 11. *See also* **P36**: T-213-Conf, page 62, lines 1 to 12; T-215, page 64, lines 10 to 15; T-217-Conf, page 60, lines 14 to 18, page 62, lines 11 to page 63, line 10; T-218, page 3, lines 15 to 17; and T-218-Conf, page 2, line 15 to page 3, line 1, page 4, line 5 to page 5, line 16, page 6, lines 1 to 6, and page 78, lines 3 to 5, testifying that Mr Bemba did not need the help or advice of the Chief of General Staff before giving the order to engage in hostilities in the CAR and Mr Bemba informed him after the decision had been taken; **P15**: T-208, page 47, line 25 to page 48, line 2; and T-208-Conf, page 42, lines 12 to 19, and page 44, line 22 to page 45, line 4; **P44**: T-206, page 6, lines 7 to 22, stating that the military commanders would have been informed for practical and logistical reasons; and **P45**: T-204, page 70, lines 2 to 4, allowing for the possibility that some senior military and political officials may have taken part in a meeting, following Mr Bemba's decision to launch the 2002-2003 CAR Operation.

[1281] *See, for example*, **P36**: T-215, page 27, lines 11 to 14, and page 45, lines 18 to 25, speculating that Mr Bemba chose Colonel Moustapha to lead the 2002-2003 CAR Operation, because his unit was closest to the CAR; **P173**: T-145, page 33, lines 19 to 21; **P169**: T-138, page 28, lines 3 to 6, and page 35, line 20 to page 36, line 1, testifying that Mr Bemba was involved in issuing specific instructions during the preparation phase before the 2002-2003 CAR Operation; **D19**: T-284, page 17, lines 16 to 19, and page 49, lines 1 to 24; T-284-Conf, page 17, line 20 to 25, and page 47, line 13 to page 48, line 25; T-287-Conf, page 30, line 15 to 16, page 31, lines 3 to 4, page 31, lines 17 to 22, page 32, lines 5 to 9, page 50, line 23 to page 51, line 17, page 52, lines 8 to 20, and page 53, line 2 to page 54, line 6; T-288-Conf, page 4, line 8 to page 7, line 5, and page 8, line 9 to page 13, line 7; T-290-Conf, page 10, lines 10 to 16; and T-292, page 42, lines 7 to 24. *See also* **D19**: T-287, page 32, lines 15 to 24; **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1628; and **P36**: T-214, page 18, line 22 to page 21, line 20.

[1282] **D39**: T-308, page 35, line 16 to page 36, line 6, stating that the selection of the two battalions that crossed to the CAR was clearly about proximity, and the Chief of General Staff must have suggested the battalions; and **D49**: T-270, page 53, line 20 to page 54, line 3, and page 55, line 23 to page 56, line 3; and T-270-Conf, page 52, lines 5 to 16, testifying, that the Chief of General Staff, after an initial meeting with Mr Bemba, proposed a brigade based on its proximity and mobility. *See also* Sections V(A) and V(B)(2).

and equipment.[1283] From Imese and Libengue, MLC troops were first deployed to Zongo, from where they would be ferried to the CAR.[1284]

456. Various witnesses, as corroborated by contemporaneous documentary evidence, testified that MLC combat troops began a phased troop deployment on 26 October 2002[1285] and that, no later than 27 October 2002, the MLC, alongside other forces aligned with President Patassé, commenced operations in the CAR.[1286] As recorded in the MLC logbooks, the troops that arrived on 26

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[1283] **P36**: T-217-Conf, page 40, lines 7 to 17; **P33**: T-158, page 32, line 23 to page 33, line 9, testifying that the Chief of General Staff was not consulted whether the MLC should intervene, but merely ordered to monitor and follow up on the operations; **P32**: T-167, page 30, lines 16 to 24, testifying that Mr Bemba ordered the Chief of General Staff to prepare the soldiers to go to the CAR; **D18**: T-318, page 5, line 25 to page 7, line 12, testifying that, while unsure of who ultimately issued the order for Colonel Moustapha to cross into the CAR, the Chief of General Staff would need Mr Bemba's approval; **D49**: T-270-Conf, page 51, lines 10 to 22, and page 52, lines 4 to 24; and T-272-Conf, page 36, lines 12 to 16, and page 43, line 12 to page 44, line 11; and **D39**: T-308, page 37, lines 1 to 11. *See also* Sections V(A) and V(B)(2).

[1284]**P36**: T-218, page 11, line 18 to page 12, line 3; **D49**: T-270, page 55, lines 1 to 22, testifying that MLC troops traveling from Imese could arrive in Zongo on the same day and that a contingent of MLC soldiers was deployed in Libengue prior to the MLC's intervention in the CAR; and **D19**: T-284, page 25, line 15 to page 26, line 16, testifying that MLC troops travelled from Imese to Dongo on foot (a journey of two days), then from Dongo to Libengue by river boat, and from Libengue (where a number of troops were based) to Zongo on foot and by vehicle (journey that took at least two days by foot). *See also* **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1628.

[1285] **P31**: T-182, page 21, lines 14 to 19, page 24, lines 14 to 17, page 25, lines 14 to 22, and page 26, lines 4 to 17; and T-183, page 25, lines 2 to 19, testifying that a group of 100 to 120 MLC soldiers arrived in the CAR one or two days after General Bozizé's rebels, and continued to arrive in the following days; **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1630 to 1631, depicting the situation reports registered in the MLC logbook first mention "OPS Bangui" on 26 October 2002, registering that in the morning of 26 October 2002 a company of 151 men crossed to Bangui under the command of Captain René Abongo; **P36**: T-214, page 23, line 8 to page 26, line 20; and **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0003, 0005 to 0006, 0014, 0019, 0021, 0026 and 0043, according to the police report contained within the *Bomengo* case file, which documents the suspects' first questioning on 17 November 2002, the soldiers declared that they arrived in Bangui on 25 and 26 October 2002. Contemporaneous news reports corroborate the evidence demonstrating the arrival of MLC forces starting on 26 October 2002: **EVD-T-CHM-00023/CAR-OTP-0005-0125**, a RFI article apparently published on 27 October 2002, describing a counter offensive by the loyalist forces against the rebels of General Bozizé on Saturday [26 October 2002] stating that there could be elements of the MLC directed by Mr Bemba; and **EVD-T-OTP-00822/CAR-OTP-0005-0129**, a RFI article apparently published on 30 October 2002, stating that around 500 Congolese belonging to the MLC have gradually arrived in Bangui since Saturday [26 October 2002]. This arrival date is also corroborated by the evidence concerning the presence of the MLC in the CAR no later than 27 October 2002.

[1286] **P31**: T-182, page 43, lines 2 to 13; and T-183, page 9, lines 11 to 18 and page 61, lines 23 to 25; **P36**: T-215, page 12, line 20 to page 13, line 3; **P178**: T-150, page 32, lines 12 to 22 and T-152, page 43, lines 2 to 3; **P68**: T-48, page 10, line 25 to page 11, line 2, and page 14, line 22 to page 15 line 7; T-49, page 13, line 19 to page 14 line 1, page 18, lines 10 to 16, page 30, lines 2 to 21, and page 34, lines 2 to 19, and page 37, lines 4 to 8; and T-50, page 45, lines 12 to 13; **P6**: T-94, page 31, lines 7 to 20; T-95, page 33, lines 14 to 15; and T-96, page 19, line 11 to page 21, line 7; **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1631 to 1633 and 1635, "OPS Bangui" is registered in the morning situation reports of 27, 29, and 30 October 2002; **EVD-T-OTP-00584/CAR-OTP-0033-0209**, at 0210 to 0211; **EVD-T-OTP-00453/CAR-OTP-0017-0363**, at 0363 and 0364, a letter from Mr Bemba to the UN, dated 4 January 2003, stating that MLC troops intervened in the CAR on 27 October 2002 at the request of President Patassé; **EVD-T-OTP-00446/CAR-OTP-0013-0082**, at 0083; **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0041, according to this February 2003 FIDH Report, MLC troops participated in a counter-attack, initiated on 27 October 2002, to dislodge General Bozizé's rebel forces from Bangui; and

October 2002 met the "requirements of a combatant" and had "the will and ability to fight",[1287] meaning that they had the necessary equipment for combat including weapons, ammunition, and medication.[1288] Recalling its general concerns as to the credibility of P36 and P178,[1289] the Chamber notes that their evidence on this issue is generally consistent and corroborated in various details by contemporaneous documentary evidence and the testimonies of Mr Firmin Findiro (P6), the CAR Prosecutor who investigated crimes committed during the 2002-2003 CAR Operation, FACA Colonel Thierry Lengbe (P31), and P68. In such circumstances, the Chamber finds the corroborated evidence concerning the MLC arrival date and commencement of operations to be reliable.

457. However, the Chamber notes that D2, D3, D13, D19, D49, and D54 testified that, other than a one-day reconnaissance mission on 26 October 2002, the first MLC troops were not deployed to the CAR until 28 or 29 October 2002.[1290] D57 and D64 testified that the MLC arrived between 30 October and early November 2002.[1291] However, this evidence is inconsistent as to details of the alleged reconnaissance mission, the meeting at which relevant decisions were reached,

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**EVD-T-CHM-00024/CAR-OTP-0005-0127**, a RFI article apparently published on 29 October 2002, stating that the counter offensive launched on Sunday [27 October 2002] morning included Congolese soldiers from the MLC of Jean-Pierre Bemba. Further, D56's testimony that the MLC arrived "around" 28 or 29 October is not necessarily inconsistent with other evidence that the MLC began to arrive by 26 October 2002 and operations commenced by 27 October 2002. *See* **D56**: T-313, page 31, lines 10 to 15. Similarly, D6's testimony is also not inconsistent insofar as D6 testified that he saw the MLC for the first time on 29 October 2002, but admitted that he could not testify about whether they arrived before that. *See* **D6**: T-328, page 22, lines 3 to 15, and page 43, line 3 to page 45, line 11; and T-328bis, page 2, line 10 to page 4, line 2.

[1287] **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1631.

[1288] **P36**: T-214, page 23, line 8 to page 26, line 20.

[1289] *See* Section IV(E)(7)(a).

[1290] **D2**: T-321, page 17, lines 6 to 23, page 23, lines 17 to 22, and page 24, lines 1 to 6; **D3**: T-325, page 15, lines 20 to 22; and T-326, page 11, lines 11 to 16; **D13**: T-350, page 18, lines 8 to 21;T-350-Conf, page 19, line 5 to page 34, line 2; and T-351, page 60, line 16 to page 65, line 15 and page 66, line 20 to page 67, line 9; **D19**: T-284, page 22, lines 3 to 18; **D49**: T-270-Conf, page 29, lines 23 to 25, page 48, line 10 to page 49, line 10, and page 50, lines 1 to 2 and 10 to 14; T-272, page 42, line 13 to page 43, line 4; and T-272-Conf, page 37, lines 21 to 25, and page 40, lines 1 to 23; and **D54**: T-347, page 21, line 14 to page 22, line 12; and T-348-Conf, page 15, line 3 to page 28, line 1.

[1291] **D57**: T-256, page 30, lines 9 to 10, and page 32, lines 1 to 12; and T-258, page 13, lines 3 to 8, and page 39, lines 15 to 19; and **D64**: T-259, page 17, line 13 to page 18, line 9, and page 37, line 8 to page 42, line 1; and T-260, page 59, lines 7 to 15.

the MLC's exact date of arrival, and/or other related details.[1292] The Chamber also recalls its concerns about the general credibility of D2, D3, D19, D49, D54, D57, and D64 and the reliability of their evidence,[1293] and about D13's evidence on other matters.[1294] In light of these concerns, the Chamber notes that, although these testimonies corroborate each other, they are not corroborated by other credible and reliable evidence. In such circumstances, the Chamber cannot rely on the evidence concerning the alleged reconnaissance mission and dating the MLC's arrival to on or after 28 October 2002.

458. Accordingly, the Chamber finds, on the basis of corroborated, credible, and reliable evidence, that the MLC arrived in the CAR on 26 October 2002 and commenced operations no later than 27 October 2002.[1295]

### 3. Bangui

459. In Bangui, MLC troops first arrived at a naval base next to the Oubangui River,[1296] and from there, they were transported to the Support Regiment, near Camp Béal and the Fourth Arrondissement.[1297] By 30 October 2002, MLC troops had advanced along the Avenue de l'Indépendence and to the neighbourhoods

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[1292] *See*, *for example*, **D13**: T-350, page 34, lines 16 to 19; and T-351-Conf, page 25, lines 14 to 21; **D49**: T-270-Conf, page 29, lines 23 to 25, page 48, lines 10 to 14 and 22 to page 49, line 10, and page 50, lines 1 to 2 and 10 to 14; T-272-Conf, page 37, lines 21 to 25 and page 40, lines 1 to 23; and T-272, page 42, line 13 to page 43, line 4; **D64**: T-259, page 17, line 13 to page 18, line 9, and page 37, line 8 to page 42, line 1; and T-260, page 59, lines 7 to 15; **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1631; and **D19**: T-287, page 3, line 22 to page 4, line 11, page 8, lines 2 to 24, and page 26, line 9 to page 27, line 18. *See also* **D3**: T-325, page 15, lines 20 to 22; and T-326, page 11, lines 11 to 16, testifying that D3 heard the MLC arrived on 29 October, but did not actually see them until 30 October, and all the while without identifying the source of this knowledge; and **D64**: T-259, page 37, line 8 to page 42, line 1; and T-260, page 59, lines 7 to 15, testifying inconsistently as to the date the MLC arrived and also providing a questionable source of knowledge insofar as D64 dated their arrival to the first time he personally saw the MLC troops in Bangui.

[1293] *See* Section IV(E)(7)(c).

[1294] *See* Section V(B)(2).

[1295] *See* para. 456.

[1296] **P63**: T-108, page 45, lines 1 to 9; **P47**: T-176, page 35, lines 19 to 23 and page 44, line 19 to page 45, line 2; and **P178**: T-150, page 32, line 25 to page 34, line 11. *See also* **P9**: T-102, page 45, lines 10 to 13.

[1297] **P31**: T-182, page 25, line 20 to page 26, line 3; and T-183, page 9, lines 2 to 18; **P178**: T-150, page 36, lines 5 to 7; and T-156, page 7, lines 6 to 24; **EVD-T-OTP-00609/CAR-ICC-0001-0072**; **P169**: T-137, page 10, lines 11 to 23; and T-140, page 3, lines 16 to 19; and **P6**: T-94, page 28, lines 5 to 10; T-96, page 21, lines 19 to 23; and T-98, page 41, lines 3 to 5. Several witnesses placed the MLC at Camp Béal itself; however, given the close proximity between Camp Béal and the Support Regiment, this discrepancy is negligible. *See* **P63**: T-108, page 45, lines 7 to 17; **P9**: T-102, page 45, lines 10 to 13; and T-108, page 6, lines 13 to 23; **CHM1**: T-355, page 43, line 1 to page 44, line 10; **EVD-T-OTP-00851/CAR-ICC-0001-0103**; and **D19**: T-284, page 22, line 19 to page 23, line 5.

of 36 Villas, Fouh, and Bogombo.[1298] After the arrival of Colonel Moustapha in the CAR at 09.00 on 30 October 2002 and a meeting with the officers, a large-scale combat operation between the MLC and General Bozizé's rebels began at 13.00.[1299]

460. While the first rebels had started withdrawing from Bangui by 29 October 2002,[1300] the last of General Bozizé's rebels withdrew from Bangui on 30 October 2002.[1301] In their wake, the MLC took control of the Fourth Arrondissement.[1302] The MLC maintained a presence in Bangui for the duration of the 2002-2003 CAR Operation.[1303]

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[1298] **P178**: T-152, page 51, lines 17 to 25; **P6**: T-94, page 28, lines 5 to 10; T-95, page 22, line 8 to page 23, line 14; and T-96, page 21, lines 8 to 23; **P63**: T-113, page 37, lines 6 to 14; and T-115, page 5, lines 23 to 25; **EVD-T-OTP-00446/CAR-OTP-0013-0082**, at 0082 to 0089; **P31**: T-182, page 43, lines 2 to 13; and T-183, page 9, lines 11 to 18 and page 61, lines 23 to 25; **D19**: T-285, page 5, lines 14 to 19, page 6, lines 4 to 5 and page 42, lines 14 to 16; and T-287, page 9, lines 3 to 6, page 10, line 14 to page 11, line 6; and **D56**: T-313, page 31, lines 10 to 25.

[1299] **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1637; and **P63**: T-108, page 45, lines 7 to 17, and page 46, lines 8 to 9. *See also* **EVD-T-OTP-00823/CAR-OTP-0005-0131**; **EVD-T-OTP-00822/CAR-OTP-0005-0129**; **EVD-T-OTP-00438/CAR-OTP-0011-0293**; **EVD-T-OTP-00821/CAR-OTP-0030-0274**, at 0275; **EVD-T-OTP-00446/CAR-OTP-0013-0082**, at 0085 to 0086; **EVD-T-CHM-00019/CAR-OTP-0056-0278**; **EVD-T-OTP-00575/CAR-OTP-0031-0093**, at track 5; and **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0041.

[1300] *See*, *inter alia*, **P209**: T-121, page 34, line 19 to page 36, line 18; **P119**: T-82-Conf, page 25, lines 10 to 17; and T-83-Conf, page 3, line 15 to 25; **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0041; **EVD-T-OTP-00401/CAR-OTP-0004-0409**, at 0419; and **EVD-T-OTP-00442/CAR-OTP-0011-0503**, at 0507.

[1301] **P119**: T-82, page 25, lines 10 to 17; **P209**: T-121, page 34, line 19 to page 36, line 18; and **EVD-T-OTP-00682/CAR-OTP-0058-0167**, at 0174 to 0175, 0179, and 0185. FIDH and Amnesty International reports also corroborate accounts that General Bozizé's rebels left Bangui by 30 October 2002. *See* **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0041; **EVD-T-OTP-00401/CAR-OTP-0004-0409**, at 0419; and **EVD-T-OTP-00442/CAR-OTP-0011-0503**, at 0507. The conclusion of the Libyan-led bombing campaign against the rebels on 29 October 2002 also corroborates the evidence that General Bozizé's rebels had retreated by 30 October 2002. *See*, *inter alia*, **P31**: T-183, page 14, lines 9 to 17; **P178**: T-150, page 17, lines 11 to 17; **P6**: T-95, page 29, lines 1 to 5 and page 54, line 17 to page 57, line 1; **CHM1**: T-353, page 43, lines 13 to 20; and **P119**: T-82, page 23, line 23 to page 24, line 11, and page 26, line 15 to page 27, line 2.

[1302] **P29**: T-80, page 10, lines 3 to 8, page 13, lines 6 to 18; **P87**: T-44, page 12, lines 16 to 19, page 13, lines 5 to 10, page 17, lines 11 to 13, and page 18, line 25 to page 19, line 10; **P63**: T-113, page 37, lines 11 to 14; and T-115, page 5, lines 23 to 25; **P108**: T-133, page 10, line 21 to page 12, line 16, testifying that, on 30 October 2002, the authorities announced that all of Bangui was under control; **P119**: T-83, page 4, line 21 to page 5, line 1; and **EVD-T-OTP-00682/CAR-OTP-0058-0167**, at 0174 to 0175, 0179, and 0185. *See also* **EVD-T-OTP-00438/CAR-OTP-0011-0293**, an article, published on 31 October 2002, by IRIN Africa, states that the calm returned to Bangui on Thursday [31 October 2002] after government forces backed by rebels from the DRC launched a massive counter-offensive around noon on Wednesday [30 October 2002].

[1303] **P119**: T-85, page 32, lines 9 to 13, testifying that the MLC "spent a lot of time in Bangui". Various logbook entries provide further evidence of the MLC's continuous presence in Bangui and show the MLC soldiers sending observations about Bangui to the command. *See*, *for example*, **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1642, 1689 and 1747. The "Information Bulletin" that P108 found in his house also supports the contention of a long-term presence of MLC in Bangui. *See* **EVD-T-OTP-00347/CAR-OTP-0037-0092**. According to P108, his house in PK12 was occupied by the MLC during the conflict. The MLC left his home in mid-February 2003. *See*, *inter alia*, **P108**: T-132, page 39, line 23 to page 40, line 20, page 42, line 4 to page 43, line 20; and T-134, page 33, line 24 to page 34, line 3.

461. There is reliable evidence from various sources, including testimony, as corroborated by media articles, NGO reports, and the *procès verbaux d'audition de victime* submitted to the Bangui Court of Appeals, that throughout Bangui – including at the Port Beach naval base, in the Fourth Arrondissement, up to Cité Makpayen, Miskine, Boy-Rabé, Dedengue I and II, Bakongo, Bondoro, Fou, Galabadja, Gobongo, and along the main roads that led to the north – MLC troops committed acts of pillaging, rape, and murder against civilians.[1304]

### a) Events in Bondoro

462. At the end of October 2002, after the arrival of the MLC, P68 and her sister-in-law fled their house to seek refuge in PK5.[1305] On their way through the Bondoro neighbourhood of Bangui, between approximately 13.00 and 14.00,[1306]

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[1304] **P6**: T-94, page 28, lines 5 to 10; T-95, page 22, line 8 to page 23, line 14; and T-96, page 21, lines 8 to 23; **EVD-T-OTP-00142 to EVD-T-OTP-00252 (CAR-OTP-0001-0159 to CAR-OTP-0001-0546)**; and **EVD-T-OTP-00254 to EVD-T-OTP-00344 (CAR-OTP-0002-0002 to CAR-OTP-0002-0137)**. *See also* **CHM1**: T-355, page 28, lines 4 to 18, page 42, lines 16 to 19, and page 43, line 14 to page 44, line 7; and **EVD-T-OTP-00851/CAR-ICC-0001-0103**. Media and NGO reports also corroborate other evidence of commission of crimes in Bangui by the MLC. *See* **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0048 to 0053; **EVD-T-OTP-00411/CAR-OTP-0004-1096**, at 1102 to 1103, 1109, 1121, and 1124; **EVD-T-OTP-00399/CAR-OTP-0004-0343**, at 0344; **EVD-T-OTP-00401/CAR-OTP-0004-0409**, at 0415, 0419 to 0423, and 0425; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0667, 0669 to 0670, 0672 to 0674, 0678, 0681 to 0683, 0684, and , 0690; **EVD-T-OTP-00409/CAR-OTP-0004-0881**, at 0892 0895 to 0902, and 0943; **EVD-T-OTP-00846/CAR-OTP-0004-0874**; **EVD-T-OTP-00413/CAR-OTP-0005-0133**; **EVD-T-OTP-00427/CAR-OTP-0008-0413**; **EVD-T-OTP-00848/CAR-OTP-0013-0051**; **EVD-T-OTP-00580/CAR-OTP-0031-0120**; **EVD-T-OTP-00582/CAR-OTP-0031-0124**; **EVD-T-CHM-00023/CAR-OTP-0005-0125**, at 0125; **EVD-T-OTP-00821/CAR-OTP-0030-0274**; **EVD-T-OTP-00575/CAR-OTP-0031-0093**; **EVD-T-CHM-00019/CAR-OTP-0056-0278**; **EVD-T-OTP-00446/CAR-OTP-0013-0082**, at 0082 to 0089; **EVD-T-OTP-00847/CAR-OTP-0013-0012**; and **EVD-T-OTP-00849/CAR-OTP-0013-0320**. There were reports of atrocities in various neighbourhoods in and around Bangui. *See*, *inter alia*, Bangui northern neighbourhoods: **EVD-T-OTP-00846/CAR-OTP-0004-0874**; **EVD-T-OTP-00438/CAR-OTP-0011-0293**; **EVD-T-OTP-00442/CAR-OTP-0011-0503**, at 0507, 0510, and 0512 to 0516; and **EVD-T-OTP-00849/CAR-OTP-0013-0320**, at 0321, 0323, and 0327 to 0328; Fourth arrondissement: **EVD-T-OTP-00854/CAR-OTP-0013-0113**; Liton: **EVD-T-OTP-00442/CAR-OTP-0011-0503**, at 0511 and 0513; Boy Rabé: **EVD-T-OTP-00427/CAR-OTP-0008-0413**; **EVD-T-OTP-00849/CAR-OTP-0013-0320**, at 0321 and 0326; **EVD-T-OTP-00846/CAR-OTP-0004-0874**; and **EVD-T-OTP-00442/CAR-OTP-0011-0503**, at 0510 to 0511, and 0514; Miskine: **EVD-T-OTP-00446/CAR-OTP-0013-0082**; Gobongo: **EVD-T-OTP-00427/CAR-OTP-0008-0413**; **EVD-T-OTP-00849/CAR-OTP-0013-0320**, at 0321; **EVD-T-OTP-00846/CAR-OTP-0004-0874**; **EVD-T-OTP-00576/CAR-OTP-0031-0099**; and **EVD-T-CHM-00040/CAR-OTP-0036-0041**, at 0043 to 0045; Mabo: **EVD-T-OTP-00442/CAR-OTP-0011-0503**, at 0515; PK10: **EVD-T-OTP-00852/CAR-OTP-0013-0052**; **EVD-T-OTP-00576/CAR-OTP-0031-0099**; and **EVD-T-CHM-00040/CAR-OTP-0036-0041**, at 0043 to 0045; and Fouh district: **EVD-T-OTP-00442/CAR-OTP-0011-0503**, at 0512. *See also* Sections V(C)(14) and V(D).

[1305] **P68**: T-48, page 10, line 25 to page 11, line 7, page 18, lines 12 to 23, and page 19, lines 2 and 3.

[1306] **P68**: T-48, page 19, lines 2 to 10, and page 21, line 24.

they were attacked by a group of Lingala-speaking[1307] "Banyamulengués" wearing uniforms similar to those of CAR soldiers.[1308] They were the only armed group P68 saw in the area.[1309]

463. One soldier grabbed P68's hand and forced her into a compound.[1310] Another took a package from her that contained clothing, textiles, a new radio, and food.[1311] The items were never returned.[1312] A third soldier grabbed the hand of P68's sister-in-law and dragged her into an adjacent compound.[1313] The soldiers took her bag, which contained personal effects.[1314] The bag and its contents were never returned.[1315] In light of the above, the Chamber finds that, at the end of October 2002, in a compound in the Bondoro neighbourhood of Bangui, at least three soldiers appropriated P68's package and her sister-in-law's bag, without their consent.

464. Having dragged P68 into a compound, the soldiers forcefully took off her clothes, threatened her with a weapon, threw her on the ground, and restrained her arms.[1316] Two of the men penetrated her vagina with their penises.[1317] She lost consciousness and then "could feel the pain of what they were doing".[1318] In light of the above, the Chamber finds that, at the end of October 2002, in a compound in the Bondoro neighbourhood of Bangui, two soldiers, by force, invaded P68's body by penetrating her vagina with their penises. According to

[1307] **P68**: T-48, page 19, line 23 to page 20, line 11; T-49, page 21, lines 5 to 8, lines 9 to 13, lines 20 to 22; and T-50, page 4, line 12 to page 5, line 6 and 7 to 17 and page 6, line 18 to page 7, line 6.
[1308] **P68**: T-48, page 11, lines 16 to 21, page 19, line 23 to page 20, line 11, and page 20, lines 16 to 18; T-49, page 11, lines 20 to 25, page 13, lines 12 to 18, page 29, lines 13 to 20, and page 47, lines 18 to 19; and T-50, page 7, line 21 to page 8, line 4.
[1309] **P68**: T-48, page 22, lines 7 to 14.
[1310] **P68**: T-48, page 11, lines 22 to 24, and page 18, lines 10 to 17.
[1311] **P68**: T-48, page 28, lines 16 to 20.
[1312] **P68**: T-48, page 11, lines 23 to 24, page 28, line 21 to page 29, line 8, and page 32, line 22.
[1313] **P68**: T-48, page 11, lines 22 to 23, page 18, lines 10 to 17, and page 31, lines 6 to 19; and T-49, page 48, lines 13 to 25.
[1314] **P68**: T-48, page 28, line 25 to page 29, lines 8 to 9 and page 32, lines 14 to 22.
[1315] **P68**: T-48, page 28, line 25 to page 29, lines 8 to 9 and page 32, lines 14 to 22.
[1316] **P68**: T-48, page 11, line 24 to page 12, line 1, page 18, lines 17 to 19, page 25, lines 1 to 4, and page 26, lines 13 to 22; and T-49, page 14, lines 6 to 12.
[1317] **P68**: T-48, page 23, lines 1 to 2, page 23, line 20 to page 24, line 12 and page 25, lines 1 to 11.
[1318] **P68**: T-49, page 14, line 16 to page 15, line 3. A medical certificate dated 29 October 2004 attests to P68's examination by *Médecins Sans Frontières* in November 2002 and refers to her as a "victim of rape". *See* **P68**: T-50, page 23, line 1 to page 24, line 2; and **EVD-T-OTP-00129/CAR-OTP-0020-0442**.

P68, the psychological and medical consequences of the events included depression, a fear of armed soldiers, vaginal and stomach ailments, and HIV.[1319]

465. During the events, P68 heard her sister-in-law in the adjacent compound, "call[ing] out like someone who is truly afraid", but could not see her because of a fence.[1320] Later that afternoon, when P68's sister-in-law returned to their house, she explained that she had been "raped" by three soldiers of the same group that attacked P68.[1321] Thereafter, she had health problems.[1322]

466. Although P68's testimony does not further specify any details of her sister-in-law's alleged "rape", based on her description of the events she personally experienced, the Chamber considers that her use of the term indicates that the perpetrators penetrated her sister-in-law's body with a sexual organ or otherwise penetrated the anal or genital opening of the victim. In this regard, the Chamber notes P68's evidence that her sister-in-law was calling out in fear; the context in which the events occurred, including what happened to P68 in an adjacent compound; and the fact that the events were reported to P68 by her sister-in-law soon after they happened. In these circumstances, the Chamber finds that, at the end of October 2002, in a compound in the Bondoro neighbourhood of Bangui, three soldiers, by force, penetrated the body of P68's sister-in-law with a sexual organ or otherwise penetrated her anal or genital opening.

**b) Events around P119's house**

467. On or around 30 October 2002, "Banyamulengués" – wearing new military uniforms like those worn by the CAR army with no insignia and being the only armed group in the area – arrived at P119's compound in the Fourth

[1319] **P68**: T-48, page 27, lines 2 to 4, page 38, line 3 to page 39, line 6, and page 40, lines 16 to 20; and T-49, page 15, lines 5 to 8.
[1320] **P68**: T-48, page 31, line 23 and page 32, lines 2 to 10.
[1321] **P68**: T-48, page 31, lines 6 to 19 and page 32, lines 11 to 14; and T-49, page 48, lines 13 to 25.
[1322] **P68**: T-48, page 33, lines 19 to 20.

Arrondissement, telling her that they were sent by "Papa Bemba".[1323] Thereafter, P119 heard girls shouting.[1324] She followed the shouts and saw "many" armed "Banyamulengués" lined up in two columns in a canal, "waiting [for] their turn" to "sleep with" two girls.[1325] P119 was hidden close by, behind thick plants.[1326] She saw the soldiers penetrate the girls with their penises.[1327] P119 testified that she "pushed" a large stone onto one of the soldiers, causing him to cry out in Lingala and the soldiers to run away.[1328] The girls, who told P119 that they were 12 and 13 years old, were crying and bleeding from their vaginas.[1329]

468. The Chamber notes the Defence's submission that P119's testimony is "incapable of belief", stressing, in particular, the implausibility that P119 went to help the two girls in the ditch without discovering their names or being harmed.[1330] P119 explained that, due to the circumstances at the time and resulting distractions, she did not have the chance to ask their names.[1331] In light of the chaotic and traumatic circumstances prevailing at the time, the Chamber accepts this explanation and considers that P119's failure to ask the victims' names does not undermine the reliability of her account.

469. Concerning P119's testimony that she pushed a stone on one of the perpetrators and the Defence's disbelief that she then escaped from harm, the Chamber

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[1323] **P119**: T-82, page 8, lines 19 to 23, page 17, lines 1 to 2, page 18, line 20 to page 19, line 3, page 24, line 11, page 25, lines 15 to 17, page 26, line 15 to page 27, line 11, page 28, lines 14 to 23, page 31, lines 2 to 3, page 34, lines 1 to 2, and page 37, line 9; T-83, page 3, line 20 to page 5, line 1; T-84, page 14, line 15 to page 17, line 7 and page 19, lines 4 to 6; T-85, page 25, line 23 to page 26, line 2; and T-86, page 9, lines 21 to 23, testifying that the incident followed the withdrawal of General Bozizé's rebels from, and the arrival of the MLC, in the Fourth Arrondissement. General Bozizé's rebels retreated from and the MLC took control of the Fourth Arrondissement on 30 October 2002. *See* para. 460.
[1324] **P119**: T-82, page 39, lines 14 to 15, and page 40, lines 5 to 6; and T-84, page 18, line 23 to page 19, line 8.
[1325] **P119**: T-82, page 39, line 12 to page 41, line 14; and T-84, page 30, line 23 to page 31, line 1, page 34, lines 3 to 6 and page 36, lines 2 to 3.
[1326] **P119**: T-82, page 40, lines 13 to 17, T-84, page 30, line 17 to page 36, line 7; and **EVD-T-D04-00013-R02/CAR-OTP-0044-0178**.
[1327] **P119**: T-82, page 42, lines 17 to 20 and page 45, line 24 to page 46, line 5; and T-84, page 36, lines 11 to 17.
[1328] **P119**: T-82, page 43, lines 7 to 17 and page 45, lines 14 to 17; T-83, page 5, lines 2 to 8; and T-84, page 32, lines 2 to 12, page 33, lines 14 to 22 and page 36, line 18 to page 37, line 6.
[1329] **P119**: T-82, page 42, lines 9 to 16, page 43, lines 4 to 24, and page 44, lines 10 to 11.
[1330] Defence Closing Brief, para. 329.
[1331] **P119**: T-84, page 7, lines 12 to 17.

recalls that P119 was hidden from view throughout the incident, which took place in the chaotic and traumatic circumstances noted above. Although the Chamber finds that the portion of P119's testimony relating to the stone she allegedly pushed onto the perpetrators might have been exaggerated, the Chamber considers that her testimony is otherwise generally reliable. The Chamber therefore finds that, on or around 30 October 2002, in a canal near P119's compound in the Boy-Rabé neighbourhood of Bangui, two soldiers, by force, invaded the bodies of two unidentified girls, aged 12 and 13 years old, by penetrating their vaginas with their penises.

470. After the events described above, soldiers broke into P119's house and took an alarm clock, a radio and a foam mattress.[1332] P119 did not know who had broken down the doors, but she saw MLC soldiers leaving the house with the radio.[1333] The items were not returned to P119.[1334] In light of the above, the Chamber finds that, after 30 October 2002, at P119's compound in the Boy-Rabé neighbourhood of Bangui, soldiers appropriated the items identified above from P119's house, without her consent.

**c) Events at P87's house**

471. On or around 30 October 2002, after General Bozizé's rebels withdrew from the Fourth Arrondissement,[1335] armed "Banyamulengués", being the only soldiers in the area,[1336] came to P87's house, took goods and left.[1337] Later, at around 21.00 that evening,[1338] three more armed "Banyamulengués" came to P87's house.[1339] They said in poor French, "give us money and we won't kill you",

[1332] **P119**: T-82, page 46, lines 8 to 17, and page 48, lines 6 to 9.
[1333] **P119**: T-82, page 46, line 22 to page 47, line 17.
[1334] **P119**: T-83, page 7, lines 16 to 23.
[1335] **P87**: T-44, page 11, lines 13 to 15, page 13, lines 5 to 25, and page 18, line 25 to page 19, line 10; and T-45, page 5, line 20 to page 6, line 1.
[1336] **P87**: T-45, page 4, lines 9 to 11.
[1337] **P87**: T-44, page 27, lines 16 to 23.
[1338] **P87**: T-44, page 14, lines 8 to 9, and page 37, line 18.
[1339] **P87**: T-44, page 14, line 6 to 12, page 28, lines 16 to 19, page 33, lines 13 to 16, and page 35, lines 13 to 18; and T-46 page 47, line 13 to page 48, line 10.

and then took, *inter alia*, a television, a radio, mattresses from her uncle's bedroom, and furniture.[1340] In light of the above, the Chamber finds that, on or around 30 October 2002, in P87's house in the Fourth Arrondissement of Bangui, perpetrators appropriated the items identified above, without the owners' consent.

472. Not long after, a third group of armed[1341] "Banyamulengués", speaking Lingala and wearing new uniforms like those of the CAR military,[1342] came to the house.[1343] One man forced P87 around the back of the house, threw her on the ground, and took off her underwear.[1344] The soldier had his hand on his weapon which he put on the ground.[1345] He then penetrated her vagina with his penis.[1346] The man called one of his companions "in their language", who came and "did the same thing".[1347] When he finished, he called a third man, who also "did the same thing", while pointing the barrel of his rifle at her.[1348] Afterwards, P87 suffered medical and psychological consequences, including depression, skin disorders, and pelvic pain.[1349]

473. Concerning Defence submissions relating to P87's "omission of any reference of rape in a previous report to the family lawyer,"[1350] the Chamber notes that she testified that feelings of shame played a role in her decision not to alert her neighbours immediately after the events[1351] and its omission from a complaint

[1340] **P87**: T-44, page 14, lines 5 to 6, page 15, lines 1 to 3, page 27, lines 19 to 23, page 28, lines 18 to 19, page 33, lines 6 to 7, and page 43, lines 11 to 22; and T-45, page 18, lines 12 to 13.
[1341] **P87**: T-44, page 13, lines 14 to 17, page 40, line 25 to page 41, line 6, and page 42, lines 1 to 2.
[1342] **P87**: T-44, page 24, lines 13 to 18, page 25, lines 4 to 10, page 38, lines 13 to 16 and lines 23 to 25, and page 51, lines 4 to 9; T-46, page 33, line 5 to page 34, line 18, page 48, lines 6 to 11, page 49, lines 1 to 5, page 51, lines 2 to 14, and page 53, lines 19 to 23; and T-47, page 15, line 18, page 37, lines 1 to 16 and page 39, line 25 to page 40, line 9, stating consistently that Lingala was the language spoken on the "other side of the river" and that she independently recognised the language spoken by the soldiers that came to her house as Lingala. *See* T-46, page 52, line 7 to page 57, line 19; and T-47, page 37, lines 3 to 19.
[1343] **P87**: T-44, page 14, lines 8 to 9, and page 35, lines 9 to 12.
[1344] **P87**: T-44, page 14, lines 14 to 15, page 28, lines 4 to 6, page 39, lines 7 to 21, and page 40, lines 1 to 3.
[1345] **P87**: T-44, page 14, lines 14 to 15, and page 39, lines 16 to 21.
[1346] **P87**: T-44, page 14, lines 17 to 18, page 28, lines 6 to 8, page 39, lines 7 to 12, and page 43, lines 4 to 5.
[1347] **P87**: T-44, page 14, lines 18 to 19, page 28, lines 8 to 10, and page 40, lines 11 to 24.
[1348] **P87**: T-44, page 14, lines 19 to 22, and page 41, line 7 to page 42, line 2.
[1349] **P87**: T-44, page 45, lines 14 to 24, and page 47, line 18 to page 48, line 3.
[1350] Defence Closing Brief, para. 462, referring to **P87**: T-45, pages 18 to 20.
[1351] **P87**: T-47, page 10, lines 3 to 6.

filed with the CAR *Procureur général* and in her victim application.[1352] The Chamber accepts this explanation, and considers that these omissions do not discredit P87. In light of the above, the Chamber finds that, on or around 30 October 2002, behind P87's house in the Fourth Arrondissement of Bangui, three perpetrators, by force, invaded P87's body by penetrating her vagina with their penises.

474. After this event, P87 re-entered the house just as two "Banyamulengués" were leaving.[1353] Threatening the family at gunpoint,[1354] they took foam mattresses belonging to the children, pots, more than 67,000 CFA francs belonging to P87, and, after breaking a safe, 600,000 CFA francs belonging to P87´s uncle.[1355] In light of the above, the Chamber finds that, on or around 30 October 2002, in P87's house in the Fourth Arrondissement of Bangui, two perpetrators appropriated the items identified above, without the owners' consent.

475. P87 was "very upset" and attempted to persuade her "brothers" to flee with her, but they wanted to stay to protect a motorbike.[1356] At least one of the men she called her "brothers" was actually her cousin.[1357] She left the house, but then heard a door breaking.[1358] She went behind the house and looked in through a gap.[1359] P87 could clearly see two "Banyamulengués" in the sitting room.[1360] She heard voices coming from the room where the motorbike was kept.[1361] She identified the voices as those of her "brother" and a "Banyamulengué".[1362] P87

[1352] **P87**: T-45, page 17, lines 7 to 9, and page 18, lines 14 to 19; and ICC-01/05-01/08-224-Conf-Exp-Anx2.
[1353] **P87**: T-44, page 28, lines 16 to 19.
[1354] **P87**: T-44, page 33, lines 24 to 25, page 35, lines 4 to 8, and page 43, line 25 to page 44, line 1.
[1355] **P87**: T-44, page 28, line 18, and page 43, line 11 to page 44, line 1.
[1356] **P87**: T-44, page 28, line 20 to page 29, line 1; and T-46, page 49, line 25 to page 50, line 5.
[1357] **P87**: T-44, page 11, lines 8 to 12.
[1358] **P87**: T-44, page 29, lines 2 to 6; and T-47, page 11, lines 6 to 18.
[1359] **P87**: T-44, page 29, lines 8 to 19; T-46, page 49, lines 17 to 24; and T-47, page 11, lines 9 to 18, and page 15, lines 15 to 22. A photograph taken during an analysis of the crime scene confirms that there was a gap in the door. *See* **EVD-T-OTP-00588/CAR-OTP-0048-0492_R01**, pages 13 to 15.
[1360] **P87**: T-44, page 29, lines 14 to 15 and page 49, line 23 to page 50, line 8; and T-46, page 49, lines 11 to 12, and page 51, lines 2 and 3, testifying that the soldiers carried torches and the interior was illuminated with oil lamps. *See* T-44, page 51, lines 2 to 3.
[1361] **P87**: T-44, page 49, line 23 to page 50, line 18.
[1362] **P87**: T-44, page 29, lines 11 to 18, and page 50, lines 14 to 18.

heard her "brother" say "[n]o, no", followed by three shots.[1363] After the shots, P87 saw a third soldier enter the sitting room, before all three exited the house.[1364] She heard her "brother" moaning and muttering, and then silence.[1365]

476. P87 waited for a while and then alerted neighbours and relatives, some of whom confirmed that they heard shots, but due to the time of night and because of the presence of MLC soldiers in the area, they did not immediately go to P87's house.[1366] At daybreak, P87 returned to the house with a neighbour and together they discovered her "brother's" dead body.[1367] She noted three bullet wounds on her "brother's" chest and blood on his body and on the floor.[1368] She also noted large injuries on his back.[1369] P119 also saw the body; she believed "Banyamulengués" killed him.[1370]

477. P87 and several neighbours later buried her "brother".[1371] A body was exhumed from the grave where P87's "brother" was said to have been buried.[1372] Forensic analysis of bone and dental samples concluded that it was the body of P87's "brother".[1373] An autopsy uncovered three chest injuries consistent with gunshot wounds.[1374]

478. Further, crime scene analysis also corroborates P87's account of the killing, concluding that a bullet most probably went through the body of P87's "brother", through the door, and into the next room.[1375] An analysis of two bullets discovered by the victim's father showed that they were fired from the

[1363] **P87**: T-44, page 29, lines 16 to 22.
[1364] **P87**: T-44, page 29, lines 19 to 22; T-46, page 51, lines 9 to 14; and T-47, page 15, line 21 to page 16, line 1.
[1365] **P87**: T-45, page 6, lines 2 to 14; and T-47, page 15, line 23 to page 16, line 1, and page 17, line 22 to page 18, line 2.
[1366] **P87**: T-44, page 29, line 25 to page 30, line 12; T-45, page 8, lines 1 to 9; and T-47, page 12, lines 18 to 21.
[1367] **P87**: T-44, page 30, lines 16 to 20.
[1368] **P87**: T-45, page 9, line 15 to page 10, line 7; and T-47, page 24, lines 3 to 5 and page 28, lines 3 to 23.
[1369] **P87**: T-45, page 10, lines 2 to 4.
[1370] **P119**: T-82, page 50, lines 4 to 19, and page 52, line 23 to page 53, line 2.
[1371] **P87**: T-44, page 31, line 21 to page 32, line 6 and lines 13 to 19.
[1372] **EVD-T-OTP-00689/CAR-OTP-0051-0263_R02**, pages 7 to 18.
[1373] **EVD-T-OTP-00587/CAR-OTP-0048-0431**, page 13, and Annexes 1 and 2.
[1374] **EVD-T-OTP-00689/CAR-OTP-0051-0263_R02**, pages 51 to 53, and 61.
[1375] **EVD-T-OTP-00588/CAR-OTP-0048-0492_R01**, pages 44 to 50, and 55 to 56.

same weapon, likely an AK47.[1376] The direction of fire was consistent with P87's account, either a horizontal shot at a standing victim or a descending shot at a kneeling victim.[1377]

479. In relation to the Defence submissions concerning the Prosecution's failure to call the second "brother",[1378] the Chamber notes that P87 testified that two of her "brothers" were in the house, but the Prosecution did not question her as to the whereabouts of the second "brother" at the time. However, in light of P87's demeanour, description of the incident, and other corroborating evidence,[1379] the Chamber does not consider that either this omission or the Prosecution's failure to call the second "brother" adversely impacts the reliability of her account. In light of the above, the Chamber finds that, on or around 30 October 2002, in P87's house in the Fourth Arrondissement of Bangui, a perpetrator killed P87's "brother" by shooting him.

**d) Events at the Port Beach naval base**

480. P47, a mechanic for a river transport company that ferried MLC troops to the CAR, testified that he witnessed two[1380] or three[1381] incidents of rape at the naval base at Port Beach after the MLC were in control of Bangui.[1382]

481. The first incident occurred between 15.00 and 19.00, at the end of October or beginning of November 2002.[1383] Twenty-two MLC soldiers,[1384] who spoke

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[1376] **EVD-T-OTP-00588/CAR-OTP-0048-0492_R01**, pages 52 to 54.
[1377] **EVD-T-OTP-00588/CAR-OTP-0048-0492_R01**, pages 56 and 58.
[1378] Defence Closing Brief, para. 86.
[1379] **EVD-T-OTP-00587/CAR-OTP-0048-0431**; **EVD-T-OTP-00689/CAR-OTP-0051-0263_R02**; and **EVD-T-OTP-00588/CAR-OTP-0048-0492_R01**.
[1380] **P47**: T-177, page 12, lines 1 to 3.
[1381] **P47**: T-177, page 9, line 3, page 12, lines 1 to 3, page 13, lines 11 to 17, page 15, lines 18 to 24, page 16, lines 10 to 12, page 22, line 24 to page 23, line 16, page 31, lines 3 to 4, page 33, lines 6 to 7 and 16 to 17, page 41, lines 1 to 13, and page 44, lines 10 to 22; T-178, page 15, line 13 to page 16, lines 7 to 11, page 17, lines 22 to 23, and page 18, lines 12 to 19; and T-181, page 29, lines 3 to 8, page 32, lines 8 to 21, and page 33, line 19 to page 34, line 2.
[1382] **P47**: T-177, page 12, lines 18 to 21, page 16, lines 1 to 18, and page 22, lines 17 to 18; and T-178, page 16, line 24 to page 17, line 2.
[1383] **P47**: T-176, page 34, lines 17 to 25; T-177, page 15, line 25 to page 16, line 5, page 21, lines 24 to 25; T-181, page 11, lines 8 to 10.

Lingala and were armed,[1385] brought eight women to the quay and then onto the deck of a ferry.[1386] The women were "terrorised", injured, frightened, and some were naked.[1387] The soldiers beat, kicked, and, after they fell down, undressed the women.[1388] While holding weapons, the soldiers took turns penetrating the women's vaginas with their penises.[1389] After the incident, P47 talked to the women, who were Central Africans from Boy-Rabé and PK12.[1390]

482. The Defence challenges the reliability of P47's account, claiming that it is incapable of belief because of, *inter alia*, inconsistencies in his testimony.[1391] The Chamber recalls that it has already dismissed the Defence's general allegations concerning the credibility of P47, finding that they do not raise any significant doubts.[1392] However, the Chamber has also acknowledged that P47's evidence was at times confusing on certain discrete issues.

483. In relation to the first incident, the Defence cites an inconsistency as to the time of day, comparing P47's testimony that the first incident occurred at 17.30 and his prior statement that it occurred at 19.00.[1393] Considering that P47 consistently testified that the first incident occurred between 15.00 and 19.00,[1394] the relatively limited nature of the inconsistency, the length of time that has elapsed between the events and testimony, the traumatic circumstances, P47's demeanour when testifying about this incident, and his otherwise consistent description thereof, the Chamber finds that the inconsistency identified by the Defence as to the timing of the first incident does not undermine the reliability

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[1384] **P47**: T-177, page 12, lines 22 to 23, page 16, line 18, page 18, lines 5 to 7, page 21, line 3, page 23, line 6; and T-180, page 36, lines 5 to 7 and 23 to 24; and T-181, page 29, lines 19 to 20.
[1385] **P47**: T-177, page 16, lines 24 to 25, page 17, lines 12 to 13, and page 25, lines 9 to 10.
[1386] **P47**: T-177, page 12, lines 9 to 22, and page 23, lines 6 to 7; T-180, page 36, lines 5 to 7 and 23 to 24; and T-181, page 29, lines 19 to 20.
[1387] **P47**: T-177, page 12, line 13 to page 22, line 16.
[1388] **P47**: T-177, page 13, lines 3 to 9, page 22, lines 11 to 12, and page 23, lines 8 to 23.
[1389] **P47**: T-177, page 13, lines 10 to 16, page 23, lines 13 to 25, page 24, lines 2 to 6, and page 25, lines 11 to 16.
[1390] **P47**: T-177, page 22, line 23 and page 25, line 22 to page 26, line 3.
[1391] Defence Closing Brief, para. 184.
[1392] *See* Section IV(E)(7)(a)(iv).
[1393] Defence Closing Brief, para. 184, *citing* **P47**: T-181, page 29, line 21 to page 32, line 5.
[1394] **P47**: T-177, page 21, lines 24 to 25.

of P47's account. The Chamber therefore considers that P47's account on the first incident is reliable. In light of the above, the Chamber finds that, at the end of October or beginning of November 2002, on a ferry docked at the Port Beach naval base in Bangui, perpetrators, by force, invaded the bodies of eight women from Boy-Rabé and PK12 by penetrating their vaginas with their penises.

484. In relation to the alleged second and third incidents, the testimony as elicited is confusing and inconsistent as to the number of perpetrators and victims, whether the MLC soldiers killed a woman during the second incident, and whether there even was a third incident.[1395] The circumstances of the second incident also appear to be confused with the first incident,[1396] while details relating to third incident are also described as being part of the second incident.[1397] Further, P47 repeatedly acknowledged his inability to consistently describe the second and third incidents, including as to whether or not the third incident occurred.[1398] In such circumstances, the Chamber is unable to rely on the portions of P47's testimony relating to the alleged second and third incidents of rape. Absent any other evidence of these incidents, the Chamber is unable to enter any finding in relation thereto.

### 4. PK12

485. On 30 or 31 October 2002, having passed through the northern neighbourhoods of Bangui,[1399] the MLC advanced to PK12.[1400] By this time, aware of the

[1395] *See*, *for example*, **P47**: T-178, page 10, lines 16 to 19, and page 15, line 25 to page 16, line 3; and T-181, page 32, line 6 to page 34, line 2.
[1396] **P47**: T-177, page 33, line 13 to page 34, line 3.
[1397] **P47**: T-181, page 32, line 14 to page 33, line 18.
[1398] **P47**: T-177, page 31, line 25 to page 32, line 2; T-178, page 12, lines 18 to 23; and T-181, page 23, line 12 to page 34, line 2.
[1399] **P23**: T-51, page 15, lines 9 to 11, testifying that the MLC took over a gendarmerie near PK3; **P22**: T-40, page 18, lines 5 to 22; and **P63**: T-108, page 50, lines 6 to 11. *See also* para. 460.
[1400] **P38**: T-33, page 20, lines 2 to 7; and T-37, page 9, lines 3 to 21; **P110**: T-126, page 19, lines 7 to 22, and page 20, line 24 to page 21, line 1; **D19**: T-285, page 5, lines 14 to 19, page 6, lines 4 to 5, and page 42, lines 14 to 16; and T-287, page 9, lines 3 to 6, page 10, lines 14 to 19, and page 11, lines 1 to 6; **P178**: T-150, page 23, line 7 to page 28, line 1, page 32, line 25 to page 34, line 11, and page 36, lines 5 to 9; T-152, page 49, lines 14 to 21; T-156, page 7, lines 15 to 21, page 10, line 11 to page 12, line 25, and page 17, lines 6 to 9; **CHM1**: T-354, page 41, line 25 to page 42, line 11; and T-357, page 51, lines 14 to 25; and **P79**: T-77, page 5, line 13 to page 8, line 11. Some witnesses testified that the MLC arrived in PK12 in November 2002; however, this

imminent arrival of the well-armed MLC troops, General Bozizé's rebels had already retreated.[1401] The MLC treated the entire PK12 area as their base,[1402] setting up several camps,[1403] occupying homes,[1404] and establishing a base at the Bégoua School.[1405] The MLC maintained a (sometimes limited or transitory) presence in PK12 until the MLC withdrew from the CAR.[1406] Other forces aligned with President Patassé were close to, but not based in, PK12.[1407]

486. There is reliable evidence from various sources, including testimony, as corroborated by media articles, NGO reports, and the *procès verbaux d'audition*

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evidence is general or uncertain and does not undermine other specific, reliable, and corroborated evidence dating the MLC arrival in PK12 to the end of October 2002. *See* **P108**: T-132, page 19, lines 4 to 18, and page 22, lines 4 to 11; and T-135, page 12, line 23 to page 13, line 4; **P23**: T-53, page 27, lines 7 to 10, and page 35, lines 1 to 6; and **P69**: T-192, page 20, lines 3 to 14.

[1401] **P38**: T-33, page 23, lines 15 to 22; **P31**: T-182, page 44, lines 2 to 5; and T-183, page 8, lines 14 to 17; **P79**: T-77, page 5, line 11 to page 6, line 4, page 7, lines 2 to 14, and page 8, line 11; T-78, page 40, line 23 to page 41, line 9, and page 44, line 19; **P112**: T-130, page 11, lines 2 to 16; and **P80**: T-61, page 17, lines 14 to 20. *See also* **EVD-T-OTP-00347/CAR-OTP-0037-0092**, at 0097. *See also* **P209**: T-121, page 23, line 7, and page 34, line 18 to page 36, line 18; **P87**: T-44, page 13, lines 3 to 4, and page 17, lines 7 to 10; T-45, page 3, line 25 to page 4, line 6; and T-46, page 20, lines 17 to 18; **D36**: T-338, page 11, line 22 to page 12, line 3, page 18, line 20 to page 19, line 6, and page 20, line 11 to page 21, line 6; and **P23**: T-51, page 8, line 25 to page 9, line 3.

[1402] **P42**: T-63, page 63, lines 14 to 16; and T-64, page 6, line 18 to page 7, line 4 and page 11, lines 7 to 16; **P73**: T-70, page 18, lines 6 to 14, and page 22, line 16 to page 23, line 8; **P22**: T-40, page 18, lines 5 to 18; and **P69**: T-193, page 28, lines 11 to 13, and page 35, line 10; and **P112**: T-131, page 8, lines 20 to 24.

[1403] **P151**: T-175, page 24, lines 8 to 22; **P38**: T-33, page 25, line 7 to page 26, line 3, page 27, lines 9 to 19, and page 39, lines 2 to 19; **P42**: T-64, page 4, line 20 to page 9, line 25; T-68, page 8, line 12 to page 11, line 1, and page 28, lines 8 to 20; and T-69, page 27, line 17 to page 28, line 10; **P79**: T-77, page 8, lines 9 to 17; **P31**: T-183, page 9, line 11 to page 10, line 2; **EVD-T-OTP-00596/CAR-ICC-0001-0001**; **EVD-T-D04-00001/CAR-ICC-0001-0002**; **EVD-T-OTP-00601/CAR-ICC-0001-0009**; and **P6**: T-96, page 21, line 8 to page 22, line 1.

[1404] **P73**: T-70, page 23, lines 2 to 19; and T-73, page 43, lines 5 to 14; **P69**: T-192, page 29, line 18 to page 30, line 17; **P151**: T-172, page 25, lines 15 to 16, and page 48, line 25 to page 49, line 4; and T-173, page 5, lines 23 to 25; **P42**: T-63, page 63, lines 14 to 16; and T-64, page 6, line 18 to page 7, line 2, and page 11, lines 7 to 16; **P169**: T-138, page 45, lines 8 to 14; **P31**: T-183, page 10, lines 4 to 14; and **P6**: T-96, page 22, lines 5 to 6.

[1405] **P73**: T-70, page 28, lines 12 to 18; and T-73, page 43, lines 5 to 14; **P63**: T-108, page 50, lines 21 to 22; **P69**: T-192, page 29, lines 7 to 17; and **P6**: T-94, page 28, lines 11 to 13; and T-96, page 22, lines 2 to 6.

[1406] **P38**: T-33, page 23, line 23 to page 24, line 1; and **P69**: T-193, page 28, lines 7 to 20, page 53, lines 13 to 16, and page 58, lines 4 to 7: P69 and P38 testified that MLC soldiers remained in PK12 until they withdrew from the CAR on 15 March 2003; **P31**: T-183, page 10, line 14 to page 11, line 5, and page 20, line 22 to page 21, line 10, testifying that after the launch of the offensive pushing into the CAR, some MLC soldiers remained behind in PK12 while others continued on the offensive; **P110**: T-128, page 47, lines 12 to 13; **P108**: T-132, page 29, lines 12 to 16 and 24 to page 30, line 4, page 37, lines 10 to 13, and page 39, line 23 to page 40, line 20; **P63**: T-109, page 8, line 23 to page 9, line 2, testifying that the MLC stayed in PK12 for at least two or three weeks and left the neighbourhood gradually; **P178**: T-150, page 35, line 17 to page 36, line 11; T-151, page 55, lines 13 to 22; and T-154, page 5, lines 6 to 13, testifying that all the top MLC leaders – Colonel Moustapha, René, Kamisi, Yves, Coup-par-Coup, Sengue, and others – were together in PK12 until some left on 6 December 2002; and **P42**: T-64, page 14, lines 1 to 10. *See also* **EVD-T-OTP-00759/CAR-OTP-0020-0263_R02**, at 0269; and **EVD-T-OTP-00757/CAR-OTP-0020-0239_R02**, at 0257. For the date of withdrawal, *see* Section V(C)(13).

[1407] **P151**: T-175, page 12, lines 6 to 24; **D65**: T-247, page 27, line 19 to page 28, line 17, testifying that Colonel Moustapha's deputy was present at the checkpoint at PK12, but there were no FACA soldiers; and **P31**: T-183, page 11, lines 10 to 18; and T-183, page 11, line 19 to page 12, line 22, testifying that the FACA troops were situated at PK11 before the PK12 barrier, and Mr Miskine's troops were moving around the PK13 area.

*de victime* submitted to the Bangui Court of Appeals, that MLC soldiers occupied houses and committed "numerous" and "continuous" acts of pillaging, rape, and murder against civilians in PK12.[1408] Looted items were stored at MLC bases, including at Bégoua School.[1409] School classrooms became storerooms,[1410] and the houses occupied by commanders, including Colonel Moustapha, were converted into warehouses.[1411] FACA Colonel Thierry Lengbe (P31) testified that there were so many complaints about pillaging that Captain René Abongo, a MLC liaison officer,[1412] had to turn off his phone.[1413]

### a) Events at P23's compound

487. In early November 2002,[1414] when the MLC was the only armed group in PK12,[1415] P23 went to speak to some soldiers, having heard gunfire.[1416] He

[1408] **P73**: T-70, page 17, lines 2 to 3, page 18, lines 8 to 14, page 19, lines 6 to 9, page 23, lines 9 to 19, page 31, line 4 to page 32, line 9; and T-72, page 7, lines 11 to 15; **P42**: T-64, page 10, line 23 to page 11, line 6; T-65, page 33, line 20 to page 34, line 7; and T-68, page 45, line 16 to page 46, line 4; **P119**: T-83, page 10, line 22 to page 11, line 8; T-84, page 17, line 8 to page 18, line 1; **P38**: T-33, page 21, lines 6 to 18, page 26, line 23 to page 27, line 8, page 50, line 25 to page 51, line 2, page 51, line 5 to page 25, line 5, page 55, lines 6 to 10; T-34, page 10, lines 20 to 24, page 11, line 24 to page 12, line 5, and page 13, lines 2 to 11; T-36, page 29, lines 2 to 9, and page 32, lines 18 to 23; and T-37, page 17, lines 7 to 24, page 32, lines 14 to 16; **P112**: T-129, page 29, line 23 to page 30, line 3; **P178**: T-150, page 62, line 12 to page 63, line 11; **P69**: T-192, page 29, line 18 to page 30, line 7; **P23**: T-52, page 23, line 17 to page 24, line 1; and T-54, page 15, line 3 to page 16, line 8; **EVD-T-OTP-00142** to **EVD-T-OTP-00252** (**CAR-OTP-0001-0159** to **CAR-OTP-0001-0546**) and **EVD-T-OTP-00254** to **EVD-T-OTP-00344** (**CAR-OTP-0002-0002** to **CAR-OTP-0002-0137**); and **EVD-T-OTP-00804/CAR-OTP-0042-0246**. News reports also corroborate other evidence of the commission of crimes in PK12/PK13. *See* **EVD-T-OTP-00846/CAR-OTP-0004-0874**; **EVD-T-OTP-00399/CAR-OTP-0004-0343**, at 0344; **EVD-T-OTP-00409/CAR-OTP-0004-0881**, at 0892, 0895 to 0902, and 0943; **EVD-T-OTP-00427/CAR-OTP-0008-0413**; **EVD-T-OTP-00442/CAR-OTP-0011-0503**, at 0507, 0510 to 0512, and 0516; **EVD-T-OTP-00446/CAR-OTP-0013-0082**, at 0082 to 0089; **EVD-T-OTP-00849/CAR-OTP-0013-0320**, at 0321 to 0328; **EVD-T-OTP-00576/CAR-OTP-0031-0099**; **EVD-T-CHM-00040/CAR-OTP-0036-0041**, at 0043 to 0045; **EVD-T-OTP-00854/CAR-OTP-0013-0113**; **EVD-T-OTP-00575/CAR-OTP-0031-0093**; and **EVD-T-CHM-00019/CAR-OTP-0056-0278**, at 0280. *See also* Sections V(C)(14) and V(D)(1).

[1409] **P73**: T-70, page 28, lines 12 to 14; and T-73, page 43, lines 5 to 14: **P87**: T-44, page 26, line 25 to page 27, line 3; and T-47, page 5, lines 11 to 18; **P38**: T-34, page 41, line 16 to page 42, line 15; **P23**: T-52, page 9, lines 12 to 16; **P42**: T-65, page 37, line 25 to page 38, line 3, testifying that pillaged items were also stored behind the Bégoua Church in PK12; and **P69**: T-192, page 29, lines 5 to 17; T-193, page 51, lines 20 to 21; T-195, page 32, lines 14 to 19; and T-196, page 22, lines 12 to 22, and page 27, line 22 to page 28, line 2, testifying that the Bégoua School and the trenches were the MLC's base in PK12, and that the soldiers put pillaged foam mattresses in the trenches they had dug towards PK13.

[1410] **P73**: T-71, page 51, lines 4 to 9, and page 52, lines 8 to 19.

[1411] **P38**: T-33, page 38, line 22 to page 39, line 1; and T-34, page 42, lines 10 to 15, and page 43, lines 4 to 12; and **P73**: T-71, page 51, lines 9 to 13. *See also* **EVD-T-OTP-00596/CAR-ICC-0001-0001**.

[1412] *See* Section V(B)(2), para. 410.

[1413] **P31**: T-183, page 18, line 9.

[1414] **P23**: T-51, page 9, lines 9 to 16; T-52, page 39, lines 2 to 10; and T-53, page 27, line 9 to page 28, line 3, page 31, lines 5 to 7, page 32, lines 6 to 25, and page 35, lines 9 to 11, testifying that the attack occurred on

sought to explain, with the help of a French-speaker, that there were no rebels in PK12.[1417] The soldiers wore uniforms like those of the CAR military and spoke Lingala.[1418] They said, "[w]ho are you to intervene?" and ordered him to lie down; when he refused, they told him he had to be "punished" for being a rebel.[1419]

488. Eight soldiers then entered P23's compound armed with guns and threatened his family.[1420] Three of them proceeded to assault his wife, P80, in front of her children.[1421] One soldier pushed her over and one slapped her in the face.[1422] One gestured and said, in Lingala, with French words interspersed, that if she resisted he would "sleep with her 50 times without stopping".[1423] While holding P80 at gunpoint, all three soldiers penetrated her vagina with their penises.[1424] In light of the above, the Chamber finds that, in early November 2002, in P23's compound in PK12, three soldiers, by force, invaded P80's body by penetrating her vagina with their penises. Following the events, P80 had physical injuries to

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either 8 or 9 November 2002, acknowledging that he does not remember the dates well, but consistently testifying that it occurred the day after the MLC's arrival in PK12; and **P80**: T-61, page 12, lines 1 to 3; and T-62, page 21, line 21 to page 23, line 9, testifying that the attack occurred on 17 November 2002, on the same day that the MLC arrived in PK12, but acknowledging that she cannot remember the exact dates. *See also* para. 485.

[1415] **P23**: T-51, page 9, lines 4 to 9 and 15 to 16, page 25, lines 17 to 24; and T-53, page 27, line 5 to page 28, line 5, page 31, lines 13 to 16 and line 21 and page 32, lines 6 to 9, testifying that it was the day after the "Banyamulengués" arrived, they were from "the other side of the river", and their chief was "Jean-Pierre Bemba"; and **P81**: T-55, page 5, lines 13 to 23; page 25, lines 16 to 19. The MLC arrived on 30 or 31 October 2002. *See* para. 485.

[1416] **P23**: T-51, page 30, lines 11 to 17.

[1417] **P23**: T-51, page 30, lines 11 to 22.

[1418] **P23**: T-51, page 7, lines 11 to 12 and 25 to page 8, line 2, and page 11, lines 13 to 14, page 14, lines 1 to 17 and page 15, lines 1 to 8; and T-52, page 12, lines 5 to 11; page 47, line 8 to page 48, line 10; **P82**: T-58, page 29, line 23 to page 30, line 16 and lines 20 to 25; and T-59, page 24, lines 9 to 16; page 25, lines 3 to 17.

[1419] **P23**: T-51, page 30, lines 23 to page 32, line 10; and T-52, page 37, line 25 to page 38, line 1.

[1420] **P23**: T-51, page 36, lines 23 to 25; T-52, page 37, line 25 to page 38, line 1; **P80**: T-61, page 9, lines 2 to 3 and 11 to 13, page 12, line 18 to page 13, line 2 and 8 to 11, page 14, lines 1 to 12, and page 16, line 14. *See also* **P82**: T-60, page 7, lines 2 to 9, identifying the points where the soldiers entered the house; and **EVD-T-OTP-00135/CAR-OTP-0028-0040**.

[1421] **P80**: T-61, page 6, lines 8 to 10, page 8, lines 1 to 11, and page 31, lines 18 to 21; and T-62, page 28, line 19 to page 30, line 3; **P23**: T-51, page 39, line 19 to page 40, line 5; **P81**: T-55, page 34, lines 10 to 12; and **P82**: T-58, page 25, lines 8 to 9, and T-60, page 5, lines 4 to 13 and page 6, lines 15 to 18.

[1422] **P80**: T-61, page 6, line 15, page 8, line 5 and page 14, line 7 and 15 to 17; and T-63, page 31, lines 22 to 23.

[1423] **P80**: T-61, page 9, lines 1 to 6, and page 14, lines 1 to 4 and 22 to 24; and T-62, page 33, lines 4 to 6, and page 34, line 25 to page 36, line 1, testifying that she understood the soldier because she knows some French and was able to recognise Lingala because some people in the neighbourhood spoke it.

[1424] **P80**: T-61, page 6, line 15 to page 8, line 11, and page 12, lines 13 to 17.

her vagina, back, pelvis, kidneys, and eyes, and she was socially stigmatised, as people pointed and made fun of her.[1425]

489. Later that same day,[1426] one of the soldiers seized P82, P23's granddaughter who was aged between 10 and 13 years old,[1427] and took her outside,[1428] where soldiers hit her legs and knees with batons, and forced her onto the ground, before at least two of them[1429] took turns penetrating her vagina with their penises.[1430] Following the event, P82 had physical injuries to her vagina, suffered pain, and was socially excluded by other girls of her age.[1431]

490. The Chamber notes that there are inconsistencies as to P82's exact age, the timing of the events, and the number of perpetrators.[1432] However, noting her demeanour, the lapse of time between the events and her testimony, her young age at the time of the events, the traumatic nature of the events and the fact that her account is corroborated by other members of her family and a neighbour,[1433] the Chamber does not consider these inconsistencies to undermine her account, which it considers to be generally reliable. In light of the above, the Chamber

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[1425] **P80**: T-61, page 8, lines 11 to 16, and page 25, line 24 to page 26, line 3; and T-63, page 31, lines 18 to 25, and page 32, lines 3 to page 34, line 5.

[1426] **P23**: T-51, page 9, lines 4 to 7 and 15 to 16, page 25, lines 17 to 24; and T-53, page 27, line 5 to page 28, line 5, and page 31, lines 13 to 16; **P80**: T-61, page 9, lines 2 to 3 and 11 to 13, page 12, line 18 to page 13, line 2 and 8 to 11, page 14, lines 1 to 12, and page 16, line 14; **P81**: T-55, page 14, lines 17 to 19; and **P82**: T-58, page 18, lines 1 and 20 to 24, page 20, lines 1 to 2, and page 43, lines 11 to 20; and T-60, page 5, lines 1 to 3 and 19 to 22, and page 12, line 18: P23, P80, P81 and P82 all testifying that the rape occurred on the same day as the rapes of P23, P80 and P81.

[1427] **P82**: T-58, page 13, lines 1 to 11, page 18, line 12, and page 26, lines 13 to 19, testifying that she was a 12 year old minor at the time of the event. Her young age is corroborated by other members of her family, albeit giving her precise age as between 10 to 13 years.

[1428] **P82**: T-58, page 18, lines 1 and 20 to 24, page 20, lines 1 to 2, and page 43, lines 11 to 20; and T-60, page 5, lines 1 to 3 and 19 to 22, and page 12, line 18, testifying that she cried out, which alerted her grand-father. P82 also refers to her grandfather as "father". *See also* **EVD-T-OTP-00135/CAR-OTP-0028-0040**.

[1429] **P82**: T-58, page 14, line 23, testifying that "[t]here were three of them on me". *See also* **P82**: T-58, page 17, line 16 to page 18, line 10 and 22 to page 19, lines 1 to 10, and page 22, lines 10 to 11, testifying that there were "two" perpetrators.

[1430] **P82**: T-58, page 14, lines 23 to 24, page 15, line 12 to page 16, line 5, page 17, line 22, page 18, lines 1 to 7, page 19, lines 2 to 10, page 21, lines 13 to 16, and page 22, line 10; and T-60, page 4, line 25 to page 5, line 3, and page 12, line 18; **P69**: T-193, page 43, lines 6 to 19; and T-194, page 46, lines 6 to page 47, line 15, page 48, lines 5 to 9 and page 50, line 21 to page 51, line 7; and **P23**: T-52, page 34, line 7.

[1431] **P82**: T-58, page 22, lines 10 to 11, page 27, lines 1 to 2, and page 29, lines 12 to 16.

[1432] **P82**: T-58, page 13, line 1 to page 22, line 11.

[1433] **P23**: T-51, page 23, lines 17 to 18 and 21, and page 43, lines 4 to 14; T-52, page 34, line 7; and T-54, page 8, line 24 to page 9, line 1; **P80**: T-61, page 9, lines 15 to 22; and **P69**: 193, page 43, lines 6 to 19; and T-194, page 46, line 6 to page 47, line 15, page 48, lines 5 to 9, and page 50, line 21 to page 51, line 7.

finds that, at the beginning of November 2002, in P23's compound in PK12, at least two soldiers, by force, invaded P82's body by penetrating her vagina with their penises.

491. P23's daughter, P81, was also allegedly raped on the same day, in a different house in the same compound.[1434] A group of five soldiers armed with Kalashnikovs,[1435] came looking "for women".[1436] P81's husband, children, brother, and mother were in the house.[1437] One soldier threatened P81 with his weapon, forced her to undress, and was the first to "sleep with" her.[1438] She was vaginally penetrated by four men.[1439] The fifth soldier refrained from raping her because she was bleeding.[1440]

492. The Chamber considers that the inconsistences in P81's testimony, for example, regarding her age at the time of the events,[1441] can be explained by the lapse of time between the events and the testimony, the traumatic circumstances, and her difficulties discussing such personal scenes in court. Accordingly, such inconsistencies do not undermine P81's credibility. In light of the above, the Chamber finds that, in early November 2002, in P23's compound in PK12, four soldiers, by force, invaded P81's body by penetrating her vagina with their penises. After, P81 had abdominal pains, problems conceiving, and was socially stigmatised, being mocked and called a "Banyamulengué wife".[1442]

493. In addition to P81, two of P23's other daughters were also victimised during the attack on the family's compound. P23 testified that they were 14 and 16 years

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[1434] **P81**: T-55, page 14, lines 17 to 19; **P23**: T-51, page 40, lines 12 to 14, page 43, lines 24 to 25, and page 44, lines 8 to 15; T-52, page 34, line 7, and page 39, lines 3 to 8; T-53, page 27, lines 14 to 21; and T-54, page 8, line 24 to page 9, line 1; **P69**: T-193, page 43, lines 6 to 19; and T-194, page 49, lines 6 to 12, and page 50, line 21 to page 51, line 7; **P42**: T-66, page 32, lines 18 to 19; and **EVD-T-D04-00010/CAR-ICC-0001-0010**.
[1435] **P81**: T-55, page 9, line 25 to page 10, line 10.
[1436] **P81**: T-55, page 6, lines 11 to 16, and page 10, lines 15 to 16; and T-56, page 29, line 18 to page 30, line 3, page 33, lines 11 to 12, and page 44, lines 12 to 24.
[1437] **P81**: T-55, page 14, lines 20 to 23.
[1438] **P81**: T-55, page 10, line 18 to page 11, line 6.
[1439] **P81**: T-55, page 9, line 25 to page 12, line 12.
[1440] **P81**: T-55, page 6, lines 7 to 10, and page 11, lines 11 to 12.
[1441] **P81**: T-55, page 14, lines 17 to 19, and page 36, lines 3 to 7; and T-56, page 12, line 24 to page 14, line 4.
[1442] **P81**: T-55, page 31, lines 8 to 18, and page 32, lines 7 to 22; and T-57, page 13, lines 16 to page 14, line 10.

old at the time.[1443] The "Banyamulengués" penetrated their vaginas with their penises.[1444] Although this testimony is lacking in certain details, considering that P23's testimony concerning the alleged rape of his daughters is corroborated by P80, P81, and P82, and the circumstances of the attack on the family compound as a whole, the Chamber considers that it is reliable. The Chamber therefore finds that, in early November 2002, in P23's compound in PK12, one or more perpetrators, by force, invaded the bodies of two of P23's daughters, aged 14 and 16 years, by penetrating their vaginas with their penises.

494. The same day that his wife, daughters, and granddaughter were attacked, three armed soldiers forcefully penetrated P23's anus with their penises in his compound, while family members and his neighbour looked on.[1445] In light of the above, the Chamber finds that, in early November 2002, in P23's compound in PK12, three perpetrators, by force, invaded P23's body by penetrating his anus with their penises. After the events, P23 could not walk, as his anus was swollen and he was treated only with traditional leaves.[1446] People in his community disrespected him.[1447] He considered himself a "dead man".[1448]

495. Armed soldiers also forcefully took property from P23's compound.[1449] From the house of P23, P80, and P82, they took a generator, electric coils, money, beds, foam mattresses, kitchen utensils, furniture, and suitcases.[1450] From P81's

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[1443] **P23**: T-54, page 8, line 21 to page 10, line 16.
[1444] **P23**: T-51, page 43, line 7 to page 44, line 15; and T-52, page 44, lines 8 to 14; **P80**: T-61, page 9, lines 18 to 22, page 10, lines 21 to 22, page 11, line 6 to page 12, line 9, page 13, lines 8 to 11, page 28, lines 3 to 7 and page 29, lines 10 to 12; **P81**: T-55, page 13, line 21 to page 14, line 9, and page 34, lines 13 to 15; and T-57, page 24, line 2 to page 26, line 3; and **P82**: T-58, page 19, line 20 to page 20, line 20; T-59, page 7, lines 4 to 8; and T-60, page 7, lines 16 to 18.
[1445] **P23**: T-51, page 12, lines 15 to 18, page 35, lines 4 to 11, page 36, lines 4 to 22, and page 38, lines 1 to 2 and lines 16 to 18; and T-52, page 38, lines 1 to 2.
[1446] **P23**: T-51, page 35, line 12; T-52, page 33, lines 15 to 17; and **EVD-T-OTP-00015/CAR-OTP-0008-0050_R03**, at 0072.
[1447] **P23**: T-51, page 31, lines 17 to 18, page 32, lines 3 to 11, page 35, lines 4 to 13, page 36, lines 11 to 12 and page 48, line 2; and T-52, page 34, lines 20 to 22, page 35, lines 2 to 6, and page 44, lines 4 and 5.
[1448] **P23**: T-51, page 31, lines 17 to 18, and page 34, line 24.
[1449] **P23**: T-52, page 5, lines 11 to 25, and page 6, lines 15 to 16; **P81**: T-55, page 9, lines 1 to 4; and **P82**: T-58, page 24, lines 4 to 5. *See also* **P80**: T-61, page 6, lines 15 to 16 and page 30, lines 3 to 5.
[1450] **P23**: T-51, page 49, line 22 to page 50, line 3; and T-52, page 5, line 1 to page 6, line 21, and page 8, lines 8 to 17; **P80**: T-61, page 22, lines 17 to 21; and **P81**: T-55, page 6, lines 6 to 24, and page 7, lines 10 to 11.

house, they took a mattress, suitcases, clothes, and bags.[1451] These items were not returned.[1452] In light of the above, the Chamber finds that, in early November 2002, in P23's compound in PK12, perpetrators appropriated the items identified above, without the owners' consent.

**b) Events at P69's house**

496. The day after their arrival in PK12, when the MLC was the only armed group in and around PK12, two armed soldiers, speaking Lingala and wearing army uniforms, raided P69's house.[1453] The "Banyamulengués" demanded money from his sister, who had a large amount of money tied around her waist.[1454] When she refused, the MLC soldiers threw her to the ground and took the money.[1455] She continued to resist, so one shot her in the head, killing her.[1456] The witness "saw the brain of [his] sister […] as if an animal's skull had been hit".[1457]

497. After his sister's death, P69 fled for approximately three weeks.[1458] Upon his return, he found items to be missing from his home, including a cassava mill, bicycle, motorcycle, furniture, and 700,000 CFA francs.[1459] He believed that MLC soldiers pillaged these items because the local residents had fled and, in their absence, the MLC, based at Bégoua School, broke into all the houses.[1460]

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[1451] **P81**: T-55, page 6, lines 12 to 24; and T-56, page 30, line 10 to page 31, line 4 and page 32, lines 6 to 10.
[1452] **P80**: T-61, page 26, lines 18 to 19, and page 25, lines 21 to 23; **P23**: T-52, page 7, lines 18 to 20; and **P81**: T-55, page 32, line 23 to page 33, line 8; and T-57, page 28, lines 14 to 23.
[1453] **P69**: T-192, page 14, lines 15 to 24, page 16, line 7, page 20, lines 8 to 12, page 22, line 24, page 25, lines 11 to 19, page 32, lines 11 to 13 and 21 to 23, and page 35, lines 13 to 19.
[1454] **P69**: T-192, page 31, lines 11 to 19, and page 35, lines 21 to 24, and page 37, lines 13 to 16.
[1455] **P69**: T-192, page 31, lines 13 to 16, page 36, lines 3 to 7; and T-196, page 24, lines 7 to 12.
[1456] **P69**: T-192, page 16, lines 10 to 13, page 31, lines 13 to 20, and page 32, lines 8 to 14; T-194, page 45, lines 10 to 13; and T-196, page 11, lines 14 to 16, and page 24, lines 12 to 13.
[1457] **P69**: T-192, page 16, lines 13 to 14.
[1458] **P69**: T-192, page 17, lines 4 to 10; page 31, lines 8 to 11, page 38, lines 8 to 9, page 51, lines 11 to 15, and page 51, line 25 to page 52, line 6; T-193, page 57, lines 8 to 10; T-195, page 12, lines 14 to 15; and T-196, page 30, lines 14 to page 31, line 2.
[1459] **P69**: T-193, page 14, line 19 to page 15, line 2.
[1460] **P69**: T-193, page 15, line 12 to page 16, line 4.

498. Some days later, six armed soldiers entered P69's compound.[1461] At least four of them[1462] dragged his wife from the kitchen, threw her down, and "slept with" her.[1463] P69 later saw semen leaking out of her vagina and anus; his wife said that the soldiers had penetrated her.[1464] When P69 protested, two soldiers took him into a bedroom,[1465] and, holding him at gunpoint, penetrated his anus and mouth.[1466] Thereafter, P69 suffered severe damage to his anus, his wife had to have an operation, and his family was "completely destroyed".[1467]

499. The Chamber notes that the evidence elicited by the Prosecution in relation to the attacks on P69's house is inconsistent on various matters, including whether his wife was inside or outside the house at the time of the events,[1468] the number of soldiers who allegedly raped his wife,[1469] his account of his own alleged rape,[1470] the language spoken by one of the "Banyamulengués" who killed his sister,[1471] and the date of her death.[1472]

500. P69 explained that there might have been mistakes when his prior statements on these points were recorded.[1473] He testified that he was unable to read or write, and was therefore unable to "pick up" or correct these inconsistencies.[1474] When challenged, P69 consistently maintained the version of events he gave to

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[1461] **P69**: T-192, page 47, line 12, page 52, lines 14 to 20, and page 53, lines 6 to 13.
[1462] **P69**: T-192, page 47, line 12; and T-193, page 10, line 23 to page 12, line 18.
[1463] **P69**: T-192, page 47, line 1 to 12; and T-193, page 11, line 6 to 7, and page 12, line 5 to 18.
[1464] **P69**: T-192, page 48, lines 13 to 16, page 54, line 24 to page 57, line 23.
[1465] **P69**: T-192, page 47, lines 13 to 21; and T-193, page 11, lines 6 to 25 and page 12, lines 3 to 18.
[1466] **P69**: T-192, page 47, lines 17 to 25, and page 54, line 23 to page 55, line 1; T-193, page 11, lines 6 to 19, page 12, lines 17 to 18, page 19, line 25 to page 20, line 14, page 23, lines 9 to 18, and page 24, lines 5 to 25; **EVD-T-CHM-00008/CAR-OTP-0035-0057**; **EVD-T-CHM-00009/CAR-OTP-0035-0058**; and **EVD-T-CHM-00010/CAR-OTP-0035-0059**.
[1467] **P69**: T-192, page 48, lines 5 to 12, and page 49, lines 3 to 6.
[1468] **P69**: T-192, page 51, lines 18 to 21; T-193, page 11, lines 24 to 25, and page 17, lines 4 to 5; and T-195, page 42, lines 15 to 16.
[1469] *Compare* **P69**: T-192, page 47, line 12; *with* **P69**: T-193, page 10, line 23 to page 12, line 18.
[1470] **P69**: T-194, page 30, line 3 to page 33, line 19, and page 34, lines 7 to 12 and line 22; and T-195, page 49, line 6 to page 50, line 25. *See also* T-192, page 40, line 25 to page 41, line 3 and page 44, line 3 to 22; and T-196, page 13, line 24 to page 15, lines 5 to 21.
[1471] **P69**: T-192, page 25, line 9 to 19 and page 28, line 3 to 13; and T-196, page 25, lines 2 to 8.
[1472] **P69**: T-192, page 40, line 25 to page 41, line 3 and page 44, line 3 to 22; and T-196, page 13, line 24 to page 15, lines 5 to 21.
[1473] **P69**: T-192, page 44, line 3 to 22; T-195, page 47, lines 18 to 21; and T-196, page 15, line 10 to 12, and page 27, lines 1 to 5.
[1474] **P69**: T-196, page 15, lines 13 to 20.

the Chamber.[1475] In light of the lapse of time between the events and testimony, the traumatic circumstances surrounding the events, P69's demeanour, his explanations for inconsistencies, and his spontaneous responses, the Chamber considers P69's testimony concerning the events described above to be reliable.

501. In light of the above, the Chamber finds that, the day after the MLC arrived in PK12, in P69's compound, (i) a perpetrator killed P69's sister, by shooting her in the head; and (ii) perpetrators appropriated money belonging to his sister, without her consent. In relation to the events during the three weeks that P69 was absent from PK12, the Chamber finds that perpetrators appropriated the items identified above from his house, without his consent. Finally, in relation to the events at the end of November 2002, the Chamber finds that, in P69's compound in PK12, (i) perpetrators, by force, invaded the body of P69's wife by penetrating her vagina and anus with their penises; and (ii) two perpetrators, by force, invaded P69's body by penetrating his anus and mouth with their penises.

**c) Events at P108's house**

502. The day after they arrived in PK12, while Mr Flavien Mbata (P108), Senior Investigative Judge of the *Tribunal de Grande Instance* in Bangui at the time,[1476] was absent, "Banyamulengué" soldiers broke into his house and, over the course of the next months, took a variety of items.[1477] When he returned to his house, P108 heard about this incident from a neighbour and others who were present at the time of the events.[1478] The soldiers occupied the house until mid-

[1475] **P69**: T-195, page 46, line 13 to page 51, line 11; and T-196, page 12, line 17 to page 15, line 20, page 24, line 2 to page 25, line 18, page 27, lines 1 to 14, page 28, line 19 to page 29, line 15, and page 35, line 16 to page 36, line 17.
[1476] **P108**: T-132, page 11, lines 10 to 11.
[1477] **P108**: T-132, page 15, lines 15 to 16, and page 29, lines 12 to 13; and T-133, page 22, line 25 to page 23, line 3.
[1478] **P108**: T-132, page 15, lines 15 to 16, and page 29, lines 12 to 13; and T-133, page 22, line 25 to page 23, line 3.

February 2003,[1479] at which time P108 returned and found that items had been taken with an estimated value of around 20 to 30 million CFA francs.[1480] The items included clothing, a freezer, a fridge, a microwave, a coffee maker, a washing machine, dishes, a radio set, two hi-fi sets, a television, computers, his children's toys, lighting, mattresses, goods from his wife's shop, generators, and batteries.[1481] These items were never returned to him[1482] P108 also found an Information Bulletin and a Manual for Basic and Advanced Weapons Training in the house, both of which contained headings and titles referring to the MLC.[1483]

503. In light of the above, the Chamber finds that, during the MLC's presence in PK12, perpetrators appropriated the items identified above from P108's house, without his consent.

**d) Events around the houses of P110 and P112**

504. By the end of October 2002 or the beginning of November 2002,[1484] P110 and P112 saw a group of around twenty armed "Banyamulengués" come to a house in their neighbourhood, break down the front door, and take various items until the house was empty.[1485] After that, a MLC commander known as "Major"

[1479] **P108**: T-132, page 29, lines 12 to 16; and T-134, page 34, lines 1 to 3.
[1480] **P108**: T-132, page 35, lines 14 to 17; and **EVD-T-OTP-00349/CAR-OTP-0037-0126-R02**, this report is entitled "*Rapport d'occupation illégale et forcée d'une maison d'habitation, pillages, vols et destructions de biens*."
[1481] **P108**: T-132, page 34, line 6 to page 35, line 10; and T-134, page 40, line 1 to 18.
[1482] **P108**: T-132, page 39, lines 7 to 20.
[1483] **P108**: T-132, page 42, line 4 to page 44, line 6; T-134, page 32, line 17 to page 33, line 4 and lines 24 to 25, and page 34, lines 1 to 3; **EVD-T-OTP-00347/CAR-OTP-0037-0092**; and **EVD-T-OTP-00667/CAR-OTP-0037-0100**.
[1484] **P110**: T-125, page 11, lines 9 to 14, testifying that the events took place in late October; and T-126, page 19, lines 18 to 22, testifying that the events happened on 30 October; and **P112**: T-128, page 47, lines 10 to 11, testifying that the events took place in November; T-129, page 52, lines 9 to 12; T-130, page 11, lines 12 to 13 and page 12, lines 4 to 12; and T-131, page 47, line 9, referring to 1 November as the date of events, clarifying that the events happened a long time ago and that he is not sure about the exact month.
[1485] **P110**: T-125, page 10, lines 19 to 25, page 13, lines 1 to 14, page 14, lines 16 to 19, page 15, lines 15 to 24, and page 16, lines 9 to 13; T-126, page 19, lines 18 to 22; and T-127, page 5, lines 5 to 19; **and P112**: T-128 page 46, line 25 to page 47, line 11, and page 48, lines 1 to 2; T-129 page 5, line 9 to 17 to page 6, line 9, page 12, lines 1 to 14; T-130, page 12, lines 4 to 12; and T-131, page 7, line 25 to page 8, line 2, page 9, lines 11 to 16, and page 12, lines 7 to 13.

made the house his base for several months.[1486] People in the neighbourhood believed that "Major" was Mr Bemba's deputy.[1487]

505. P110 further testified that, the day after their arrival in PK12, a group of "Banyamulengués […] from Zaire", speaking Lingala[1488] shot a woman dead in the street.[1489] P110 had a direct view of the group and although it was dark, there was lighting on the street and lamps in nearby compounds.[1490] The soldiers, who were firing their weapons into the air and towards the ground,[1491] called out to a woman, telling her in Sango to come to them,[1492] but instead she turned and attempted to flee.[1493] As she ran away, gunshots were fired from amongst the group of soldiers, and she was struck by a bullet and fell down.[1494] P110 did not approach the corpse, but she heard that the body was buried the next day.[1495] In these circumstances, as P110 did not approach the body, did not enquire as to the woman's fate until the next day, and did not further explain why or how she concluded that the shots fired by the soldiers killed the woman, the Chamber is unable to conclude that the shots fired by the soldiers killed the woman.

506. "Banyamulengué" soldiers also broke into P110's house the day after their arrival in PK12.[1496] They were shooting in all directions; therefore, P110 fled with her children.[1497] Upon returning to her house,[1498] she concluded, based on

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[1486] **P110**: T-125, page 16, lines 15 to 20, and page 21, lines 10 to 14; T-126, page 51, lines 7 to 8, T-128, page 6, lines 2 to 4. *See also* **P112**: T-129, page 29, lines 3 to 9.
[1487] **P110**: T-128, page 5, lines 16 to page 7, line 1.
[1488] **P110**: T-125, page 12, lines 10 to 18.
[1489] **P110**: T-125, page 10, line 25 to page 12, line 2; and T-127, page 32, line 24 to page 35, line 14.
[1490] **P110**: T-125, page 32, lines 8 to 13 and page 34, lines 1 to 4; T-127, page 35, line 21 to page 36, line 13, and page 39, line 24 to page 41, line 9; and T-128, page 23, line 20 to page 24, line 3, and page 31, line 16 to page 32, line 4.
[1491] **P110**: T-125, page 27, lines 24 to page 28, line 14.
[1492] **P110**: T-125, page 35, lines 18 to 21, and page 50, lines 15 to page 51, line 22.
[1493] **P110**: T-125, page 34, line 24 to page 35, line 1.
[1494] **P110**: T-125, page 28, lines 10 to 17, and page 34, line 1 to page 35, line 2 and 23; T-127, page 30, lines 4 to 21, and page 31, line 11 to 14, testifying that she did not know which of the soldiers fired the gunshots, but she was clear that the shots were fired from amongst the group of soldiers.
[1495] **P110**: T-125, page 35, line 13 to 18 to page 36, line 2; T-127, page 17, lines 10 to 14, and page 26, lines 12 to 16, page 27, line 24 to page 28, line 6, and page 28, lines 19 to 22; and T-128, page 32, lines 17 to 20.
[1496] **P110**: T-125, page 23, line 6 to page 24, line 5.
[1497] **P110**: T-125, page 24, lines 6 to 11.

the fact that the same group did similar things throughout her neighbourhood, that the "Banyamulengués" had, in her absence, taken everything they could from her living room,[1499] and her father's bedroom, including many valuables and his suitcase.[1500] In light of the above, the Chamber finds that, the day after the MLC arrived in PK12, perpetrators appropriated the items identified above from P110's house, without her consent.

507. In November 2002, when P112 was absent from his house,[1501] items of an estimated value of 1.7 million CFA francs,[1502] including a radio, a mattress, clothing, a bed, a cassava mill, a sewing machine, plates, and kitchen utensils were taken from his house.[1503] On the basis of his observations of other acts in his neighbourhood, and despite the fact that he was absent when his house was broken into, he concluded that the perpetrators were soldiers of the same group breaking into other houses in PK12.[1504] In light of the above, the Chamber finds that, in November 2002, perpetrators appropriated the items identified above from P112's house, without his consent.

**e) Events at the house of P22's uncle**

508. On or around 6 or 7 November 2002,[1505] a group of more than 20[1506] "Banyamulengués" broke into P22's uncle's house, where P22 was living at the time.[1507] The soldiers had new CAR military uniforms[1508] and spoke French and

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[1498] **P110**: T-125, page 8, lines 8 to 11, page 15, line 15 to page 16, line 2, page 24, line 14 to page 25, line 3.
[1499] **P110**: T-125, page 25, lines 4 to 6.
[1500] **P110**: T-125, page 24, lines 8 to 9.
[1501] **P112**: T-131, page 46 lines 20 to 22.
[1502] **P112**: T-129, page 15, line 6 to page 17, line 4, and page 27, lines 8 to page 28, line 4; and **EVD-T-OTP-00346/CAR-OTP-0037-0132_R01**.
[1503] **P112**: T-129, page 26, line 21 to page 27, line 7.
[1504] **P112**: T-128, page 27, lines 5 to 17; T-129, page 5, line 19 to 23, page 7, line 19 to page 8, line 8, page 15, lines 3 to 15, page 18, line 25 to page 20, line 8, and page 53, lines 13 to 22; and T-130, page 13, lines 6 to 13.
[1505] **P22**: T-41, page 9, line 19 to page 10, line 3, testifying that the incident occurred one week after the MLC's arrival in PK12. The MLC arrived on 30 or 31 October 2002. *See* para. 485.
[1506] **P22**: T-41, page 7, line 2.
[1507] **P22**: T-40, page 11, lines 19 to 23, page 18, line 23 to page 19, line 6, and page 20, lines 7 to 8.
[1508] **P22**: T-41, page 16, lines 3 to 12; and page 16, line 24 to page 17, line 2.

Lingala.[1509] Six of the soldiers came to the room she was in and asked her to give them money.[1510] Holding her under gunpoint, the soldiers then pushed P22 onto the bed and tore off her undergarments.[1511] They opened her legs using their boots, and three soldiers took turns penetrating her with their penises.[1512] In light of the above, the Chamber finds that, on or around 6 or 7 November 2002, in the house of P22's uncle in PK12, three perpetrators, by force, invaded the body of P22 by penetrating her vagina with their penises. Thereafter, P22 was suicidal, reluctant to engage in any sexual relationship, and exhibited symptoms consistent with post-traumatic stress disorder ("PTSD").[1513]

509. The soldiers also took radio sets, irons, portable telephones, clothing, toiletries, and watches from P22's room.[1514] They took clothing and "anything they liked" from her bedridden uncle's room,[1515] kicking and beating her uncle when they did not find money.[1516] They also took all the food supplies and animals.[1517] The items and animals were not returned.[1518] In light of the above, the Chamber finds that, on or around 6 or 7 November 2002, perpetrators appropriated the items identified above, without consent of the owners.

**f) Events at P79's house**

510. Several days after the MLC arrived in PK12, when there was no other armed group in PK12,[1519] five armed, Lingala-speaking soldiers[1520] forcibly entered

[1509] **P22**: T-40, page 19, lines 9 to 10; T-41, page 7, lines 3 to 22, page 32, lines 2 to 9, page 33, lines 21 to 23, and page 14, line 23 to page 15, line 8 and lines 18 to 20; and T-42, page 21, lines 1 to 3. *See also* **P22**: T-41, page 7, lines 10 to 15; and T-42, page 20, lines 18 to 23, testifying that she knew some French and could recognise Lingala.
[1510] **P22**: T-40, page 19, lines 3 to 10.
[1511] **P22**: T-40, page 19, lines 11 to 14; and T-41, page 14, lines 19 to 20.
[1512] **P22**: T-40, page 19, line 15; T-41, page 13, line 24 to page 14, line 13 and page 18, lines 1 to 16; and T-42, page 13, line 21.
[1513] **P22**: T-41, page 17, lines 14 to 15, page 39, line 7, and page 42, lines 18 to 21; and T-42, page 11, lines 2 to 12; and **EVD-T-OTP-00125/CAR-OTP-0004-0316**.
[1514] **P22**: T-40, page 19, lines 17 to 18; and T-41, page 18, line 24 to page 19, line 3.
[1515] **P22**: T-40, page 21, lines 4 to 5; and T-41, page 21, line 16.
[1516] **P22**: T-40, page 20, lines 16 to 18; and T-41, page 20, lines 12 to 25.
[1517] **P22**: T-40, page 21, lines 1 to 4; and T-41, page 21, lines 3 to 20.
[1518] **P22**: T-41, page 19, lines 8 to 12.
[1519] **P79**: T-77, page 7, lines 17 to 18, and page 40, line 24 to page 41, line 2; and T-79, page 39, lines 16 to 17.

P79's house whilst she was sleeping in the living room, pulled her out of the bed, threw her on the ground, and undressed her.[1521] Two of the soldiers, forcibly penetrated her vagina with their penises, and one soldier held her at gunpoint.[1522] After, P79 developed physical and psychological symptoms, including high blood pressure, gastric problems, hypertension, and nightmares.[1523]

511. During the same attack, in another room, a soldier vaginally penetrated P79's 11-year-old daughter in the presence of other children.[1524] The children tried to cry out, but the soldiers told them, "Don't make a noise or we will shoot you".[1525] Immediately after the events, P79 saw that her daughter was bleeding from her vagina.[1526] The soldiers then proceeded to take suitcases, a refrigerator, a television, shoes, clothes, and a foam mattress[1527] from the houses of P79 and her brother.[1528]

512. In relation to P79's account, the Chamber has considered what weight to give the *procès-verbaux* purported to relate to P79 and her daughter.[1529] P79 denied the authenticity of these documents,[1530] claiming that she and her daughter did not report the alleged rapes to the authorities suggested by the documents.[1531] She explained several times that revealing a Muslim girl's alleged rape would

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[1520] **P79**: T-77, page 9, lines 4 to 5 and line 22 to page 10, line 5, page 14, lines 2 to 3, and page 16, lines 11 to 14; and T-78, page 21, lines 7 to 25, and page 46, line 7.
[1521] **P79**: T-77, page 9, lines 6 and 7 and page 10, lines 13 to 14 and 24 to 25; and T-78, page 45, lines 17 to 18, and page 46, lines 1 to 2 and 10 to 11.
[1522] **P79**: T-77, page 9, lines 7 to 9, page 10, line 18 to page 11, line 11, page 12, lines 3 to 12 and page 16; lines 17 to 19; T-78, page 45, lines 17 to 19 and page 46, lines 1 to 2; T-77, page 9, lines 7 and 8, page 10, lines 18 to 20, page 13, lines 20 to 22 and page 16, lines 11 to 14; and T-78, page 46, line 7.
[1523] **P79**: T-77, page 12, lines 5 to 12, page 19, lines 6 to 11, page 33, lines 9 to page 34, line 8, and page 34, line 23 to page 35, line 20; and T-79, page 3, lines 13 to 25, page 4, lines 22 to 24, page 5, lines 14 to 22 and page 36, line 24 to page 37, line 1.
[1524] **P79**: T-77, page 9, line 10 to 13, page 11, lines 23 to 25, page 17, line 20 to page 18, line 17, and page 34, lines 14 to 22, testifying that she saw her daughter lying on the ground, crying, with blood running down her legs from her vagina, and when P79 asked what had happened, her daughter replied that "one of those men slept with [her]".
[1525] **P79**: T-77, page 9, lines 11 to 13, and page 17, lines 17 to 19.
[1526] **P79**: T-77, page 11, lines 23 to 25, and page 17, line 20 to page 18, line 5.
[1527] **P79**: T-77, page 21, lines 2 to 9; and T-78, page 53, lines 12 to 16.
[1528] **P79**: T-77, page 21, lines 2 to 16.
[1529] *See* Section IV(E)(2).
[1530] **EVD-T-D04-00032/CAR-OTP-0003-0150**; and **EVD-T-D04-00033/CAR-OTP-0002-0298**.
[1531] **P79**: T-79, page 32, lines 18 to 22, page 34, line 11 to page 37, line 7, and page 36, lines 5 to 21.

prevent her from being able to find a husband.[1532] Further, when comparing her signature with her prior statement, P79 denied having signed the *procès verbal d'audition de victime*.[1533] Finally, the *procès verbal de constat* allegedly relating to P79's daughter does not include any specific date in the letter head and none of these documents bear signatures or other identifying information of P79 or her daughter.[1534] Accordingly, the Chamber does not accord any weight to these documents in assessing P79's testimony.

513. In light of the above, the Chamber finds that, several days after the MLC arrived in PK12, in P79's house, (i) two perpetrators, by force, invaded P79's body by penetrating her vagina with their penises; (ii) a perpetrator, by force, invaded the body of P79's daughter by penetrating her vagina; and (iii) perpetrators appropriated the items identified above, without the owners' consent.

**g) Events at P73's house and P42's compound**

514. Armed MLC soldiers regularly went to P73's house after they arrived in PK12, taking drinks, food, manioc, wood, and money from his wife's business, his wife's clothing, as well as small items from their living room, such as a wall clock[1535] and a radio.[1536] On one particular occasion, at the end of November, six soldiers "from the other side of the river", speaking Lingala and French and some in military uniforms,[1537] came to P73's house.[1538] They demanded food,

[1532] **P79**: T-77, page 18, line 23 to page 19, line 2; and T-79, page 4, lines 10 to 15, and page 5, lines 2 to 13.
[1533] **P79**: T-79, page 40, line 5 to page 41, line 14; **EVD-T-OTP-00602/CAR-ICC-0001-0011**; and **EVD-T-OTP-00248/CAR-OTP-0001-0539**.
[1534] **EVD-T-D04-00032/CAR-OTP-0003-0150**.
[1535] **P73**: T-70, page 33, line 5 to page 34, line 2, page 40, lines 2 to page 41, line 15, page 42, lines 5 to 17, page 45, lines 7 to 9, page 46, line 18, page 47, lines 2 to 3; and page 48, line 21 to page 49, line 2.
[1536] **P73**: T-70, page 35, line 20 to page 37, line 8; page 53, line 6 to page 55, line 7; and page 57, lines 6 to 17; T-73, page 19, lines 18 to 22, testifying that the MLC soldiers forced him to buy a radio for 4,000 CFA francs, but they subsequently took it, without refunding him.
[1537] **P73**: T-70, page 17, lines 20 to 22, page 22, line 24 to page 23, line 1, page 26, lines 11 to 14, page 44, lines 14 to 24; T-72, page 15, lines 15 to 17; and T-73, page 42, line 8 to page 43, line 3, testifying that only the commander spoke French and that the soldiers had mismatched "tops and bottoms" wearing tennis shoes, rangers, and berets.

which P73's wife gave them.[1539] When a soldier requested a drink, P73 told him there was no beer.[1540] The soldier then dragged P73's wife inside the house.[1541] The others pointed a weapon at P73, threatened to kill him and hit him with their rifle butts.[1542] They threw P73's wife to the ground, removed her wrap and, while P73's wife had her hands behind her back, took 30,000 CFA francs that was tied there.[1543] The soldiers wanted to go into the bedroom; when P73 intervened, they hit him.[1544] One soldier pointed his gun at P73's neck, threatening to kill him.[1545]

515. Sometime at the end of November,[1546] MLC soldiers also came to P42's house in PK12 and took supplies from his son's business without paying for them.[1547] A second time, also around the end of November, after his son asked them to pay and showed resistance,[1548] the soldiers beat him, accused him of being a rebel and took him away[1549] to the military headquarters.[1550] Other soldiers then arrived.[1551] They were armed with "AKs",[1552] wore military uniforms with no insignia, and spoke Lingala and accented French,[1553] but not Sango.[1554] The

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[1538] **P73**: T-70, page 9, lines 8 to 9 and page 35, lines 10 to 19, testifying that the night after the attack, a soldier came to P73's house and said "he could see what his companions were doing", but could not interfere because otherwise he might have been killed.
[1539] **P73**: T-70, page 33, lines 14 to 15.
[1540] **P73**: T-70, page 33, lines 18 to 20, and page 45, line 25 to page 46, line 2.
[1541] **P73**: T-70, page 33, lines 20 to 21, and page 46, lines 1 to 2; T-70- FRA, page 35, lines 17 to 18, and page 48, lines 5 to 6.
[1542] **P73**: T-70, page 33, lines 22 to 25, and page 46, lines 3 to 4.
[1543] **P73**: T-70, page 34, lines 1 to 22, and page 46, lines 6 to 9.
[1544] **P73**: T-70, page 34, lines 3 to 6, and page 46, lines 11 to 15.
[1545] **P73**: T-70, page 34, lines 11 to 19.
[1546] **P42**: T-64, page 25, line 23 to page 26, line 7; T-67, page 60, lines 3 to 4; T-68, page 38, lines 1 to 2 and page 50, lines 12 to 13; and T-69, page 48, lines 1 to 7.
[1547] **P42**: T-64, page 16, lines 7 to 16, and page 17, lines 4 to 19; and T-68, page 42, lines 13 to 18.
[1548] **P42**: T-64, page 16, lines 17 to 21, and page 26, lines 13 to 16.
[1549] **P42**: T-64, page 16, lines 22 to 24, page 17, lines 5 to 6, and page 41, lines 7 to 15; and T-69, page 21, lines 23 to 25, and page 22, lines 4 to 5.
[1550] **P42**: T-64, page 16, lines 22 to 24, page 17, lines 5 to 6, page 18, line 24 to page 20, line 20, and page 41, lines 7 to 15; and T-69, page 21, line 1 to page 22, line 5, page 24, line 18 to page 25, line 16, and page 27, line 7 to page 30, line 7.
[1551] **P42**: T-64, page 17, line 4.
[1552] **P42**: T-64, page 40, lines 14 to 19.
[1553] **P42**: T-64, page 25, lines 17 to 18, page 27, lines 12 to page 28, line 15, page 29, line 2 to page 30, line 6, page 42, line 25 to page 43, line 2, page 50, lines 6 to 20, and page 55, line 5; T-65, page 16, lines 13 to 23, page 33, line 14 to page 34, line 9 to 17; T-66, page 13, lines 8 to 9; and T-68, and page 55, lines 1 to 3.
[1554] **P42**: T-64, page 25, line 17, and page 43, lines 2 to 5; and T-65, page 33, line 19.

soldiers accused P42 of being a "rebel",[1555] and forced him and his family to lie face-down on the ground in one of the houses in the compound.[1556]

516. The soldiers took P42's 10-year-old daughter[1557] to a small shelter behind P42's house,[1558] where he heard her shouting.[1559] Two soldiers vaginally penetrated her; one with his finger and the other with his penis.[1560] P42's wife later told him that their daughter had blood on her dress and was bleeding from her vagina.[1561]

517. The soldiers also took "everything" from the house,[1562] including clothes, bags of salt and onions, 90,000 CFA francs, administrative documents, mattresses, spare parts from a cupboard, a radio, and automobile parts.[1563]

518. The Chamber recalls the particular caution with which it must approach the chronology of events testified to by P42 and P73, in light of the fact that they spoke to one another about the dates of the events they experienced.[1564] Both witnesses testified that the events they experienced occurred at the end of November 2002. However, they gave detailed descriptions of distinct incidents occurring in different locations. The Chamber also notes other evidence, including P69's testimony about an attack on his compound, that MLC soldiers were committing crimes in PK12 in late November 2002.[1565] In such circumstances, the Chamber does not consider that the similar timeframes given by these witnesses, which accords with the period that the MLC was present in PK12, indicates any reason to doubt their chronology of the events.

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[1555] **P42**: T-64, page 16, lines 22 to 24, and page 17, line 13 to 21.
[1556] **P42**: T-64, page 17, line 22 to page 18, line 2; and **EVD-T-OTP-00026/CAR-OTP-0027-0809_R01**, at 0834.
[1557] **P42**: T-64, page 21, line 7, and page 48, line 25; and T-68, page 57, lines 5 to 6.
[1558] **P42**: T-65, page 50, line 16 to page 52, line 2; **EVD-T-OTP-00026/CAR-OTP-0027-0809_R01**, at 0835 and 0838; and **EVD-T-OTP-00601/CAR-ICC-0001-0009**.
[1559] **P42**: T-64, page 18, lines 3 to 9, page 41, lines 24 to 25, and page 48, line 10.
[1560] **P42**: T-64, page 47, lines 2 to 4; page 48, line 21 to page 49, line 8; T-65, page 53, lines 1 to 3, and page 53, line 23 to page 54, line 10; and T-69, page 17, lines 21 to 22.
[1561] **P42**: T-64, page 49, lines 4 to 8.
[1562] **P42**: T-64, page 18, lines 3 to 4, and page 44, lines 13 to 14.
[1563] **P42**: T-64, page 44, lines 1 to 12; and **EVD-T-OTP-00026/CAR-OTP-0027-0809_R01**, at 0832.
[1564] *See* Section IV(E)(7)(b)(i), para. 337.
[1565] *See* Section V(C)(4)(b).

519. In light of the above, the Chamber finds that, at the end of November 2002, perpetrators appropriated the property identified above from P73's house in PK12. In relation to the events at P42's compound in PK12, the Chamber finds that, around the end of November 2002, (i) two perpetrators, by force, invaded the body of P42's daughter by penetrating her vagina; and (ii) perpetrators appropriated the property identified above, without the owners' consent.

### 5. PK22

520. A few days after arriving in PK12, the MLC pursued and engaged in combat with General Bozizé's rebels on the road to PK22, arrived in the vicinity of PK22 before 15 November 2002, and captured the area soon after.[1566] There is reliable evidence from various sources, including testimony, as corroborated by media articles, NGO reports, and the *procès verbaux d'audition de victime* submitted to the Bangui Court of Appeals, that, in and around PK22, MLC soldiers committed acts of pillaging, rape, and murder against civilians.[1567]

#### a) Events concerning P42's cousin

521. P42 learned from others, who he did not identify during his testimony, that, days after the MLC's arrival in PK22, a "Banyamulengué" shot his cousin.[1568]

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[1566] **P38**: T-33, page 23, line 5 to 7, and page 24, line 7 to page 25, line 6, testifying that the MLC troops went to PK22 the day after they arrived in PK12; **P42**: T-64, page 10, lines 13 to 22 and page 13, lines 13 to 19; T-65, page 10, lines 8 to 14; and T-68, page 28, lines 6 to 20, testifying that the MLC reached PK22 three days after their arrival in PK12; **P23**: T-53, page 20, line 9 to page 21, line 8 and page 26, lines 12 to 22, testifying that the MLC engaged Bozizé's rebels in PK22 from 15 to 18 November 2002; **P79**: T-77, page 5, line 10; and **P6**: T-96, page 19, lines 11 to 16, page 21, lines 2 to 7. *See also* **EVD-T-OTP-00399/CAR-OTP-0004-0343**, at 0344.

[1567] **P119**: T-84, page 8, line 3 to page 9, line 17; **P69**: T-193, page 14, lines 8 to 12; and T-195, page 4, line 16 to page 5, line 3, and page 14, line 22 to page 15, line 3; **EVD-T-OTP-00142** to **EVD-T-OTP-00252** (**CAR-OTP-0001-0159** to **CAR-OTP-0001-0546**) and **EVD-T-OTP-00254** to **EVD-T-OTP-00344** (**CAR-OTP-0002-0002** to **CAR-OTP-0002-0137**); **EVD-T-OTP-00400/CAR-OTP-0004-0345**, at 00346 to 0348; **EVD-T-OTP-00399/CAR-OTP-0004-0343**, at 0344; **EVD-T-OTP-00409/CAR-OTP-0004-0881**, at 0892, 0896 to 0902, and 0943; **EVD-T-OTP-00442/CAR-OTP-0011-0503**, at 0510 to 0516; **EVD-T-OTP-00849/CAR-OTP-0013-0320**, at 0321; **EVD-T-OTP-00576/CAR-OTP-0031-0099**; and **EVD-T-CHM-00040/CAR-OTP-0036-0041**, at 0043 to 0045. *See also* **P6**: T-94, page 47, line 15; and T-95, page 22, lines 22 to 24. *See also* Sections V(C)(14) and V(D)(1).

[1568] **P42**: T-64, page 13, lines 23 to 24; T-65, page 21, lines 13 to 23, and page 48, lines 4 to 10; and T-67, page 41, lines 20 to 21, and page 48, lines 16 to 24. The witness also referred to this "cousin" as his "uncle" during his testimony.

The Chamber considers that this hearsay evidence is lacking in sufficient detail, including about its source, for any conclusion in relation to the killing of P42's cousin.

**b) Events in the bush outside PK22**

522. In the bush outside PK22, after the MLC arrived in the vicinity in November 2002, a woman identified by P75 encountered a group of four "Banyamulengués", including three men, wearing military T-shirts and trousers, and a woman.[1569] The attackers were shouting Lingala, including the word "*Yaka*", which meant that they were asking for money.[1570] They threw the woman on the ground, beat her, and threatened her at gunpoint.[1571] One man wiped his penis on her face, forcing her to lick it, while the other men pulled her hair.[1572] When she resisted, they ripped off her clothes, pulled her legs apart, and beat and threatened her.[1573] All three men vaginally penetrated her and one anally penetrated her.[1574] Afterwards, the female "Banyamulengué" took the woman's bag containing all her clothes; the bag and its contents were not

[1569] **P75**: T-92-Conf, page 8, lines 21 to 25, page 9, line 4, and page 19, line 19 to page 20, line 4. The woman fled after the Banyamulengués arrived in Bangui at the end of October, but did not remember the exact date she fled. She also did not recall the date of the events in the bush outside of PK22, only recalling that it was a Sunday. The woman claimed that the MLC arrived in Nguerengou, eight kilometres north of PK22, the day after the events. *See* **P75**: T-92-Conf, page 6, line 19, page 7, line 1, page 8, line 9 to page 10, line 13, page 11, line 3, and page 21, line 2; T-93-Conf, page 5, lines 3 to 20, and page 25, lines 17 to 19. The MLC arrived in the vicinity of PK22 before 15 November 2002 and captured the area soon after. *See* para. 520.
[1570] **P75**: T-92-Conf, page 8, lines 18 to 25, page 9, lines 2 to 25, page 10, line 10, page 19, lines 5 to 14, page 22, lines 9 to 11, page 26, lines 22 to 23, page 28, lines 20 to 21, and page 40, line 21 to page 41, line 7; and T-93-Conf, page 9, lines 5 to 8, page 10, lines 22 to 25, page 12, lines 5 to 25, and page 13, lines 7 to 9, testifying that the attackers shouted "Yaka, Yaka", and that although she did not understand it, the language was the same spoken by other "Banyamulengués" she encountered during the 2002-2003 CAR Operation. Other witnesses testified that "Yaka" was Lingala. *See* **P22**: T-41, page 7, lines 10 to 15; and **P79**: T-77, page 6, line 17 to page 7, line 1.
[1571] **P75**: T-92-Conf, page 20, line 11, page 25, lines 5 to 13 and 24 to page 26, line 3, and page 26, line 15.
[1572] **P75**: T-92-Conf, page 9, line 14, page 26, lines 21 to 22, and page 27, lines 10 to 11.
[1573] **P75**: T-92-Conf, page 9, lines 6 to page 10, lines 4 to 13, page 25, lines 15 to 24, and page 26, line 13 to page 27, line 16.
[1574] **P75**: T-92-Conf, page 9, lines 20 to 24, and page 26, line 18 to page 28, line 5.

returned.[1575] Following the events, the woman was ashamed and had various medical problems, including pelvic pain.[1576]

523. In light of the above, the Chamber finds that, in November 2002, in the bush outside PK22, (i) three perpetrators, by force, invaded the body of a woman by penetrating her mouth, vagina, and anus with their penises; and (ii) a perpetrator appropriated the woman's bag and contents, without her consent.

### 6. Damara

524. After clashes in PK22, between 10 and 15 November 2002,[1577] General Bozizé's rebels withdrew; the MLC followed – via PK24, PK25, Nguéréngou, PK45, and Mondjo – to Damara.[1578] P63 testified that, while advancing towards Damara, MLC troops fired projectiles towards the town throughout an entire night.[1579] On 7 December 2002, the MLC, along with other forces aligned with President Patassé, seized Damara.[1580] The MLC controlled the area around Damara until

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[1575] **P75**: T-92-Conf, page 29, lines 6 to 10.
[1576] **P75**: T-92-Conf, page 12, lines 16 to 17, and page 30, lines 2 to 15; and T-93-Conf, page 15, lines 20 to 21.
[1577] **P42**: T-65, page 10, lines 8 to 12, and page 11, lines 21 to 22, testifying that clashes in PK22 happened around 10 November, 3 days after arrival of MLC in PK12; **P38**: T-33, page 23, line 5 to 7, page 24, line 7 to page 25, line 6, testifying that the MLC troops went to PK22 the day after they arrived in PK12; **P42**: T-64, page 10, lines 13 to 22 and page 13, lines 13 to 19; T-65, page 10, lines 8 to 14; and T-68, page 28, lines 6 to 20, testifying that the MLC reached PK22 three days after their arrival in PK12; **P23**: T-53, page 20, line 9 to page 21, line 8 and page 26, lines 12 to 22, testifying that the MLC fought General Bozizé's rebels in PK22 from 15 to 18 November 2002; **P79**: T-77, page 5, line 10; and **P6**: T-96, page 19, lines 11 to 16, and page 21, lines 2 to 7. *See also* **EVD-T-OTP-00399/CAR-OTP-0004-0343**, at 0344, indicating that the MLC were in PK12 before 10 November 2002.
[1578] **P42**: T-65, page 10, lines 8 to 18; **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0041; **P63**: T-108, page 50, lines 21 to 25; T-109, page 11, lines 11 to 15 and page 17, lines 15 to 22; and T-115, page 7, lines 3 to 9 and page 10, lines 3 to 16, testifying that the MLC occupied all the houses along the road to Damara, moved from Nguéréngou to PK45 on foot, reaching their destination the next day, and after PK45, the MLC continued towards Damara – going through a town called Mondjo – shooting projectiles towards Damara; **P151**: T-172, page 36, lines 4 to 18; and T-173, page 27, lines 13 to 22, testifying that part of the MLC's mission was to block off the Damara road and keep assailants coming from Chad from travelling towards Bangui; **P6**: T-96, page 22, lines 7 to 8, and page 23, line 7 to page 24, line 25, testifying that, at PK25, the MLC occupied a farm belonging to the "Sino-Centrafricaine" farming group, by the M'Poko River; **P75**: T-92, page 11, lines 3 to 8 and page 20, line 25 to page 21, line 4; and T-93, page 16, lines 18 to 24; **P63**: T-109, page 12, lines 16 to 18 and page 13, lines 9 to 24; and **P23**: T-51, page 10, lines 20 to 25, and page 15, lines 1 to 11: P23, P75, and P63 also testified that the MLC troops were in towns along the road to Damara.
[1579] **P63**: T-115, page 10, lines 11 to 17.
[1580] **EVD-T-CHM-00060/CAR-D04-0002-1380**; and **P209**: T-117, page 16, line 25 to page 17, line 7, and page 31, lines 9 to 14. This date is not disputed by the parties. *See* Prosecution Closing Brief, para. 20; and Defence Closing Brief, para. 367.

January or February 2003.[1581] Colonel Moustapha went to Damara at least three times between December 2002 and February 2003.[1582] According to P63, about three weeks after the MLC arrived, a helicopter landed in Damara.[1583] One or two days after the helicopter left, P63 saw heavy weaponry, including four cannons, and many ammunition cases in Damara that had not been there before the helicopter came.[1584]

525. There is reliable evidence from various sources, including testimony, as corroborated by media reports and the *procès verbaux d'audition de victime* submitted to the Bangui Court of Appeals, that MLC soldiers committed acts of pillaging, rape, and murder against civilians in Damara.[1585] P63 and P209 both testified that the "Banyamulengués" pillaged everywhere – every single house,

[1581] **P63**: T-116-PART2, page 3, lines 20 to 24, testifying that the MLC occupied Damara for at least three weeks; **D19**: T-292, page 32, lines 2 to 9, testifying that the MLC conducted operations in Damara for roughly one and a half month before the MLC's withdrawal in March 2003; **P178**: T-150, page 33, line 17 to page 34, line 7 and page 39, lines 12 to 18; and T-154, page 6, line 14 to page 7, line 11, testifying that the troops stayed in Damara for "one month and eight days more or less". *See*, *inter alia*, **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1767, a logbook entry, dated 7 February 2003, states that the coordinator of the CAR OPS writes that the "rear-guard unit" and the Poudrier Battalion were in Damara; and **P209**: T-117, page 28, lines 14 to 23; T-120, page 10, lines 5 to 7, page 28, line 25 to page 29, line 4, page 32, lines 9 to 13, and page 33, lines 6 to 12; T-122, page 36, lines 1 to 5, and page 37, lines 12 to 17; T-123, page 8, line 23 to page 9, line 23, page 11, lines 20 to 24, and page 16, line 18 to page 17, line 23; and T-124, page 6, lines 2 to 7, testifying that the MLC established bases, checkpoints, and headquarters in Damara, and withdrew from Damara either in January 2003 or in February 2003.

[1582] **P169**: T-137, page 10, line 24 to page 11, line 10; and T-138, page 45, line 19 to page 46, line 9; **P178**: T-150, page 37, lines 1 to 2; **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1665, 1732, and 1765: logbook entries state that Colonel Moustapha returned to Damara on 28 December 2002, 24 January 2003, and 5 February 2003; and **P209**: T-117, page 23, lines 7 to 15; T-118, page 16, line 2 to page 17, line 21; T-119, page 4, line 3 to page 8, line 21; T-120, page 25, lines 10 to 24; and T-122, page 59, lines 11 to 21.

[1583] **P63**: T-116-PART2, page 3, lines 20 to 24.

[1584] **P63**: T-110, page 13, lines 7 to 15; and T-113, page 46, line 22 to page 47, line 3.

[1585] **P209**: T-117, page 27, line 2 to page 28, line 13; T-118, page 14, line 19 to page 15, line 19; T-122, page 30, line 20 to page 31, line 5; **P63**: T-110, page 3, line 16 to page 4, line 17; and T-113, page 44, line 18 to page 46, line 8; **P6**: T-94, page 47, lines 15 to 18; T-95, page 3, line 22 to page 4, line 8, page 14, line 22 to page 21, line 25, page 24, lines 3 to 9, page 54, lines 8 to 16, and page 62, line 5 to page 63, line 11; T-96, page 11, line 23 to page 12, line 8; T-97, page 6, line 17 to page 7, line 9; **P178**: T-151, page 10, lines 13 to 15, page 18, lines 4 to 7, and page 25, lines 5 to page 26, line 24; **EVD-T-OTP-00044/CAR-OTP-0005-0099**, at 0103 and 0107 to 0113; and **P9**: T-102, page 16, lines 7 to 9, and page 42, line 22 to page 46, line 11; and T-104, page 7, line 7 to page 8, line 3, page 27, line 2 to 12, and page 29, line 15 to page 30, line 7; **EVD-T-OTP-00045/CAR-OTP-0010-0107**, at 0112; **EVD-T-OTP-00046/CAR-OTP-0010-0120**, at 0140 to 0142, 0145 to 0148, 0155 to 0157, and 0165; **EVD-T-OTP-00852/CAR-OTP-0013-0052**; **EVD-T-OTP-00854/CAR-OTP-0013-0113**; **EVD-T-OTP-00820/CAR-OTP-0013-0114**; and **EVD-T-OTP-00142** to **EVD-T-OTP-00252** (**CAR-OTP-0001-0159** to **CAR-OTP-0001-0546**) and **EVD-T-OTP-00254** to **EVD-T-OTP-00344** (**CAR-OTP-0002-0002** to **CAR-OTP-0002-0137**). *See also* Sections V(C)(14) and V(D)(1).

shop, and even churches – and everything, including beds, foam mattresses, motorcycles, and electrical generators.[1586]

526. After the arrival of the MLC in Damara, P68 heard from her aunt that she had discovered her husband's dead body.[1587] P68 did not know further details about this incident.[1588] The Chamber considers that this uncorroborated and general hearsay evidence is insufficient to support any conclusion in relation to the death of P68's uncle.

### 7. Bossembélé-Bozoum axis

527. From PK12, while MLC forces advanced along the Damara-Sibut axis, they also pursued and engaged General Bozizé's rebels along the Bossembélé-Bozoum and Bossembélé-Bossangoa axes.[1589] The MLC entered Bossembélé by 24 December 2002 and maintained a presence there until, at least, February 2003.[1590] There is reliable evidence from various sources, including testimony, as corroborated by media reports, and the *procès verbaux d'audition de victime* submitted to the Bangui Court of Appeals, that MLC soldiers committed acts of

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[1586] **P63**: T-110, page 9, line 21 to page 10, line, 3 and page 12, line 23 to page 13, line 5; and **P209**: T-117, page 28, lines 9 to 13, and page 32, line 22 to page 33, line 7; T-118, page 6, lines 14 to 21; T-119, page 8, lines 13 to 21; and T-122, page 30, lines 7 to 12 and page 32, lines 2 to 7.
[1587] **P68**: T-48, page 34, line 18 to page 35, line 24; and T-49, page 7, lines 7 to 11.
[1588] **P68**: T-48, page 35, line 24 to page 36, line 3.
[1589] **P151**: T-173, page 28, lines 9 to 14; and T-174, page 53, line 15 to page 54, line 9; **P173**: T-144, page 15, lines 4 to 23; T-146, page 19, line 6 to page 20, line 3; T-147, page 15, lines 13 to 18; and T-149, page 50, line 6 to page 51, line 9. *See also* **CHM1**: T-354, page 40, line 12 to page 41, line 4; **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0041; **EVD-T-OTP-00401/CAR-OTP-0004-0409**, at 0418; and **EVD-T-D04-00031/CAR-OTP-0030-0154**.
[1590] **P63**: T-116-PART2, page 2, line 21 to page 3, line 3; **P169**: T-140, page 42, lines 16 to 25, testifying that Colonel Moustapha set up a base in Bossembélé; **P178**: T-150, page 33, line 17 to page 34, line 7, page 36, lines 24 to 25, and page 39, lines 12 to 18; **P6**: T-96, page 22, line 7 to page 23, line 25; **P169**: T-137, page 4, lines 2 to 9, page 12, lines 1 to 7, page 21, lines 1 to 7, page 30, lines 18 to 23, testifying that Yves and Sengue left Bossembélé on 7 and 8 March 2003; T-137, page 30, line 24 to page 31, line 4; and T-138, page 47, line 24 to page 48, line 4, testifying that he believes that Colonel Moustapha left Bossembélé either on 6 or 7 March 2003 and was no longer in Bossembélé by 8 March 2003; **P213**: T-191, page 5, lines 8 to 13, page 22, lines 5 to 8, page 30, line 14 to page 31, line 8, and page 62, line 23 to page 63, line 2; **P173**: T-145, page 37, lines 8 to 16; and T-146, page 19, lines 1 to 5 and page 20, lines 1 to 3, 7 to 9, and 13 to 14; and **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1654, 1665, 1743, and 1767, a logbook entry, dated 24 December 2002, stating that, on 23 December 2002, Colonel Moustapha moved to Bossembélé in order to coordinate a future action on Bozoum; a 28 December 2002 entry in the logbook shows that the 28th Battalion was in Bossembélé; a 28 January 2003 MLC communication logbook entry states that the "enemy" was coming with more troops and equipment from Chad by the Cameroon-Bangui/Bozoum-Bangui route and was preparing to attack Bossembélé through Bossangoa and Bozoum; a logbook entry, dated 7 February 2003, in which the coordinator of the CAR OPS writes that the 28th and 5th Battalions were in Bossembélé on 6 February 2003.

pillaging, rape, and murder against civilians.[1591] For example, an internal memorandum from the CAR Defence Ministry, dated 2 December 2002, reported that, as a result of repeated acts of pillaging by MLC troops at checkpoints in Bossembélé, truck drivers would no longer operate on that axis.[1592]

528. From Bossembélé, the MLC troops advanced to and captured Bozoum by 28 December 2002.[1593] The MLC lost control of Bozoum in the second half of January 2003.[1594] In February 2003, the MLC actively sought to recapture, and succeeded in temporarily taking areas along the Bossembélé-Bozoum road.[1595]

### 8. Request for and arrival of reinforcements from the MLC

529. Shortly after 16 January 2003, on President Patassé's orders, the FACA Chief of General Staff, General Antoine Gambi, travelled with three or four others from the General Staff and USP to meet with Mr Bemba in Gbadolite.[1596] At this meeting, the FACA Chief of General Staff and Commander Bemondombi of the CAR CO informed Mr Bemba of the operational situation in the field, focusing on the rebels' advance towards Bangui, and with a view to causing Mr Bemba to change his strategy and provide additional ammunition and reinforcements

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[1591] **P173**: T-149, page 31, line 15 to page 32, line 9; **P6**: T-95, page 3, line 22 to page 4, line 8, page 17, lines 4 to 10, page 19, line 10, page 20, lines 16 to 17, page 24, lines 3 to 10, page 54, lines 8 to 16, and page 62, line 5 to page 63, line 11; and T-96, page 12, lines 7 to 15; **P9**: T-102, page 16, lines 7 to 22 and page 42, line 22 to page 46, line 11; and T-104, page 7, lines 10 to 15; **EVD-T-OTP-00044/CAR-OTP-0005-0099**, at 0103 and 0107 to 0113; **EVD-T-OTP-00045/CAR-OTP-0010-0107**, at 0112; **EVD-T-OTP-00046/CAR-OTP-0010-0120**, at 0140 to 0142, 0145 to 0148, 0155 to 0157, and 0165; **EVD-T-OTP-00445/CAR-OTP-0013-0065**, at 0065 to 0066; **EVD-T-OTP-00442/CAR-OTP-0011-0503**, at 0515; **EVD-T-OTP-00848/CAR-OTP-0013-0051**; **EVD-T-OTP-00852/CAR-OTP-0013-0052**; **EVD-T-CHM-00049/CAR-OTP-0013-0098**; **EVD-T-OTP-00854/CAR-OTP-0013-0113**; **EVD-T-OTP-00820/CAR-OTP-0013-0114**; **EVD-T-OTP-00142** to **EVD-T-OTP-00252** (**CAR-OTP-0001-0159** to **CAR-OTP-0001-0546**) and **EVD-T-OTP-00254** to **EVD-T-OTP-00344** (**CAR-OTP-0002-0002** to **CAR-OTP-0002-0137**); and **EVD-T-OTP-00579/CAR-OTP-0031-0116**, and **EVD-T-CHM-00042/CAR-OTP-0057-0243**. *See also* Sections V(C)(14) and V(D)(1).
[1592] **EVD-T-OTP-00801/CAR-OTP-0042-0236**.
[1593] **P6**: T-95, page 65, line 24 to page 66, line 2; and **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1665, 1689, 1720, 1712, 1747, and 1749.
[1594] **P6**: T-95, page 65, line 24 to page 66, line 2; and **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1665, 1689, 1720, 1712, 1747, and 1749.
[1595] **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1762 and 1765, a logbook entry stating that the 5th Battalion was sent to Bossemptele in early February 2003 and was evacuated to Bossembélé by 6 February 2003.
[1596] **CHM1**: T-353-Conf, page 62, lines 3 to 13; T-356-Conf, page 12, line 10 to page 13, line 2 and lines 23 to 25; and T-357-Conf page 43, lines 2 to 8.

to repel the rebel advance.[1597] Mr Bemba provided detailed information regarding the positions held by MLC troops, demonstrating greater knowledge than the FACA officials about the situation on the ground.[1598] Senior MLC members including the ALC Chief and other members of the General Staff accompanied Mr Bemba to the meeting; before he took the decision to send reinforcements, the CAR delegation left the room while Mr Bemba discussed the situation with his staff.[1599] After the meeting in Gbadolite, around the end of January or the beginning of February 2003, the FACA received weapons, ammunition, and reinforcements.[1600]

530. In partial contrast to the above, D19 testified that Colonel Moustapha contacted Mr Bemba from Bossembélé to request reinforcements,[1601] implying that General Gambi did not meet with Mr Bemba to make the same request. The Chamber considers that it would seem logical for Colonel Moustapha, in his role as operations commander in the CAR, to contact Mr Bemba regarding reinforcements. However, recalling its concerns as to D19's credibility,[1602] the Chamber does not consider his testimony to undermine the evidence of the meeting in Gbadolite between Mr Bemba and General Gambi. In any event,

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[1597] **CHM1**: T-353-Conf, page 62, lines 8 to 13; T-356-Conf, page 13, lines 20 to 22, and page 16, lines 2 to 9; and T-357-Conf, page 43, lines 15 to 23, and page 44, lines 3 and 4; and **P36**: T-213-Conf, page 70, line 16 to page 71, line 2. *See also* **P36**: T-213-Conf, page 70, lines 20 to 24, testifying that Mr Bemba asked the FACA Chief of General Staff whether the FACA troops could handle some secondary roads here and there, to which the Chief of General Staff said in very clear terms that he did not have any soldiers. *See also* **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1743; **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0041; and **EVD-T-OTP-00401/CAR-OTP-0004-0409**, at 0418.

[1598] **CHM1**: T-356-Conf, page 20, line 20 to page 21, line 25; and T-356-Conf-FRA, page 18, line 24 to page 19, line 22.

[1599] **CHM1**: T-353-Conf, page 63, lines 1 to 2; T-356-Conf, page 18, line 17 to page 19, line 1 and page 20, lines 6 to 15; and T-357-Conf, page 44, lines 5 to 12. *See also* Sections V(A) and V(B)(2).

[1600] **CHM1**: T-356, page 13, lines 20 to 23, page 14, lines 1 to 9, and page 16, line 2 to page 17, line 19; **D19**: T-285, page 6, lines 7 to 21; and T-290, page 29, lines 1 to 12, testifying that an additional battalion led by Major Yves came to the CAR as reinforcement; and **P169**: T-136, page 24, lines 10 to 19, page 26, lines 19 to 25, and page 28, lines 8 to 13; T-136-Conf, page 24, lines 19 to 25, and page 26, line 22; T-137, page 3, line 18 to page 4, line 2, and page 5, lines 13 to 19, page 6, lines 4 to 19; T-137-Conf, page 3, lines 23 to 25, testifying that Major Yves and his battalion arrived after the others, around the end of January or the beginning of February 2003, landing by plane at Bangui M'Poko airport, page 6, lines 7 to 10, 17 and 19; T-141-Conf, page 12, line 1 to page 13, line 16.

[1601] **D19**: T-290-Conf, page 29, lines 3 to 7, and page 61, lines 8 to 10. *See also* **P169**: T-137-Conf, page 6, lines 7 to 19; T-137, page 7, lines 1 and 2; and T-141-Conf, page 12, lines 4 to 8 and 12 to 15, page 13, lines 4 and 6; and T-141, page 13, lines 2 to 5 and 12 to 16.

[1602] *See* Section IV(E)(7)(c)(vi).

D19's testimony actually supports the conclusion that Mr Bemba decided upon the MLC deployment of reinforcements, ammunition, and weapons to the CAR around the end of January or beginning of February 2003.

### 9. Sibut

531. From Damara, General Bozizé's rebels withdrew to and then past Sibut.[1603] In the latter half of February 2003, the MLC, armed with and firing heavy weapons, including rockets and mortars,[1604] entered Sibut, setting up roadblocks and staying in the town for about two weeks.[1605] During that time, the MLC was the only armed force present in Sibut.[1606] There is reliable evidence from various sources, including testimony, as corroborated by media reports and the *procès verbaux d'audition de victime* submitted to the Bangui Court of Appeals, that MLC soldiers committed acts of murder, rape, and pillaging against civilians in Sibut.[1607] Some accounts recorded in a video in evidence[1608] suggest that the

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[1603] **V2**: T-222, page 49, line 24 to page 51, line 2; and T-223, page 29, line 14 to page 30, line 25; and **P42**: T-65, page 10, lines 8 to 24.

[1604] **V2**: T-222, page 48, line 10; T-224, page 11, lines 5 to 14; and T-225, page 9, lines 3 to 9, and page 51, lines 4 to 16.

[1605] **V2**: T-222, page 47, line 11 to page 48, line 19, and page 51, lines 1 to 2; T-223, page 14, lines 6 to 18, and page 23, lines 3 to 13; T-224, page 52, lines 23 to 24; and T-225, page 35, lines 19 to 23, testifying that the MLC entered Sibut on 24 February 2003, one week after General Bozizé's rebels came through the town, and that the MLC stayed in Sibut for two weeks, controlling the town and setting up roadblocks on the roads from Damara to Sibut; **P173**: T-144, page 18, lines 7 to 14; and T-149, page 15, lines 9 to 16 and page 26, lines 8 to 10, testifying that the MLC troops occupied Sibut in February 2003; **P9**: T-102, page 45, line 19 to page 46, line 4; **P209**: T-123, page 9, lines 18 to 23 and page 16, lines 18 to 21; **P42**: T-65, page 10, lines 19 to 24, testifying that the MLC continued from Damara towards Sibut, clashing with the rebels at Galafondo; **P178**: T-150, page 36, lines 12 to 24, page 39, line 22 to page 40, line 7; and **P169**: T-136, page 28, lines 8 to 19 and page 29, lines 8 to 11, testifying that, after leaving PK12, Kamisi went towards Damara and got as far as Sibut.

[1606] **V2**: T-222, page 47, lines 9 to 18, page 50, line 24 to page 51, line 2 and lines 11 to 18; T-223, page 3, line 20 to page 6, line 8, page 13, lines 13 to 17, page 14, lines 6 to 18, page 15, lines 2 to 8, page 22, lines 4 to 12, page 23, line 3 to 13, page 29, lines 14 to 19, page 36, lines 10 to 19, and page 51, line 17 to page 52, line 2; and T-224, page 6, lines 11 to 13 and page 12, lines 9 to 11; and **P173**: T-144, page 40, line 17 to page 41, line 19; and T-145, page 14, lines 8 to 16.

[1607] **V2**: T-222, page 53, line 21 to page 55, line 7; T-223, page 36, line 20 to page 39, line 25, and page 51, line 7 to page 54, line 3; and T-224, page 4, line 12 to page 6, line 14, page 11, line 19 to page 20, line 19, and page 22, line 5 to page 27, line 10; **CHM1**: T-355, page 28, line 6 to page 29, line 9, page 31, line 15 to page 39, line 21, page 42, lines 9 to 12, and page 43, line 14 to page 44, line 7; **P69**: T-193, page 14, lines 7 to 12, page 29, lines 21 to 25, page 44, lines 9 to 15, and page 55, lines 4 to 9; **P173**: T-144, page 40, line 20 to page 41, line 19; and T-145, page 14, lines 10 to 16; **P38**: T-34, page 39, lines 1 to 17; **P119**: T-83, page 10, line 4 to page 13, line 5; **EVD-T-OTP-00605/CAR-ICC-0001-0066**; **EVD-T-OTP-00850/CAR-ICC-0001-0102**; **EVD-T-OTP-00142** to **EVD-T-OTP-00252** (**CAR-OTP-0001-0159** to **CAR-OTP-0001-0546**) and **EVD-T-OTP-00254** to **EVD-T-OTP-00344** (**CAR-OTP-0002-0002** to **CAR-OTP-0002-0137**); **EVD-T-OTP-00854/CAR-OTP-0013-0113**; **EVD-T-OTP-00580/CAR-OTP-0031-0120**; **EVD-T-OTP-00852/CAR-OTP-0013-0052**; and **EVD-T-OTP-00820/CAR-OTP-0013-0114**. *See also* Sections V(C)(14) and V(D)(1).

MLC did not commit crimes in Sibut. However, as set out in more detail below,[1609] the Chamber has doubts as to the reliability of this video and notes that certain accounts actually corroborate other evidence of the commission of crimes by MLC forces in Sibut.

532. Mr Judes Mbetigou (V2) testified that MLC soldiers in Sibut looted from the central market to Tomi, Adaman, Muslim 1, 2, and 3, Mbrés, Sara, Bimaba, Darba 1 and 2, Bala, Brazza, and Koda.[1610] The MLC stocked pillaged items of a lower value, forcing civilians to buy them.[1611] The MLC transported other items, including clothes and mattresses, to Possel, along the Oubangui River, on the CAR side of the border.[1612]

533. Upon the MLC's arrival in Sibut, when V2 first heard gunshots, he sought refuge in the bush.[1613] When he returned the next day, V2 saw that his store had been broken into and concluded that the perpetrators were MLC soldiers because they looted all over Sibut.[1614] These soldiers came from "Zaire", spoke Lingala, and wore CAR military uniforms without insignia.[1615] He found that various items were missing from his shop, including his children's belongings, an iron, a sewing machine, and his clients' clothes.[1616] In light of the above, the Chamber finds that, soon after the MLC arrived in Sibut, perpetrators appropriated the items identified above from V2's shop, without his consent.

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[1608] EVD-T-D04-00008/CAR-DEF-0001-0832.
[1609] *See* Section V(D)(9).
[1610] **V2**: T-224, page 13, lines 1 to 7.
[1611] **V2**: T-224, page 11 line 25, page 12 line 25 to page 13, line 1, and page 13, lines 22 to 23.
[1612] **V2**: T-222, page 52, lines 21 to 25; T-223, page 39, lines 10 to 22; and T-224, page 4, lines 12 to 13, page 12, lines 23 to 25, and page 13, lines 13 to 14. *See also* **V2**: T-224, page 13, lines 20 to 21; and T-225, page 52, lines 3 to 7, testifying that he saw the loading of the pillaged goods onto vehicles in Kanga, which is located two kilometres away from Sibut.
[1613] **V2**: T-224, page 15, lines 7 to 8.
[1614] **V2**: T-225, page 49, lines 10 to 19.
[1615] **V2**: T-222, page 47, line 16 to page 48, line 10; and T-223, page 4, line 16.
[1616] **V2**: T-222 page 53, lines 2 to 9; T-223, page 53, lines 20 to 23; T-224, page 15, lines 9 to 14; and T-225, page 49, lines 10 to 14.

### 10. Bossembélé-Bossangoa axis

534. Along the Bossembélé-Bossangoa axis, in late February or early March 2003, the MLC pushed General Bozizé's rebels from Bossangoa and remained there for no more than one week.[1617] The MLC suffered heavy losses during battles with General Bozizé's rebels in and around Bossangoa.[1618] There is reliable evidence from various sources, including testimony, as corroborated by media reports and the *procès verbaux d'audition de victime* submitted to the Bangui Court of Appeals, that MLC soldiers committed acts of pillaging against civilians around Bossangoa.[1619]

535. P22 heard from her aunt that "Banyamulengués" killed her cousin in Bossangoa when he tried to stop them from taking his family's cattle.[1620] P22's hearsay evidence concerning this event, however, is lacking in sufficient detail, in particular, as to the actual means and cause of her cousin's death, in order to permit the Chamber to make any conclusions in relation to the death of P22's cousin.

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[1617] **P169**: T-136, page 33, lines 14 to 24, and page 43, line 19 to page 44, line 1; T-137, page 3, lines 4 to 8; and T-138, page 50, line 11 to page 51, line 3, testifying that Major Sengue's battalion moved to Boali, then continued towards Bossembélé before arriving in Bossangoa in February 2003, where there were many MLC soldiers; **P173**: T-144, page 18, lines 7 to 14, testifying that the MLC troops on the Bozoum axis reached Bossangoa and Bozoum; **P6**: T-95, page 66, lines 3 to 4; and T-96, page 22, lines 17 to 24, testifying that the MLC had a base on the road from Bossembélé to Bossangoa, and pushed General Bozizé's rebels from Bossangoa; **P42**: T-64, page 14, lines 1 to 17, testifying that, shortly before leaving Bangui for the DRC on 15 March 2003, the MLC were present in Bossangoa; and **D19**: T-292, page 45, lines 12 to 22, testifying that, although he could not recall the exact date, the MLC were in Bossangoa, for no more than a week, towards the end of the conflict. *See also* **EVD-T-OTP-00759/CAR-OTP-0020-0263_R02**, at 0276 to 0277.

[1618] **P42**: T-64, page 14, lines 1 to 12; **CHM1**: T-355, page 63, line 18 to page 64, line 16; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0687; and **P151**: T-173, page 27, line 24 to page 28, line 14. Although P169 testified that General Bozizé's rebels were not in Bossangoa, he stated that Richard, a MLC captain, was sent on a mission to sweep up an area 45 kilometres from Bossangoa and that Captain René was killed in battle seven kilometres from Bossangoa. *See* **P169**: T-137, page 58, line 17 to page 59, line 4; and T-138, page 50, line 11 to page 51, line 3.

[1619] **P178**: T-152, page 36, lines 3 to 9; **P169**: T-136, page 39, lines 6 to 14; and T-138, page 49, line 24 to page 51, line 4; **P173**: T-149, page 31, line 15 to page 32, line 9; **P6**: T-95, page 3, line 22 to page 4, line 8, page 24, lines 3 to 10, page 54, lines 8 to 16 and page 62, line 5 to page 63, line 11; and T-96, page 12, lines 7 to 8; **P9**: T-102, page 16, lines 7 to 22 and page 42, line 22 to page 46, line 11; T-104, page 7, lines 10 to 15; **EVD-T-OTP-00044/CAR-OTP-0005-0099**, at 0107 to 0108 and 0110 to 0113; **EVD-T-OTP-00045/CAR-OTP-0010-0107**, at 0116; **EVD-T-OTP-00046/CAR-OTP-0010-0120**, at 0140 to 0142, 0145 to 0148, 0155 to 0157, and 0165; **EVD-T-OTP-00142** to **EVD-T-OTP-00252** (**CAR-OTP-0001-0159** to **CAR-OTP-0001-0546**) and **EVD-T-OTP-00254** to **EVD-T-OTP-00344** (**CAR-OTP-0002-0002** to **CAR-OTP-0002-0137**); **EVD-T-OTP-00820/CAR-OTP-0013-0114**; **EVD-T-CHM-00004/CAR-DEF-0001-0205**; and **EVD-T-OTP-00582/CAR-OTP-0031-0124**. *See also* Sections V(C)(14) and V(D)(1).

[1620] **P22**: T-41-Conf, page 36, lines 1 to 21.

### 11. Mongoumba

536. In the beginning of March 2003, FACA forces in Mongoumba seized goods being taken by MLC troops on two boats to Dongo, DRC, and allegedly detained some MLC soldiers.[1621] By 5 March 2003, the FACA soldiers and local policemen had left Mongoumba, returning to Bangui or seeking refuge in the forest.[1622]

537. P173 testified that Colonel Moustapha's wife, who was with the MLC troops at the time of the events, called Colonel Moustapha, who was in Zongo at the time,[1623] to tell him about the events in Mongoumba.[1624] According to P173, Colonel Moustapha gave the order to the battalion that was in Libengue to cross over to Mongoumba.[1625] This evidence is contradicted, in part, by the evidence of P169 and P178, set out below, that it was Major Kamisi, not Colonel Moustapha's wife, who informed Colonel Moustapha of the incident. Further, P173's source of knowledge about the incident is unclear.[1626] Accordingly, recalling the particular caution with which it must approach P173's evidence,[1627] the Chamber is unable to rely on this part of his testimony absent corroboration.

538. P169 testified that, at the end of February 2003, Colonel Moustapha received a Thuraya call from Major Kamisi and a message from his radio operator.[1628]

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[1621] **P169**: T-137, page 48, line 12 to page 49, line 17; T-138-Conf, page 27, lines 2 to 5, and page 30, lines 5 to 9; T-140, page 16, lines 19 to 24; and T-141-Conf, page 4, lines 7 to 8; **P178**: T-151, page 46, lines 9 to 18, and page 51, line 7 to page 52, line 18; T-157, page 21, lines 19 to 25; and T-157-Conf, page 22, lines 1 to 9; **P29**: T-80, page 25, line 21 to page 26, line 16, page 28, lines 20 to 23, and page 39, line 16 to page 40, line 2; and **P15**: T-209, page 8, line 5 to page 10, line 2; T-209-Conf, page 10, line 5 to page 12, line 13, page 13, lines 17 to 18, and page 15, lines 1 to 3. *See also* **EVD-T-OTP-00583/CAR-OTP-0031-0136**, track 1; **EVD-T-OTP-00825/CAR-V20-0001-0165**, at 0167; **EVD-T-OTP-00734/CAR-OTP-0056-0300**, at 0303; **EVD-T-OTP-00855/CAR-OTP-0013-0115**; and **EVD-T-OTP-00820/CAR-OTP-0013-0114**.

[1622] **V1**: T-220, page 21, lines 4 to 5; T-221, page 7, line 25 to page 8, line 3 and 20 to page 9, line 6; and T-222, page 31, lines 20 to 22; **P29**: T-81, page 5, lines 14 to 20; and **P178**: T-157, page 25, lines 7 to 9. *See also* **EVD-T-OTP-0825/CAR-V20-0001-0165**, at 0169; and **EVD-T-V20-0006/CAR-V20-0001-0177**, at 0181.

[1623] **P173**: T-144, page 32, line 20 to page 33, line 2; T-149, page 37, line 25 to page 38, line 13; and T-149-Conf, page 42, line 7 to page 43, line 3.

[1624] **P173**: T-144, page 32, line 20 to page 33, line 1.

[1625] **P173**: T-144, page 32, line 20 to page 33, line 9.

[1626] **P173**: T-149-Conf, page 42, lines 7 to 12 and 25 to page 43, line 3.

[1627] *See* Section IV(E)(7)(a)(vii).

[1628] **P169**: T-136-Conf, page 34, lines 1 to 9, and page 40, lines 17 to 23; T-137-Conf, page 48, line 22 to page 49, line 17; T-140-Conf, page 16, lines 19 to 24; and T-141-Conf, page 4, lines 7 to 8.

Colonel Moustapha had been informed by Major Kamisi that the CAR police officers and gendarmes in Mongoumba had seized goods being taken by MLC troops to Dongo by riverboat, detained some MLC soldiers, and took money from Colonel Moustapha's wife, who was also on the boat.[1629] According to P169, Colonel Moustapha then called Mr Bemba by Thuraya, explaining the incident.[1630] He testified that, after the conversation, Colonel Moustapha ordered Major Kamisi to prepare troops as he had received orders to "go and wipe out" Mongoumba[1631] and to prepare "the children" for a punitive operation.[1632] Although P169 testified that Colonel Moustapha identified Mr Bemba as the source of the order,[1633] he later claimed that Colonel Moustapha never identified Mr Bemba by name.[1634] He testified that it was concluded that Colonel Moustapha had the conversation with Mr Bemba because of his tone.[1635] P169 further testified that "there was no other leader who could have been giving him orders".[1636]

539. P178 partly corroborated P169's testimony that Colonel Moustapha received a phone call from Major Kamisi regarding events in Mongoumba,[1637] informing him that the boats and goods had been seized.[1638] However, he testified that Colonel Moustapha's first reaction was to call President Patassé to get him to

[1629] **P169**: T-136, page 41, lines 10 to 20; and T-137, page 48, line 22 to page 49, line 14.
[1630] **P169**: T-136-Conf, page 34, lines 8 to 16. and page 38, line 12 to page 39, line 2; T-136, page 41, lines 2 to 4; T-137-Conf, page 43, line 24 to page 44, line 12; T-137, page 48, line 22 to page 49, line 17; T-138-Conf, page 27, lines 2 to 5 and page 30, lines 5 to 8; T-140-Conf, page 16, lines 19 to 24; and T-141-Conf, page 4, lines 7 to 8.
[1631] **P169**: T-136-Conf, page 34, lines 8 to 18, and page 40, line 24 to page 41, line 9; T-136-Conf, page 38, line 14 to page 39, line 4; T-137-Conf, page 49, lines 12 to 17; T-138-Conf, page 30, lines 5 to 9, and page 48, line 21 to page 49, line 1; and T-141-Conf, page 5, line 4 to page 6, line 5.
[1632] **P169**: T-136-Conf, page 34, lines 17 to 21, and page 41, lines 7 to 8; and T-137-Conf, page 49, lines 15 to 17.
[1633] **P169**: T-138-Conf, page 48, line 24 to page 49, line 1.
[1634] **P169**: T-141-Conf, page 12, line 18 to page 13, line 17. *See also* T-137, page 21, lines 3 to 18.
[1635] **P169**: T-141, page 6, lines 6 to 25.
[1636] **P169**: T-141, page 6, lines 24 to 25, and page 13, lines 1 to 5.
[1637] **P178**: T-151, page 51, lines 7 to 22; T-157, page 21, lines 19 to 23, and page 22, lines 19 to 25; and T-157-Conf, page 21, line 25 to page 22, line 16.
[1638] **P178**: T-157-Conf, page 21, line 19 to page 22, line 9. *See also* T-151-Conf, page 46, lines 9 to 16, testifying that Colonel Moustapha had sent MLC troops and his wife to Dongo with the looted property and that Colonel Moustapha's wife had "three million on her", but when they arrived in Mongoumba, they were stopped by FACA troops, who seized the goods and detained the MLC soldiers and Moustapha's wife.

issue orders for the goods to be returned to the MLC.[1639] P178 stated that President Patassé then said over the radio that the FACA troops were "good-for-nothing" and ordered them to return the goods to the "Banyamulengués".[1640] P178 testified that the FACA troops did not return the goods; so Colonel Moustapha sent his own team to attack and recapture the goods.[1641]

540. In sum, P169's testimony appears to diverge from that of P178 on whether Colonel Moustapha first spoke to Mr Bemba and/or President Patassé before passing on the order to carry out a punitive operation against Mongoumba. In light of (i) the particular caution with which it must approach the evidence of P169;[1642] (ii) the discrepancies within the testimony as to his source of knowledge and assertions;[1643] (iii) the deduction and inference which founded the conclusion that Colonel Moustapha had the conversations with Mr Bemba, and (iv) the absence of corroboration as to who ordered the attack, the Chamber is unable to rely on P169's testimony that Mr Bemba ordered the attack on Mongoumba during the specific phone call he testified about.

541. Nevertheless, the Chamber recalls its findings concerning Mr Bemba's authority over military operations and strategy,[1644] which is consistent with the testimonies of P169 and P173 that only Mr Bemba was in a position to have ordered the attack on Mongoumba.[1645] Further, authenticated records of Mr Bemba's Thuraya device[1646] show that Mr Bemba made a call lasting approximately 13 minutes to Colonel Moustapha at 21.15 on 4 March 2003.[1647]

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[1639] **P178**: T-151, page 46, line 23 to page 47, line 1 and page 51, line 20; T-154-Conf, page 13, lines 10 to 14; and T-157-Conf, page 22, lines 22 to page 23, line 1.
[1640] **P178**: T-151-Conf, page 46, line 23, to page 47, line 9; and T-152, page 33, lines 1 to 16.
[1641] **P178**: T-151, page 46, line 1 to page 47, line 18; and T-152, page 32, line 25 to page 33, line 19. *See also* T-157, page 22, line 19 to page 23, line 1; and T-157-Conf, page 23, lines 1 to 6.
[1642] *See* Section IV(E)(7)(a)(vii).
[1643] **P169**: T-136-Conf, page 34, lines 8 to 15; T-138-Conf, page 48, line 24 to page 49, line 1; T-141-Conf, page 12, line 18 to page 13, line 17; and T-142, page 35, lines 15 to 18. *See also* T-137, page 21, lines 3 to 18.
[1644] *See* Sections V(A)(4) and V(B)(2)(c).
[1645] **P169**: T-141, page 6, lines 24 to 25, and page 13, lines 2 to 5; and **P173**: T-145-Conf, page 29, lines 5 to 14.
[1646] *See* Section V(B)(2)(b), para. 420.
[1647] **EVD-T-OTP-00591/CAR-OTP-0055-0893**, at 0915.

On the day of the attack, Mr Bemba called Colonel Moustapha 16 times for a total of, at least, 17 minutes.[1648] Although many of these calls lasted for only a few seconds, the record demonstrates that (i) Mr Bemba and Colonel Moustapha communicated between 4 and 5 March 2003,[1649] and (ii) Mr Bemba persevered in trying to reach Colonel Moustapha after calls which lasted only a few seconds or failed to connect.[1650] On these bases, the Chamber finds that the only reasonable conclusion is that Mr Bemba knew of the attack on Mongoumba, but took no preventative or remedial action.

542. Regardless, although P169 and P178 provided differing accounts as to whom Colonel Moustapha called immediately after he was informed of the events, their testimony is consistent in many aspects, and on this basis the Chamber finds that, after being informed of the incident, Colonel Moustapha transmitted an order to his troops for a punitive operation against Mongoumba.[1651]

543. P178 later spoke to a participant in the Mongoumba attack who explained that the MLC crossed the river two or three kilometres from Mongoumba and took a fisherman hostage to guide them.[1652] On 5 March 2003, they surrounded and attacked the town, liberated the detained MLC soldiers, and, before leaving on 5 or 6 March 2003, ransacked Mongoumba.[1653] The MLC was the only armed

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[1648] **EVD-T-OTP-00591/CAR-OTP-0055-0893**, at 0915 to 0916.
[1648] **EVD-T-OTP-00591/CAR-OTP-0055-0893**, at 0915 to 0916.
[1649] **EVD-T-OTP-00591/CAR-OTP-0055-0893**, at 0914 to 0916.
[1650] **EVD-T-OTP-00591/CAR-OTP-0055-0893**, at 0915.
[1651] **P169**: T-136, page 34, lines 1 to 25; T-137, page 48, line 12 to page 49, line 25; T-138-Conf, page 27, lines 2 to 4, page 30, lines 5 to 9, and page 48, line 21 to page 49, line 1; T-140, page 16, lines 19 to 24; T-141-Conf, page 4, lines 7 to 8 and page 5, line 4 to page 6, line 5; and T-141, page 7, lines 20 to 24; and **P178**: T-151, page 46, line 1 to page 47, line 18, page 51, lines 10 to 22, and page 52, lines 12 to 18; T-152, page 32, line 25 to page 33, line 19; and T-157, page 21, lines 19 to 23 and page 22, line 7 to page 23, line 3, testifying that Colonel Moustapha sent his own team to attack and recapture the goods. *See also* **P29**: T-80, page 25, line 21 to page 26, line 21; **P15**: T-209, page 8, line 2 to page 9, line 18; and T-209-Conf, page 11, line 3 to page 12, line 8; and **EVD-T-OTP-00825/CAR-V20-0001-0165**, at 0167; and **P173**: T-144, page 33, lines 4 to 9 and page 74, lines 13 to 14; T-145, page 29, lines 10 to 14; and T-149, page 40, lines 6 to 22. *See also* Section V(B)(2).
[1652] **P178**: T-157, page 24, line 13 to page 25, line 22.
[1653] **P178**: T-157, page 24, line 13 to page 25, line 22; **P173**: T-144, page 32, line 20 to page 33, line 9; **P29**: T-80, page 17, lines 16 to 24, page 26, lines 1 to 21, and page 28, lines 23 to 24; and T-81, page 4, line 25 to page 5, line 13; **V1**: T-220, page 12, lines 16 to 20, page 14, lines 2 to 6, page 24, line 21, page 35, lines 2 to 3, page 46, lines 3 to 11, and page 52, lines 22 to 23: P29 and V1 both testified that MLC soldiers went to Mongoumba on 5 March 2003; **EVD-T-OTP-00583/CAR-OTP-0031-0136**; **EVD-T-OTP-00734/CAR-OTP-0056-0300**, at 0303; **EVD-T-V20-00006/CAR-V20-0001-0177**, at 0181; and **EVD-T-OTP-00855/CAR-OTP-0013-0115**.

force in Mongoumba during the attack.[1654] There is reliable evidence from various sources, including testimony, as corroborated by media reports, that the MLC committed acts of pillaging, rape, and murder against civilians in Mongoumba.[1655]

544. The Chamber notes that D19, who was in a position to know about the Mongoumba attack, claimed that he knew nothing about it.[1656] However, recalling its general concerns as to D19's credibility and the reliability of his evidence,[1657] and noting that his uncorroborated testimony is contradicted by the reliable evidence set out above, the Chamber finds that D19's testimony on this point is unreliable and cannot undermine the Chamber's findings regarding the MLC retaliatory attack on Mongoumba.

**a) Events at P29's house**

545. On 5 March 2003, as P29 prepared to flee, a group of three soldiers forced her back into her house,[1658] kicked her to the ground, onto her back, ripped off her clothes, and pushed her legs apart.[1659] Despite P29's cries, all three soldiers took turns penetrating her vagina with their penises.[1660] As they did not carry weapons, P29 assumed that the men – who wore military uniforms, without insignia – were not "regular" soldiers.[1661] The soldiers spoke amongst

[1654] **V1**: T-220, page 21, line 4 to 5; T-221, page 7, line 25 to page 8, line 3 and 20 to page 9, line 6; and T-222, page 31, lines 20 to 22; and **P29**: T-81, page 5, lines 14 to 20, testifying that, when the MLC came to Mongoumba, the officials present in the town – the police and gendarmes – fled into the bush with the people.
[1655] **P29**: T-80, page 21, lines 8 to 20, page 22, lines 5 to 24, page 34, line 14 to page 35, line 3, and page 40, lines 3 to 22; and T-81, page 11, lines 1 to 22, page 15, line 19 to page 17, line 21, and page 47, lines 17 to 24; **P47**: T-178, page 35, lines 14 to 19, and page 36, lines 8 to 22; **V1**: T-220, page 22, line 12 to page 39, line 20; **EVD-T-OTP-00820/CAR-OTP-0013-0114**; **EVD-T-OTP-00855/CAR-OTP-0013-0115**; and **EVD-T-V20-00006/CAR-V20-0001-0177**, at 0181. *See also* Sections V(C)(14) and V(D)(1).
[1656] **D19**: T-289-Conf, page 14, lines 14 to 17, page 15, line 9 to page 17, line 15, and page 18, line 16 to page 19, line 4; and T-292-Conf, page 15, lines 11 to 15.
[1657] *See* Section IV(E)(7)(c)(vi).
[1658] **P29**: T-80, page 17, line 19, page 18, lines 7 to 11, page 20, line 23 to page 21, line 2, page 25, line 21, and page 30, lines 2 to 10. *See also* **P29**: T-80, page 30, lines 11 to 15, testifying that she did not run because she was afraid and knew she could not run faster than the men.
[1659] **P29**: T-80, page 21, lines 4 to 13, page 32, lines 11 to 14, and page 51, lines 12 to 14.
[1660] **P29**: T-80, page 21, lines 12 to 24, page 31, lines 1 to 6, page 32, line 3 to page 33, line 6, and page 39, lines 9 to 15.
[1661] **P29**: T-80, page 29, lines 11 to 16, page 34, lines 1 to 4, page 50, lines 23 to 25, and page 53, lines 4 to 11.

themselves in a language that P29 could not understand; likely the soldiers' own dialect and probably not Lingala.[1662] The soldiers only used hand gestures to communicate with P29.[1663] In light of the above, the Chamber finds that, on 5 March 2003, in her home in Mongoumba, three perpetrators, by force, invaded P29's body by penetrating her vagina with their penises. P29 testified that, after the events, she felt constant sadness and discovered that she had contracted HIV/AIDS.[1664]

**b) Events experienced by V1**

546. Also on 5 March 2003, a group of around 20 armed soldiers intercepted Ms Pulchérie Makiandakama (V1) and other persons, who were hiding under beds in the local hospital in Mongoumba.[1665] The soldiers wore green military fatigues, with no insignia,[1666] informed V1 that their "President" was "Mr Bemba",[1667] and spoke Lingala with a DRC accent.[1668] Due to her familiarity with Lingala, V1 could differentiate between DRC and CAR Lingala accents.[1669] She could also distinguish MLC troops from CAR soldiers as the latter, *inter alia*, had stripes on their uniforms and spoke French and Sango.[1670]

547. The soldiers took everything on the persons they found at the hospital, including V1's shoes.[1671] As she spoke Lingala, the soldiers took her with them

[1662] **P29**: T-80, page 21, lines 14 to 20, page 32, lines 15 to 20, page 33, lines 7 to 12, and page 39, lines 1 to 4.
[1663] **P29**: T-80, page 18, lines 11 to 12, and page 52, line 16 to page 53, line 1.
[1664] **P29**: T-80, page 45, line 24 to page 49, line 18, and page 56, line 24 to page 57, line 4. *See also* **P29**: T-81, page 6, lines 13 to 25.
[1665] **V1**: T-220, page 12, lines 13 to 20, page 16, lines 6 to 19, page 17, lines 5 to 24, and page 18, lines 16 to 18; and T-221, page 39, line 15 to page 40, line 3.
[1666] **V1**: T-220, page 22, lines 5 to 6; and T-221, page 39, line 15 to page 40, line 3.
[1667] **V1**: T-221, page 9, lines 12 to 23.
[1668] **V1**: T-220, page 16, lines 22 to 25, page 17, lines 1 to 4, page 18, lines 4 to 9, page 21, lines 11 to 12, and page 51, line 22 to page 52, line 23; T-221, page 7, lines 20 to 24; and T-222, page 16, lines 10 to 14, page 17, lines 1 to 11, page 32, lines 1 to 10, and page 33, line 24 to page 34, line 3.
[1669] **V1**: T-220, page 16, line 22 to page 17, line 4, page 18, lines 3 to 9, and page 51, line 22 to page 52, line 15; T-221, page 6, line 14 to page 7, line 24; and T-222, page 13, lines 7 to 11, page 17, lines 1 to 11, page 32, lines 1 to 10, and page 33, line 22 to page 34, line 3, testifying that she spoke Lingala because she frequently traded in the DRC and crossed the border from Mongoumba to Libengue on a regular basis.
[1670] **V1**: T-220, page 22, lines 9 to 10; and T-221, page 8, lines 23 to 24, and page 9, lines 9 to 11.
[1671] **V1**: T-220 page 17, lines 9 to 24.

as an interpreter.[1672] They first went to a church in Mongoumba where they took from the bishop – at gunpoint and under threat of death – a cassock, clothes, a cross, and money.[1673] They then went to the priests' residence, pointed their arms at one of the priests, and took money, the priest´s vehicle, and many other items, including furniture and a television.[1674] They continued onto the nuns' residence, where they took, *inter alia*, money, a safe, mattresses, a car, a cooker, a television, a refrigerator, and suitcases.[1675] Subsequently, at the gendarmerie, the soldiers looted all the administrative documents and ate the food they found in the kitchen.[1676]

548. Thereafter, the soldiers took V1 to a camp, next to the river bank,[1677] where two soldiers approached her, removed her trousers and undergarments, knocked her to the ground when she tried to fight back, and "slept with" and "raped" her in turns, while other soldiers looked on, "shouting with joy".[1678]

549. The soldiers told V1 to follow them back to Mongoumba where they continued to loot.[1679] From the Mayor's house, the soldiers looted money and all of his property, while one of them threatened to rape and kill his wife.[1680] Eventually, the soldiers reached the house of "a Muslim man".[1681] They demanded his sheep. When he refused, the soldiers fired several shots at him.[1682] They then

[1672] **V1**: T-220, page 19, lines 2 to 19, page 24, lines 7 to 12, page 31, lines 21 to 24, page 32, lines 11 to 15, and page 40, lines 8 to 9; T-221, page 41, line 15 to page 42, line 3; and T-222, page 15, lines 10 to 11.
[1673] **V1**: T-220, page 22, line 15 to page 24, line 14.
[1674] **V1**: T-220, page 24, line 14 to page 25, line 13.
[1675] **V1**: T-220, page 25, line 12 to page 26, line 24; and T-221, page 11, lines 12 to 14.
[1676] **V1**: T-220, page 27, lines 2 to 20.
[1677] **V1**: T-220, page 28, line 14 to page 29, line 10.
[1678] **V1**: T-220, page 29, line 3 to page 30, line 22.
[1679] **V1**: T-220, page 30, line 8 to page 34, line 9.
[1680] **V1**: T-220, page 30, line 10 to page 32, line 9; and T-222, page 18, lines 11 to 20; and **P29**: T-81, page 11, lines 4 to 21, testifying that the Mayor's motorbike was later put in soldiers' canoe for transport across the river.
[1681] **V1**: T-220, page 32, lines 5 to 9; and T-222, page 18, line 23 to page 19, line 1.
[1682] **V1**: T-220, page 32, lines 10 to 22.

mutilated him and he died.[1683] After these events, the soldiers raided his compound and ate all the food.[1684]

550. Thereafter, the soldiers went to the house of the Muslim man's neighbour and demanded that the woman there give them her double foam mattress; when the woman resisted, the soldiers killed her.[1685] V1 knew this woman, but did not recall her name.[1686] The soldiers then took furniture from her house, and V1 had to carry some of the looted items towards the river.[1687]

551. Upon arrival at the camp near the river, the soldiers threw V1 to the ground and stripped her naked.[1688] After four of the soldiers penetrated her vagina with their penises, she lost consciousness.[1689] When she regained consciousness, the other soldiers continued "raping" her, while some of them held her to the ground.[1690] V1 was bleeding from her vagina.[1691] Twelve soldiers in total[1692] penetrated her vagina, anus, and mouth with their penises.[1693] At that time, the soldiers were armed with rifles.[1694] Afterwards, V1 had pain in her vagina and lungs, and psychological problems. She felt like she was no longer treated as a human being and was called the "Banyamulengué wife"; such stigmatisation in her community left her unemployed and unable to provide for her children.[1695]

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[1683] **V1**: T-220, page 32, line 24 to page 33, line 16; and T-222, page 25, lines 11 to 25, testifying that, when the man did not die, he told the soldiers that, in order to kill him, they would have to cut his penis and pierce his eyes, and they did so resulting in his death.
[1684] **V1**: T-221, page 11, line 22 to page 12, line 3.
[1685] **V1**: T-220, page 33, line 18 to page 34, line 3.
[1686] **V1**: T-222, page 19, lines 12 to 16.
[1687] **V1**: T-220, page 33, line 18 to page 34, line 9.
[1688] **V1**: T-220, page 35, lines 4 to 20, page 38, lines 18 to 21, and page 39, lines 14 to 15; and T-221, page 10, lines 1 to 17.
[1689] **V1**: T-220, page 36, lines 9 to 23; and T-221, page 23, lines 8 to 9.
[1690] **V1**: T-220, page 36, lines 10 to 23 and page 38, lines 10 to 11.
[1691] **V1**: T-220, page 36, lines 22 to 23.
[1692] **V1**: T-220, page 36, lines 6 to 18 and page 38, lines 10 to 11.
[1693] **V1**: T-220, page 36, lines 9 to 23 and page 38, lines 18 to 19 and 22. *See also* **V1**: T-220, page 35, lines 14 to 20.
[1694] **V1**: T-220, page 36, line 24 to page 37, line 3.
[1695] **V1**: T-220, page 53, line 6 to page 54, line 24; and T-221, page 3, line 23 to page 5, line 15.

552. The Defence argued that V1's testimony is "incapable of belief" considering its scale,[1696] and highlighted various alleged inconsistencies with or omissions from her statement to the Legal Representative[1697] and her victim application.[1698] The Chamber notes that V1's victim application was written in French, a language she does not understand.[1699] She testified that it was not re-read to her in Sango.[1700] As to her prior statement to the Legal Representative, V1 accepted that she may have forgotten to mention some details.[1701] Noting the lapse of time between the events and testimony, the traumatic circumstances, the explanations given by V1 concerning alleged inconsistencies and omissions, her consistent testimony before the Chamber, and her demeanour, the Chamber finds that these inconsistencies and omissions do not undermine V1's testimony, which it considers to be generally reliable.

553. The Chamber notes that V1 did not specify what she meant when she testified that the soldiers "slept" with her and "raped" her during the first incident. However, noting her testimony that they removed her clothes, including her "undergarments", and her testimony concerning the second incident of rape, indicating her understanding of the term to include penile penetration of her body, the Chamber finds that, on 5 March 2003, at a camp on the riverbank in Mongoumba, two perpetrators, by force, invaded V1's body by penetrating her with their penises. In relation the second incident, the Chamber also finds that, on 5 March 2003, at a camp on the riverbank in Mongoumba, 12 perpetrators, by force, invaded V1's body by penetrating her vagina, anus and mouth with their penises.

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[1696] Defence Closing Brief, para. 516. The Defence does not refer to any part of the transcripts of V1's testimony to support this specific submission.
[1697] **V1**: T-222, page 26, lines 5 to page 27, line 17.
[1698] **V1**: T-220, page 48, lines 9 to 16; and T-221, page 19, lines 11 to 13, and page 20, line 18 to page 24, line 11.
[1699] **V1**: T-221, page 18, line 5 to page 24, line 3.
[1700] **V1**: T-221, page 20, lines 13 to 15.
[1701] **V1**: T-222, page 26, line 9 to page 27, line 17.

554. In relation to other incidents she claimed to have witnessed, the Chamber finds that in Mongoumba, on 5 March 2003, (i) perpetrators killed an unidentified "Muslim" man, by shooting and mutilating him at his house; and (ii) perpetrators appropriated, without the owners' consent, the items identified above from V1, a church, priests' and nuns' residences, the house of an unidentified "Muslim" man and his neighbour, the gendarmerie, and the mayor's house. Concerning the alleged killing of the unidentified woman, V1 did not provide sufficient details as to the means and cause of death in order to enable the Chamber to enter a finding in relation to this event.

### 12. Decision to withdraw

555. Although it is unclear as to when exactly the decision was taken, various witnesses testified that Mr Bemba took the decision and issued the order for the MLC troops to withdraw from the CAR.[1702] He had a number of political reasons or motivations to issue this order, including pressure from the international community, especially following negotiation of the Sun City

[1702] **P15**: T-208-Conf, page 28, lines 13 to 18; and T-209-Conf, page 21, lines 11 to 15, page 23, line 16 to page 24, line 4 and 19 to 22, page 33, lines 16 to 19, and page 34, lines 2 to 9, testifying that Mr Bemba took the decision to withdraw the MLC troops from the CAR, announcing the decision on 16 January 2003 and setting the date for withdrawal as 16 March 2003; **P44**: T-205, page 58, lines 19 to 22, testifying that only Mr Bemba was in a position to take such a decision; **P36**: T-215-Conf, page 32, lines 15 to 16; **P169**: T-137-Conf, page 12, lines 2 to 7, page 21, lines 3 to 13 and 17 to 18, page 25, lines 18 to 22, and page 30, line 23, testifying that on 7 or 8 March 2003 Colonel Moustapha gave instructions to the other MLC commanders for the troops to withdraw; he stated that Colonel Moustapha said that he had received the orders from his "commanding officer" or "supreme leader"; **D49**: T-271-Conf, page 20, lines 13 to 15; and T-273-Conf, page 37, lines 10 to 14; and **P213**: T-188-Conf, page 25, lines 8 to 10. *See also* **D48**: T-269-Conf, page 46, line 21 to page 47, line 10, testifying that the decision to withdraw the MLC troops on 15 March 2003 was taken in a meeting of the MLC executive and announced to the press; **P15**: T-209-Conf, page 21, lines 20 to 25, page 24, line 22 to page 25, line 8, page 26, lines 12 to 21, page 27, lines 6 to 16, and page 28, lines 22 to 25, testifying that between 16 January 2003 and 16 March 2003, before totally withdrawing from the CAR, Mr Bemba decided to push General Bozizé's troops back to the border with Chad; some members of the MLC thought that this final operation was "a bit pointless", however, there was no formal objection, the political wing simply discussed it among themselves; they were "disciplined enough" not to oppose decisions taken by Mr Bemba; and T-209-Conf, page 26, line 22 to page 27, line 5 and 24 to page 28, line 14; and **P178**: T-154-Conf, page 19, line 8 to page 20, line 18, page 21, lines 1 to 23, page 22, line 8 to page 23, line 6, page 26, lines 4 to 11, page 29, lines 7 to 19, and page 30, lines 11 to 19, testifying that President Patassé issued an order for the MLC troops to withdraw, while also testifying that Mr Bemba issued an order to withdraw; and T-154-Conf, page 21, lines 8 to 18, page 23, lines 7 to 16, and page 32, line 16 to page 33, line 13, testifying that, after General Bozizé's rebels retook territory, when the MLC began to withdraw, Colonel Moustapha continued to send MLC troops, "little soldiers", to the front, while the other soldiers withdrew, and thus sacrificed them to give President Patassé the impression that the MLC was still supporting him on Mr Bemba's orders.

agreements.[1703] In this regard, the Chamber notes the evidence that, as early as November 2002, Mr Bemba promised the orderly withdrawal of his troops from the CAR,[1704] and in early 2003, he publicly declared his decision to do so.[1705]

556. Recalling its concerns as to the credibility of P36, P169, P178, and P213 and the reliability of their evidence,[1706] the Chamber notes that their testimonies concerning the decision to withdraw and the motivations therefor generally corroborate each other. They are further corroborated, in various details, by the testimonies of P15, P44, P45, and D48; contemporaneous news reports, including as to Mr Bemba's potential motives for withdrawing the troops;[1707] and the Chamber's findings concerning Mr Bemba's authority over military operations and strategy within the MLC generally, as well as over the MLC contingent in the CAR.[1708] The Chamber therefore finds the corroborated evidence that Mr Bemba took the decision to withdraw the troops from the CAR and his motivations for doing so to be reliable.

557. In contrast, D19 testified that President Patassé ordered, through General Bombayake, the withdrawal of MLC troops from the CAR, and that, when Colonel Moustapha informed Mr Bemba, Mr Bemba told him to do what he

[1703] **P15**: T-209-Conf, page 20, line 13 to page 21, line 19, page 23, lines 2 to 14, page 29, lines 8 to page 33, line 24; **P44**: T-205-Conf, page 29, lines 4 to 18, page 55, lines 3 to 5, 11 to 13, and 16 to 25, and page 56, line 23 to page 57, line 2; T-205, page 56, lines 5 to 22; and T-206-Conf, page 13, lines 13 to 19, and page 14, lines 12 to 18; **P45**: T-203-Conf, page 62, lines 11 to 15; and **P213**: T-188-Conf, page 24, lines 20 to 23, page 25, lines 8 to 10, and page 26, lines 12 to 16. *See also* **EVD-T-OTP-00753/CAR-OTP-0020-0191_R02**, at 0209.
[1704] **EVD-T-OTP-00444/CAR-OTP-0013-0053**, at 0053 to 0054. *See also* Sections V(D)(1) and V(D)(3).
[1705] **EVD-T-OTP-00807/CAR-OTP-0064-0265**, at 0267, a MLC newsletter, covering the period from December 2002 to January 2003, stating that the decision to withdraw the MLC troops from the CAR was made public by Mr Bemba by way of *communiqué de presse*; **EVD-T-OTP-00824/CAR-OTP-0010-0471**, a news article containing an interview with Mr Bemba in which Mr Bemba is quoted as stating "*j'avais 1500 hommes sur place*" and "*j'ai rappelé mes hommes*"; and **EVD-T-OTP-00407/ CAR-OTP-0004-0667**, at 0682: an excerpt from a 13 February 2003 RFI report broadcast by BBC on 14 February 2003, containing a statement attributed to Mr Bemba to the effect that the MLC troops would start withdrawing as of 15 February 2003. *See contra* **EVD-T-OTP-00443/CAR-OTP-0013-0005**, at 0006, an interview reproduced in an issue of *Le Citoyen*, dated 24 February 2003, in which President Patassé stated that the question of the withdrawal of the MLC troops was up to him as the Commander-in-chief and that no one could impose it on him.
[1706] *See* Section IV(E)(7)(a).
[1707] *See* para. 555.
[1708] *See* Sections V(A)(4) and V(B)(2)(c).

was told.[1709] D13 and D25 provided similar testimony.[1710] However, noting that D19's account was contradicted by some of his prior statements,[1711] the Chamber's general concerns regarding the credibility of D19 and D25 and the reliability of their evidence,[1712] and its specific doubts concerning related portions of the testimony of D13, D19, and D25, in particular as to operational command over the MLC contingent in the CAR,[1713] the Chamber is unable to rely on the evidence of D13, D19, and D25 relating to the withdrawal of the MLC troops absent corroboration by other credible and reliable evidence.

558. The Chamber also notes that D21 testified that the withdrawal was done with the agreement and approval of the CAR authorities.[1714] However, when shown a press article containing an interview with Mr Bemba where he stated that he called "his men" back to the DRC,[1715] D21 altered his testimony, stating that there were some "consultations" between the MLC and the CAR authorities regarding logistics.[1716] The Chamber does not consider this final, altered testimony to be unreasonable and notes that it is generally consistent with its findings relating to cooperation between the MLC and CAR authorities.[1717]

559. In light of the above, the Chamber finds, on the basis of corroborated and reliable evidence, that Mr Bemba took the decision and subsequently issued the order to withdraw the MLC troops from the CAR.[1718]

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[1709] **D19**: T-285-Conf, page 9, lines 1 to 11; T-291-Conf, page 10, line 20 to page 12, line 2; T-292-Conf, page 25, lines 6 to 21 and page 37, line 18 to page 38, line 3; T-292, page 38, line 14 to page 39, line 11 and page 45, lines 13 to 22. *See also* **D19**: T-285-Conf, page 9, lines 16 to 21; T-291-Conf, page 14, lines 4 to 12, page 14, line 24 to page 15, line 10; and T-292-Conf, page 41, lines 7 to 17.
[1710] **D13**: T-350-Conf, page 81, line 13 to page 82, line 10; and T-351-Conf, page 2, line 22 to page 5, line 15; and **D25**: T-337, page 60, lines 11 to 21.
[1711] **EVD-T-OTP-00759/CAR-OTP-0020-0263_R03**, at 0276; **EVD-T-OTP-00753/CAR-OTP-0020-0191_R02**, at 0209, and 0211; **D19**: T-292-Conf, page 36, line 24 to page 38, line 3; and **D19**: T-291-Conf, page 14, line 13 to page 15, line 10. *See also* **D19**: T-292-Conf, page 38, line 6 to page 39, line 21.
[1712] *See* Section IV(E)(7)(c).
[1713] *See* Section V(B)(2)(c).
[1714] **D21**: T-302-Conf, page 11, line 25 to page 12, line 6; and T-306-Conf, page 84, line 16 to page 85, line 11.
[1715] **D21**: T-302-Conf, page 12, lines 13 to 25; and **EVD-T-OTP-00824/CAR-OTP-0010-0471**.
[1716] **D21**: T-302-Conf, page 13, lines 1 to 23 and page 15, lines 12 to 16.
[1717] *See* Section V(B)(2).
[1718] *See* paras 555 to 556.

### 13. MLC withdrawal

560. After Colonel Moustapha transmitted Mr Bemba's withdrawal order to the MLC troops, they began to withdraw on or about 6 March 2003.[1719] As the MLC withdrew, and as General Bozizé's rebels advanced towards Bangui,[1720] there was fighting between the MLC and General Bozizé's rebels at Damara,[1721] between Bossembélé and Boali,[1722] at PK13 on Boali road,[1723] and in PK12.[1724] Colonel Moustapha and the MLC troops left PK12 between 14 and 15 March 2003, passing through Bangui, and across the Oubangui River to the DRC.[1725]

561. P169 testified that, on 15 March 2003, several columns of MLC soldiers, including a battalion commander known as Major Yves, were at the Yasimandji market, in the Sango neighbourhood of Bangui.[1726] From his hiding place in a

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[1719] **P169**: T-137, page 4, lines 2 to 19, page 12, lines 1 to 7, page 21, lines 1 to 18, page 24, line 18 to page 25, line 24, page 30, line 18 to page 31, line 4, and page 37, lines 1 to 5; and T-138, page 47, line 24 to page 48, line 4, testifying that Colonel Moustapha ordered troops to withdraw from CAR on 6 or 7 March 2003 and that Major Kamisi's troops in Sibut were the first troops to withdraw; Major Sengue's and Major Yves' troops started withdrawing from 7 to 8 March; Major Sengue's troops withdrew from Bossangoa and Bozoum, and Major Yves left on either 7 or 8 March 2003, bringing his soldiers to Bossembélé in three convoys; Colonel Moustapha left Bossembélé either on 6 or 7 March and was no longer there by 8 March 2003; **P209**: T-120, page 10, lines 5 to 7, page 28, line 21 to page 29, line 4, page 32, lines 9 to 13, and page 33, lines 6 to 12; and T-123, page 8, line 23 to page 9, line 23, page 11, lines 20 to 24, and page 16, line 18 to page 17, line 23, testifying that the MLC withdrew from Damara either in January 2003 or in February 2003; **P178**: T-150, page 34, lines 5 to 7, testifying that the MLC withdrew to PK26 and from there returned to the DRC; **P47**: T-178, page 37, lines 2 to 14; and T-181, page 19, line 3 to page 20, line 1, testifying that Colonel Moustapha fled to the south of the CAR and that P47 drove him across the river to the south; and **P36**: T-215, page 31, line 21 to page 32, line 16. *See also* **EVD-T-OTP-00612/CAR-ICC-0001-0071**; **P169**: T-137-Conf, page 25, line 25 to page 26, line 9; T-137, page 23, line 22 to page 24, line 1 and page 31, lines 1 to 4; and T-138, page 47, line 24 to page 48, line 4; and **P47**: T-178, page 37, lines 2 to 14, testifying that Colonel Moustapha withdrew on 6 or 7 March from Bossembélé in the direction of Bangui.

[1720] **P173**: T-144, page 12, lines 8 to 24; T-145, page 41, lines 1 to 9; and T-149, page 12, lines 6 to 14.

[1721] **CHM1**: T-355, page 63, line 18 to page 64, line 16.

[1722] **P169**: T-137, page 25, lines 14 to 17, page 26, lines 3 to 14, page 37, lines 10 to 16, and page 38, lines 4 to 21, testifying that Yves men were ambushed while withdrawing; **CHM1**: T-355, page 63, line 18 to page 64, line 16; and **D19**: T-291, page 15, line 18 to page 16, line 5.

[1723] **P38**: T-34, page 47, line 23 to page 48, line 13.

[1724] **P38**: T-34, page 47, line 5 to page 49, line 21; **P6**: T-94, page 32, line 5 to page 33, line 2, testifying that, on 15 March 2003, there were sounds of gunfire and detonations in PK12 and that General Bozizé's rebels arrived and chased the MLC troops that remained in the territory; **P169**: T-137, page 33, lines 18 to 23; and T-138, page 56, line 25 to page 57, line 4; **P112**: T-130, page 11, line 17 to page 12, line 3, testifying that General Bozizé came back and entered PK12 on 15 March 2013; **P42**: T-64, page 14, lines 1 to 17; and **EVD-T-OTP-00161/CAR-OTP-0001-0190**.

[1725] **P38**: T-33, page 23, line 15 to page 24, line 1; **P42**: T-64, page 14, lines 1 to 17; **P73**: T-70, page 25, lines 4 to 6; **P6**: T-94, page 32, lines 7 to 20; **P108**: T-132, page 16, lines 19 to 25, and page 18, lines 18 to 20, testifying that General Bozizé successfully completed his *coup d'état* on 15 March 2003; and **P169**: T-136-Conf, page 23, lines 4 to 10; T-137-Conf, page 32, lines 11 to 24; and T-142, page 18, line 8 to 11, testifying that Colonel Moustapha had arrived back in Bangui by 14 March 2003, and then left for Zongo.

[1726] **P169**: T-137, page 26, lines 1 to 18.

nearby compound,[1727] P169 saw a child selling bread.[1728] When the child resisted a soldier taking his bread, P169 testified that the soldier shot him, killing him instantly.[1729] Major Yves then shouted, "[l]et's go", "give him his bread", and "[l]eave it there. Just drop it over there. Give the bread back. Go." All of the soldiers then left.[1730] Recalling its concerns relating to P169's credibility and the reliability of his evidence,[1731] and noting certain unresolved questions in his testimony on this specific event,[1732] the Chamber is unable to enter findings in relation to this incident on the basis of P169's uncorroborated evidence.

562. After General Bozizé's rebels gained control of Bangui,[1733] the MLC completed its withdrawal on 15 March 2003.[1734]

### 14. General conduct of MLC troops during the 2002-2003 CAR Operation

563. The forces engaged in hostilities during the 2002-2003 CAR Operation, in particular, the MLC and General Bozizé's rebels, suffered many casualties, including hundreds killed and wounded in action.[1735] Over the course of the

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[1727] **P169**: T-142, page 15, lines 9 to 15, and page 16, lines 1 to 25.
[1728] **P169**: T-137, page 26, line 19.
[1729] **P169**: T-137, page 26, lines 19 to 21; and T-142, page 15, lines 3 to 8.
[1730] **P169**: T-137, page 26, line 21 to page 27, line 4; and T-142, page 15, lines 4 to 5, and page 17, lines 3 to 12.
[1731] *See* Section IV(E)(7)(a)(vii).
[1732] The Defence questioned the witness about why the soldier was told to return the bread; however, the witness did not answer the question. *See* **P169**: T-142, page 17, lines 10 to 12.
[1733] **P169**: T-137, page 25, lines 14 to 17, page 26, lines 3 to 14, page 33, lines 18 to 23, page 37, lines 10 to 16, and page 38, lines 4 to 21; and T-138, page 56, line 25 to page 57, line 4; **P108**: T-132, page 16, lines 19 to 24, and page 18, lines 18 to 20, testifying that General Bozizé successfully completed his *coup d'état* on 15 March 2003; **V2**: T-223, page 29, line 20 to page 30, line 3; and T-224, page 13, lines 10 to 15 and page 53, lines 4 to 11; **P63**: T-110, page 17, line 13 to page 18, line 19, testifying that, on 15 March 2003, General Bozizé's rebels arrived in the Eighth Arrondissement; they were on the Avenue des Martyrs and also occupied the Fourth Arrondissement; **P38**: T-34, page 47, line 5 to page 49, line 21; **P112**: T-130, page 11, line 17 to page 12, line 3, testifying that General Bozizé came back and entered PK12 on 15 March 2003; and **P42**: T-64, page 14, lines 1 to 17.
[1734] **P15**: T-208, page 28, lines 13 to 18; and T-209, page 21, lines 16 to 25, and page 24, line 22 to page 25, line 16, testifying that the MLC's withdrawal announcement was effective as of 15 March 2003; **D19**: T-292, page 39, lines 2 to 6, testifying that, after receiving the order to withdraw, it took two to three weeks for MLC soldiers to withdraw from CAR; **P169**: T-136, page 23, lines 4 to 10; T-137, page 32, line 11 to 24; and T-142, page 18, line 8 to 11, testifying that Colonel Moustapha left for Zongo by 14 March 2003; **P38**: T-33, page 23, line 15 to page 24, line 1; **P42**: T-64, page 14, line 1 to 17; **P73**: T-70, page 25, lines 4 to 6; **P6**: T-94, page 32, lines 7 to 20: P38, P42, P73, and P6 testifying that the MLC troops left PK12 on 15 March 2003. *See also* **P169**: T-138, page 47, line 24 to page 48, line 4; and **CHM1**: T-355, page 63, line 18 to page 64, line 16, testifying that, when President Patassé's regime fell on 15 March 2003, the remaining MLC troops withdrew in a haphazard manner.
[1735] *See*, *inter alia*, **P42**: T-65, page 10, lines 11 to 15; **D9**: T-323, page 14, lines 3 to 8, page 15, lines 17 to 24, and page 16, lines 1 to 10; and T-323bis, page 20, lines 14 to 17; **D65**: T-246, page 37, lines 7 to 9; **P63**: T-109,

2002-2003 CAR Operation, there is reliable evidence from various sources, including testimony, as corroborated by media articles, NGO reports, and the *procès verbaux d'audition de victime* submitted to the Bangui Court of Appeals, that MLC soldiers committed many acts of murder and rape, and many acts of pillaging against civilians over a large geographical area, including in and around Bangui, PK12, PK22, Bozoum, Damara, Sibut, Bossangoa, Bossembélé, Dékoa, Kaga Bandoro, Bossemptele, Boali, Yaloke, and Mongoumba.[1736] Within these areas, MLC soldiers allegedly targeted civilians, without regard to age, gender, profession, or social status,[1737] in and around schools, homes, fields, and roads.[1738] Many CAR civilians used the term "Banyamulengué" (or phonetically

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page 18, lines 10 to 19; **D45**: T-296, page 9, line 8 to page 10, line 23; **EVD-T-OTP-00702/CAR-D04-0002-1514**, at 1637 to 1638; and **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0081.

[1736] **CHM1**: T-355, page 28, line 6 to page 29, line 9, page 31, line 23 to page 33, line 19, page 42, lines 16 to 25, and page 43, line 14 to page 44, line 7; **EVD-T-OTP-00850/CAR-ICC-0001-0102**; **P229**: T-101, page 23, line 21 to page 25, line 5, and page 27, line 15 to page 28, line 9; and T-102, page 16, lines 8 to 22; **P69**: T-193, page 54, line 16 to page 55, line 12; **P9**: T-102, page 15, line 19 to page 16, line 22, and page 21, lines 5 to 14; **P6**: T-95, page 26, lines 7 to 25; and page 27, lines 10 to 12; **EVD-T-OTP-00605/CAR-ICC-0001-0066**; **P178**: T-152, page 49, lines 14 to 21; **EVD-T-OTP-00610/CAR-ICC-0001-0073**; **EVD-T-OTP-00350/CAR-OTP-0046-0349**; and **EVD-T-OTP-00142 to EVD-T-OTP-00252 (CAR-OTP-0001-0159 to CAR-OTP-0001-0546)** and **EVD-T-OTP-00254 to EVD-T-OTP-00344 (CAR-OTP-0002-0002 to CAR-OTP-0002-0137)**. The commission of crimes in various CAR locations is further corroborated by a number of media and NGO reports. *See*, *inter alia*, PK26: **EVD-T-OTP-00442/CAR-OTP-0011-0503**, at 0515 to 0516; Damara: **EVD-T-OTP-00442/CAR-OTP-0011-0503**, at 0508 and 0515 to 0517; **EVD-T-OTP-00852/CAR-OTP-0013-0052**; and **EVD-T-OTP-00854/CAR-OTP-0013-0113**; Kpabara: **EVD-T-OTP-00442/CAR-OTP-0011-0503**, at 0515; Gbakere: **EVD-T-OTP-00852/CAR-OTP-0013-0052**; Yombo: **EVD-T-OTP-00853/CAR-OTP-0013-0090**; Ndjo: **EVD-T-CHM-00049/CAR-OTP-0013-0098**; Yembe: **EVD-T-OTP-00576/CAR-OTP-0031-0099**, as transcribed in French at **EVD-T-CHM-00040/CAR-OTP-0036-0041**, at 0043 to 0045; Bozoum: **EVD-T-OTP-00854/CAR-OTP-0013-0113**; and **EVD-T-OTP-00580/CAR-OTP-0031-0120**; Ngata: **EVD-T-CHM-00049/CAR-OTP-0013-0098**; Bogodi: **EVD-T-CHM-00049/CAR-OTP-0013-0098**; Bagandou: **EVD-T-OTP-00853/CAR-OTP-0013-0090**; Paoua: **EVD-T-OTP-00580/CAR-OTP-0031-0120**; Yembe 1 district: **EVD-T-OTP-00849/CAR-OTP-0013-0320**, at 0328. For Bangui, PK12, PK13, PK22, Sibut, Bossembélé, Sibut, Bossangoa, and Mongoumba, *see also* Sections V(C)(3), V(C)(4), V(C)(5), V(C)(6), V(C)(7), V(C)(9), and V(C)(10). Within these cities, the MLC "canvassed" the neighbourhoods. *See* **P6**: T-95, page 12, lines 18 to 22; **P68**: T-48, page 37, lines 11 to 14, testifying that pillaging and abuses took place in Bangui in areas behind the police station of the 4th Arrondissement, up to the Cité Makpayen, Boy-Rabé and Dedengue I and II; **CHM1**: T-355, page 28, lines 6 to 18, page 42, lines 16 to 19, and page 43, line 14 to page 44, line 7, testifying that abuses and violent acts occurred in the northern neighbourhoods of Bangui, Bakongo, Boy-Rabé, Fou, Galabadja, Gobongo and along the main roads that led to the north, including PK12 and the roads to Damara and Boali; **EVD-T-OTP-00851/CAR-ICC-0001-0103**; and **V2**: T-222, page 54, lines 21 to 25, testifying that rapes were committed in Sibut all the way from Domi and the Muslim neighbourhoods to Kanga including the Mbrés neighbourhood, Mondwa, Sara, Marba, Darba 1 and Darba 2.

[1737] **P9**: T-102, page 17, lines 1 to 5, and page 21, lines 5 to 11; and **P69**: T-194, page 7, lines 2 to 14. *See also* **EVD-T-OTP-00401/CAR-OTP-0004-0409**, at 0428.

[1738] **P9**: T-104, page 7, line 22 to page 8, line 3, and page 43, line 19 to page 44, line 10; and **EVD-T-OTP-00046/CAR-OTP-0010-0120**, at 0161, 0166 and 0167.

similar terms) to refer to the MLC troops.[1739] Civilians could identify the MLC troops due to their presence in certain areas and other characteristics, including language, weapons, and uniforms.[1740]

564. The Chamber notes that Mr Firmin Findiro (P6), as confirmed by Mr Pamphile Oradimo (P9) – respectively, the CAR Prosecutor and Investigative Judge who investigated crimes committed during the 2002-2003 CAR Operation – testified that the MLC troops had a consistent "*modus operandi*".[1741] In this respect, other witnesses testified that the troops first confirmed, by the absence of retaliatory fire[1742] and by using scouts,[1743] that General Bozizé's rebels had already departed an area. The MLC soldiers then "mop[ped] it up",[1744] searching "house-to-house" for remaining rebels,[1745] pillaging goods, raping civilians, and intimidating and killing civilians who resisted.[1746]

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[1739] *See*, *inter alia*, **CHM1**: T-353, page 64, lines 3 to 11; **P47**: T-176, page 22, lines 16 to 24; and T-177: page 40, lines 19 to 21; **P209**: T-117, page 20, lines 1 to 4, and page 21, lines 5 to 7; **P112**: T-128, page 46, lines 19 to 21; **P169**: T-138, page 9, lines 15 to 23; **P178**: T-150: page 58, lines 7 to 24; and **P110**: T-125, page 10, lines 4 to 5 and 15, testifying that the term "Banyamulengué" refers to people with bad intentions who came to the CAR from Zaire.

[1740] **P6**: T-95, page 3, line 22 to page 4, line 8, page 54, lines 8 to 16, and page 62, line 5 to page 63, line 11; **EVD-T-OTP-00044/CAR-OTP-0005-0099**, at 0107, 0108, and 0110 to 0112; **P9**: T-102, page 42, line 22 to page 46, line 11; and T-104, page 7, lines 10 to 15; **EVD-T-OTP-00045/CAR-OTP-0010-0107**, at 0112, 0115 and 0116; **EVD-T-OTP-00046/CAR-OTP-0010-0120**, at 0140 to 0142, 0145 to 0148, 0150, 0156, 0157 and 0165; and **P229**: T-102, page 43, line 17 to page 44, line 22. *See also* **P222**: T-89, page 32, line 19 to page 33, line 13, testifying that Central Africans could identify the Lingala language because they had various opportunities to hear it, such as on radio and television programmes.

[1741] **P6**: T-96, page 4, line 23 to page 5, line 20, and page 32, lines 12 to 15; and **EVD-T-OTP-00046/CAR-OTP-0010-0120**, at 0156 to 0157, and 0161.

[1742] **P63**: T-109, page 10, lines 10 to 17, page 16, lines 11 to 15, and page 20, lines 16 to 21; and T-115, page 10, lines 11 to 17, testifying that, as they approached a town, MLC troops fired light or heavy weapons; if there was no retaliatory fire, they knew the town was safe to enter. *See also* **V2**: T-222, page 48, lines 13 to 19; T-224, page 53, line 20 to 24; and T-225, page 9, line 3 to page 10, line 3, testifying that the MLC shelled Sibut and fired guns as they arrived.

[1743] **P63**: T-109, page 9, line 2 to page 10, line 9, and page 11, lines 11 to 15; T-110, page 4, lines 1 to 13; and T-115, page 9, lines 2 to 6, testifying that MLC troops sent scouts, called "kadogo", ahead to mix with the civilian population and report when a location was clear. *See also* **P178**: T-152, page 36, line 14 to page 37, line 5, page 39, lines 14 to 25, and page 40, lines 17 to 23, testifying that Colonel Moustapha used Congolese youths who had been shoe-shiners in the CAR as scouts because they spoke Sango and knew the CAR.

[1744] **P178**: T-150, page 73, lines 1 to 9.

[1745] **P6**: T-95, page 12, lines 18 to 22; and T-96, page 3, lines 5 to 17; and **P63**: T-110, page 4, lines 6 to 13, and page 8, lines 13 to 25. *See also* **P119**: T-82, page 33, lines 6 to 16; **P87**: T-44, page 13, lines 12 to 16, and page 21, lines 20 to 22; **P47**: T-177, page 26, line 24 to page 27, line 1 and page 44, lines 4 to 5.

[1746] **P6**: T-95, page 11, lines 3 to 12, and page 14, line 22 to page 21, line 25; and T-96, page 3, lines 13 to 17, and page 4, line 18 to page 5, line 20; **P9**: T-104, page 28, line 17 to page 29, line 3; **P63**: T-110, page 4, lines 6 to 13; and **P178**: T-150, page 73, lines 1 to 9.

565. As for the motivations behind the soldiers' conduct, there is evidence that MLC soldiers sought to punish civilians in the CAR, for example, for MLC losses or as suspected enemies or enemy sympathisers.[1747] Further, as they did not receive adequate payment and rations from their superiors,[1748] some MLC soldiers applied the so-called and unofficial "Article 15", a term which predates the 2002-2003 CAR Operation and means that soldiers were to do what was necessary in order to "make ends meet".[1749] Many witnesses testified that, when applying "Article 15", MLC soldiers in the CAR secured – including by acts of murder, rape, and pillaging – compensation, in cash and kind, from the civilian population.[1750]

566. Indeed, MLC soldiers, sometimes after telling their victims that they were hungry,[1751] personally used pillaged goods.[1752] They slaughtered the livestock,

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[1747] **P6**: T-95, page 15, lines 2 to 10; and **P63**: T-110, page 4, lines 6 to 13, and page 8, lines 13 to 25. *See also* **P178**: T-151, page 18, line 23 to page 19, line 2, and page 25, lines 5 to page 26, line 24; and T-157, page 11, lines 6 to 15, and page 18, lines 2 to 6, testifying that MLC officers killed, or ordered the killing of, civilians as suspected rebels, for example, in Damara, or for MLC losses, for example, in Bossangoa; **V2**: T-224, page 53, lines 12 to 19, testifying that a MLC soldier informed him that President Patassé asked the MLC to burn Sibut down because the people were rebels; and **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1702.

[1748] **P45**: T-201, page 47, lines 2 to 11; **P44**: T-205, page 37, lines 7 to 19; **D49**: T-274, page 39, lines 10 to 23; **P36**: T-213, page 30, lines 6 to 10; and T-216, page 11, lines 5 to 15; **P33**: T-159, page 36, line 20 to page 37, line 3; **P173**: T-144, page 34, line 21 to page 35, line 2, and page 66, lines 12 to 24; **P110**: T-126, page 6, line 13 to page 7, line 4; **P32**: T-165, page 41, lines 13 to 21; **P69**: T-192, page 46, lines 7 to 10; **P112**: T-129, page 29, line 23 to page 30, line 3; and **D21**: T-306, page 64, lines 15 to 20.

[1749] **P44**: T-205, page 40, lines 1 to 14, testifying that the expression "Article 15" was invented by a politician from Kasai and meant "[d]o anything you can in order to survive, in order to make ends meet, in order to live"; **P45**: T-201, page 52, lines 4 to 7; T-202, page 5, lines 2 to 10; T-203, page 12, lines 6 to 14, page 13, line 19 to page 14, line 9; and T-205, page 40, lines 9 to 14, testifying that the term "Article 15" was used by soldiers as a code meaning that "you have to do everything you can to survive in these difficult circumstances"; **P173**: T-144, page 64, line 6 to page 65, line 10, page 66, lines 22-23, page 69, lines 10 to 14, and page 70, lines 1 to 11; and T-145, page 38, lines 2 to 11, testifying that the expression "Article 15" comes from the President Mobutu period in the DRC, where all Congolese were told to live as best as they could, including to kill, rape and steal in order to live because they were not being paid; and **P119**: T-82, page 33, line 24 to page 34, line 11, testifying that she was told by the leader of the group of soldiers who came to her compound that they had "to apply Article 15" and "to manage for themselves".

[1750] **P15**: T-210, page 28, lines 5 to 9; **P33**: T-159, page 36, line 20 to page 38, line 8, and page 39, lines 10 to 19; **P110**: T-126, page 6, line 13 to page 7, line 4; **P32**: T-165, page 58, lines 4 to 17; **P42**: T-64, page 11, line 19 to page 12, line 5, page 33, line 5 to page 34, line 14, and page 35, line 8 to page 39, line 19; **P209**: T-123, page 17, lines 3 to 14; **P47**: T-177, page 51, lines 1 to 6; and **P173**: T-144, page 34, line 21 to page 35, line 2, and page 64, line 6 to page 65, line 10. *See also* **EVD-T-OTP-00418/CAR-OTP-0005-0194**, reporting that the MLC soldiers made the civilians "pay".

[1751] *See, for example*, **P80**: T-63, page 22, lines 2 to 4; and **P73**: T-70, page 33, lines 14 to 15, page 37, lines 10-12, and page 45, lines 1 to 4.

[1752] *See, for example*, **P213**: T-187, page 44, line 24 to page 45, line 2, testifying that all those who were involved in the 2002-2003 CAR operation took advantage of the opportunity to get items they had not possessed before; and **P178**: T-150, page 62, line 24 to page 63, line 11, testifying that he learned about the lootings from

prepared and ate food items,[1753] and burned shutters, doors, and furniture as firewood.[1754] In addition, MLC soldiers traded pillaged items for other goods, such as alcohol, and forced civilians to buy back goods taken from them or their neighbours.[1755] The MLC troops also transported pillaged goods to the DRC, and, in particular, to Zongo, where they were kept by the soldiers who pillaged them, placed at the "disposal of the party", sold, distributed, and/or transported from Zongo to other towns in the DRC.[1756] Victims of pillaging were often left with nothing.[1757] The consequences were far-reaching. For example, P73 was unable to pay for medical treatment, V2's business has never recovered from the loss of necessary equipment, and many victims were left without, *inter alia,*

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the soldiers themselves in PK12 who would speak about the events in front of him; they would discuss what each got, such as "Well, I got a TV set" and "What did you get?", and the others said that they got a radio set or a motorbike.

[1753] **P42**: T-64, page 16, lines 2 to 17; **P73**: T-70, page 33, lines 11 to 21, and page 45, lines 1 to 12; and T-71, page 21, lines 1 to 7; **V1**: T-221, page 11, line 25 to page 12, line 3; and **P112**: T-129, page 29, line 23 to page 30, line 3.

[1754] **P73**: T-70, page 24, lines 5 to 7; **P63**: T-110, page 13, lines 3 to 5; and T-113, page 21, line 22 to page 22, line 5; and **P112**: T-129, page 27, lines 5 to 7.

[1755] **P63**: T-110, page 11, lines 4 to 8; and **P73**: T-70, page 24, lines 2 to 11.

[1756] **P178**: T-150, page 66, line 25 to page 67, line 3, page 69, lines 8 to 16, and page 70, lines 12 to 13 and 20 to page 71, line 25; T-152, page 19, lines 15 to 17; and T-151, page 52, lines 17 to 20, testifying that looted goods and looted vehicles were regularly transported to Zongo, and some of the goods were sold there; T-150, page 68, line 25 to page 69, line 7 and 17 to page 70, line 12; and T-152, page 19, lines 10 to 14, testifying that some looted goods were sold in Bangui; T-150, page 63, lines 2 to 11, page 64, line 14 to page 65, line 16, and page 68, line 12; T-151, page 43, lines 7 to 8; T-152, page 76, lines 1 to 17; and T-154, page 68, lines 1 to 19, testifying that the vehicles were transported from Bangui to Zongo, from Zongo most of the vehicles were transported in Gbadolite to "strengthen [Mr Bemba's] rebellion", and Mr Bemba took away almost all the vehicles that had been transported to Gbadolite; T-151, page 52, lines 20 to 22 and page 66, lines 17 to 21; and T-157, page 25, lines 14 to 22, testifying that some looted goods were transported to Libengue and Dongo in DRC; **P33**: T-159, page 16, lines 9 to 16, page 38, lines 3 to 4, page 41, line 13 to page 42, line 19, page 43, lines 3 to 20, and page 49, lines 9 to 13; and T-163, page 36, line 25 to page 41, line 11, testifying that looted vehicles and other looted goods were transported to Zongo, some of the goods were distributed in Zongo, and from Zongo almost all the vehicles were transported to Gbadolite; **P213**: T-187, page 39, line 23 to page 43, line 14, and page 44, line 12 to page 45, line 18, testifying that the goods were transported from CAR to Zongo, Gbadolite, and Gemena; some of the vehicles were transported to Gemena, Zongo, and Kinshasa, but most of them were transported to Gbadolite, to be "placed at the disposal of the party"; **P47**: T-177, page 28, lines 12 to 23 and page 51, line 1 to page 52, line 5; and T-180, page 4, line 25 to page 5, line 15, testifying that the looted items were transported to Zongo; **P38**: T-34, page 42, line 16 to page 43, line 25; **P23**: T-52, page 9, lines 3 to 7 and page 10, lines 2 to 7; and **P112**: T-129, page 28, lines 5 to 13. *See also* **P63**: T-108, page 47, line 20 to page 48, line 3; T-110, page 10, line 24 to page 11, line 14, and page 12, lines 2 to 15; T-112, page 9, lines 1 to 23; and T-115, page 12, lines 14 to 24, page 16, lines 1 to 8, page 17, line 18 to page 18, line 9 and page 20, lines 7 to 25; **P213**: T-187, page 40, line 10 to page 43, line 14; **EVD-T-OTP-00854/CAR-OTP-0013-0113**, the *Le Citoyen* article, dated 28 February 2003, describes the transportation of goods looted from civilians by the "Banyamulengués" in the Fourth Arrondissement of Bangui, Damara, Sibut, Bossembélé, Bégoua, Bozoum across the river at Port Beach to Zongo; and **EVD-T-OTP-00413/CAR-OTP-0005-0133**, at 0133.

[1757] **P23**: T-50, lines 1 to 3; **P42**: T-64, page 44, lines 13 to 14; and **V1**: T-220, page 45, line 24 to page 46, line 5.

their savings, foam mattresses, and clothes, which they had worked hard to obtain.[1758]

567. The evidence also evinces certain specific motivations and objectives behind the commission of rape. Indeed, some MLC soldiers considered victims to be "war booty"[1759] and/or sought to destabilise, humiliate, and punish suspected rebels and rebel sympathisers.[1760] Such objectives were often realised: rape victims experienced significant medical, psychiatric, psychological, and social consequences, including PTSD, HIV, social rejection, stigmatisation, and feelings of humiliation, anxiety, and guilt.[1761] Regarding the crime of murder, the evidence shows that, on some occasions, MLC soldiers killed or threatened to kill those who resisted acts of pillaging and rape.[1762]

568. Finally, the Chamber notes that there is evidence that MLC soldiers received instructions before and during the 2002-2003 CAR Operation to be "vigilant" with civilians, who were suspected to be enemies or enemy sympathisers, and to kill or shoot civilians. For example, P47, a mechanic for a river transport

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[1758] **P73**: T-70, page 40, lines 1 to 9; **P42**: T-64, page 44, lines 13 to 14; and **V2**: T-223, page, 53, line 19 to page 54, line 3. *See also* **P29**: T-80, page 49, lines 21 to 25, and page 50, lines 8 to 10.

[1759] **P229**: T-100, page 4, lines 14 to 23; and **P173**: T-144, page 64, lines 20 to 23; and **P42**: T-64, page 33, line 5 to page 34, line 14. *See also* **EVD-T-OTP-00401/CAR-OTP-0004-0409**, at 0428.

[1760] **P229**: T-100, page 4, line 24 to page 7, line 3, and page 8, line 25 to page 9, line 7; **EVD-T-OTP-00686/CAR-OTP-0065-0043**, at 0052; **EVD-T-OTP-00679/CAR-OTP-0065-0043_R01**, at 0047; **P69**: T-194, page 7, lines 2 to page 8, line 15; **P23**: T-51, page 30, line 23 to page 32, line 10, and page 39, lines 11 to 16; and **EVD-T-OTP-00015/CAR-OTP-0008-0050_R03**, at 0069 and 0070. *See also* **EVD-T-OTP-00401/CAR-OTP-0004-0409**, at 0428; **P9**: T-104, page 44, lines 4 to 7; and **EVD-T-OTP-00046/CAR-OTP-0010-0120**, at 0161.

[1761] **EVD-T-OTP-00686/CAR-OTP-0065-0043**, at 0051 to 0056; **EVD-T-D04-00023/CAR-OTP-0065-0173**; **EVD-T-D04-00024/CAR-OTP-0065-0178**; and **P229**: T-100, page 20, line 1 to page 35, line 23, and page 48, lines 5 to 22; and T-101, page 5, line 5 to page 7, line 24, testifying that victims of rape suffer from four types of consequences: medical (lesions to organs, HIV seroconversion, syphilis serology, loss of virginity, lesions to vagina, and unwanted pregnancies), psychological (fear, anxiety, anger, aggression, guilt, isolation, embarrassment and shame, loss of confidence, and washing rituals), psychiatric (PTSD, reactive depression, melancholia, neuroses, addictive behaviour, and psychosomatic disorders), and social (stigmatisation and repudiation); **EVD-T-OTP-00003/CAR-OTP-0064-0560**; and **P221**: T-38, page 24, line 2 to page 29, line 5; and T-39, page 5, lines 2 to 18 and page 7, line 3 to page 14, line 11, testifying about psychological, social, and medical consequences on victims of rape in CAR, in particular about difficulties of social reintegration of victims of rape in African communities and their inability to demand and receive appropriate medical treatment because of fear of rejection by their families and communities and lack of financial resources. *See also* **P9**: T-102, page 31, line 8 to page 32, line 24; and T-104, page 28, lines 2 to 9; **EVD-T-OTP-00046/CAR-OTP-0010-0120**, at 0160; and **P6**: T-94, page 46, lines 12 to 20; and T-96, page 51, line 1 to page 52, line 17.

[1762] **P6**: T-95, page 11, lines 3 to 12, and page 15, lines 2 to 10; and T-96, page 3, lines 13 to 17, and page 4, line 18 to page 5, line 20; **P9**: T-104, page 28, line 17 to page 29, line 3; **P63**: T-110, page 4, lines 6 to 13; and **P178**: T-150, page 73, lines 1 to 9.

company that ferried MLC troops to the CAR, and P213 both testified that, before deployment, MLC troops were instructed to treat everyone they encountered in the CAR as the enemy and to kill them.[1763] Likewise, P23, P112, and P178 all testified that the MLC troops in PK12 were under orders to kill or shoot at civilians, in particular, men and boys.[1764] Further, in January 2003, the MLC Chief of General Staff, as recorded in the MLC logbook and copied to Mr Bemba, urged the MLC contingent in the CAR to exercise "vigilance towards the civilian population who are doubtlessly hiding mutineers among them".[1765] Moreover, P178 testified that Colonel Moustapha relayed an order "from the very top", to shoot anything that moved, in order to avenge the death of Captain René, who was "Mr Bemba's favourite son".[1766] According to P178, this order resulted in "a real bloodbath", "a terrible thing for the population between Bossembélé, Bozoum, Bossangoa".[1767]

569. The Chamber recalls its concerns as to the testimonies of P47, P178, and P213.[1768] In this regard, the Chamber notes that P23, P47, P112, P178, and P213 all identified different sources of the orders to use force against civilians, including Mr Bemba, unidentified MLC officers, Colonel Moustapha, and President Patassé.[1769] In such circumstances, and although, as discussed below, the

[1763] **P213**: T-186, page 42, lines 14 to 18, page 43, line 2 to page 44, line 15, and page 46, lines 15 to 22, testifying that, during a meeting at the Zongo airfield, Mr Bemba told the troops the following: "[w]e have prepared you to go into the Central African Republic. Over there you don't have any fathers, mothers, older brothers, younger brothers. Your task is the one I have entrusted to you. According to the information we have, enemy is wearing civilian clothing. Anyone you encounter on the battle-field is an enemy" – P213 understood this order to mean that "anyone you come across on the battle-field you just kill them"; and **P47**: T-176, page 32, line 11 to page 33, line 24; and T-178, page 25, lines 16 to 23, testifying that he heard that, before the MLC soldiers embarked on the ferry in Zongo to cross over to the CAR, "the person in charge" addressed the soldiers, telling them "war is being waged" in the CAR and "all those you find there, men and women, you should kill them, destroy all the houses that we see there beyond Zongo".

[1764] **P112**: T-129, page 8, lines 16 to 24, and page 32 lines 9 to 21; and T-130, page 16, lines 2 to 12; **P178**: T-151, page 22, line 25 to page 23, line 10; and **P23**: T-51, page 49, lines 11 to 17.

[1765] **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1702, the messages reads, in the original French, *"vigilance envers la population centrafricaine qui cache sans doute des mutins chez elle*".

[1766] **P178**: T-150, page 50, lines 9 to 10; T-151, page 20, lines 2 to 25; and T-157, page 15, line 19 to page 16, line 9.

[1767] **P178**: T-151, page 18, line 23 to page 19, line 2 and page 20, lines 17 to 20; and T-157, page 11, lines 6 to 15 and page 18, lines 2 to 13.

[1768] *See* Section IV(E)(7)(a).

[1769] **P213**: T-186, page 42, lines 14 to 18, page 43, line 2 to page 44, line 15, and page 46, lines 15 to 22, identifying Mr Bemba as the source; **P47**: T-176, page 32, line 11 to page 33, line 24; and T-178, page 25, lines

Chamber is satisfied that orders with such content were issued to MLC troops, the Chamber is unable to reach any conclusion as to the exact source of these orders.

570. The testimonies concerning the orders issued before deployment, on the ground in PK12, and following Captain René's death are generally consistent as to their content and corroborate each other insofar as such instructions singled out civilians in the CAR as the enemy, or as harbouring the enemy, and instructed MLC soldiers to kill or shoot civilians. The Chamber emphasises that the testimonies of P47, P178, and P213 are corroborated by the testimonies of P23 and P112. P23 and P112 were victims of alleged crimes by MLC soldiers. Both testified as to what the MLC troops told them about the instructions they received. The Chamber has carefully assessed this hearsay evidence, but has no reason to doubt their testimony, generally, or, on this particular topic.

571. Moreover, the evidence of P23, P47, P112, P178, and P213, which must be read in light of the inconsistent and/or inadequate training MLC troops received,[1770] is further corroborated by (i) the logbook message urging vigilance against the civilian population; (ii) the order transmitted by Colonel Moustapha, with Mr Bemba's knowledge, to attack Mongoumba at a time when only civilians were present;[1771] and (iii) evidence concerning the MLC's *modus operandi* and the perpetrators' motives.[1772] In light of the above considerations, taken together, the Chamber finds the corroborated evidence that orders to exercise vigilance towards civilians in the CAR, including the use of force against them, were issued to MLC troops during the 2002-2003 CAR Operation to be reliable.

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16 to 23, testifying that "the person in charge" addressed the soldiers; **P112**: T-129, page 8, lines 16 to 24, and page 32 lines 9 to 21; T-130, page 16, lines 2 to 12, testifying that he was informed by a MLC soldier that the MLC soldiers had received the instruction from Mr Bemba to kill men aged 15, 18 and over; **P178**: T-151, page 22, line 25 to page 23, line 10, testifying that Colonel Moustapha ordered the MLC soldiers to shoot at the population; and **P23**: T-51, page 49, lines 11 to 17, testifying that a MLC officer told him that President Patassé asked the MLC to kill all boys over the age of two.

[1770] *See* Section V(A)(2).

[1771] *See* Section V(C)(10).

[1772] *See* paras 564 to 567.

572. The Chamber notes D19's testimony that Mr Bemba called Colonel Moustapha before the MLC crossed to the CAR and told him to apply the "code of good practice, good conduct".[1773] However, recalling its general concerns as to D19's credibility and the reliability of his testimony,[1774] the Chamber considers that this uncorroborated evidence does not undermine the corroborated and reliable evidence set out above.

573. Accordingly, the Chamber finds that orders were issued to MLC troops during the 2002-2003 CAR Operation to exercise vigilance towards civilians in the CAR, including the use of force against them.

## D. PUBLIC ALLEGATIONS OF CRIMES AND MR BEMBA'S REACTIONS THERETO

574. Below, the Chamber addresses (i) media allegations of crimes committed by MLC soldiers during the 2002-2003 CAR Operation, and the measures Mr Bemba took in response, including (ii) an inquiry headed by Colonel Mondonga in November 2002; a November 2002 visit to the CAR, during which Mr Bemba (iii) met with the UN representative in the CAR, General Cissé, and President Patassé and (iv) gave a speech at PK12; (v) the trial of Lieutenant Willy Bomengo and others at the Gbadolite court-martial; (vi) an investigative commission sent to Zongo; (vii) correspondence with General Cissé; (viii) correspondence and interviews in response to a report by the *Fédération internationale des ligues des droits de l'Homme* ("FIDH"); and (ix) a mission to Sibut.

575. Although the CAR authorities also investigated some of the alleged crimes, the Chamber considers it sufficient for purposes of this Judgment to note that such efforts were largely unsuccessful (i) because the CAR investigation team did not

[1773] **D19**: T-284-Conf, page 28, lines 15 to 18.
[1774] *See* Section IV(E)(7)(c)(vi).

have access to members of the MLC and others who had worked with them during the 2002-2003 CAR Operation; and (ii) for political reasons, which were the main motivation for terminating proceedings in the CAR against Mr Bemba, who had then been appointed Vice-President of the DRC.[1775]

### 1. Media allegations

576. From the early days and throughout the 2002-2003 CAR Operation, as noted by a number of witnesses,[1776] international media outlets – particularly *Radio France Internationale* ("RFI"), but also others, like the British Broadcasting Corporation ("BBC"), the Associated Press ("AP"), the Integrated Regional Information Networks ("IRIN"), and the Voice of America – consistently reported allegations that MLC soldiers were committing acts of pillaging, rape, and murder against the civilian population in the CAR.[1777] From the early days of

[1775] **P6**: T-96, page 9, line 3 to page 10, line 6, and page 24, lines 16 to 23; and T-97, page 24, lines 11 to 15; and **P9**: T-104, page 19, line 21 to page 21, line 8, page 24, lines 9 to page 25, line 17, page 27, lines 11 to 19, page 33, lines 7 to 15, page 54, lines 3 to 18, page 57, line 8 to page 59, line 5, and page 61, line 11 to page 62, line 8; and T-105, page 10, line 10 to page 12, line 22, page 15, line 22 to page 17, line 3, page 17, line 19 to page 18, line 3, and page 33, line 22 to page 34, line 15. *See also* ICC-01/05-01/08-962, paras 36 to 45.

[1776] *See*, *inter alia*, **P45**: T-204, page 15, lines 2 to 7, testifying that, from the very beginning of the MLC intervention in the CAR, and each time the MLC troops advanced and captured a particular area, there were always allegations of crimes of pillaging, murder, and rape committed by the MLC troops being raised in the media; **D48**: T-267, page 31, lines 7 to 10, page 34, lines 8 to 22, page 48, lines 9 to 12, page 49, lines 14 to 19, and page 70, lines 15 to 16; and T-268, page 28, lines 15 to 16, page 29, lines 1 to 4, and page 30, lines 1 to 2, testifying that the accusations could be heard on the radio that the MLC soldiers had committed pillaging, rape, and murder, and that the allegations were broadcast "round the clock" on RFI; **P44**: T-205, page 29, lines 2 to 7 and 20 to 23 and page 53, line 2 to page 54, line 3, testifying that RFI, as well as the BBC and the Voice of America, reported extensively on the abuses, including "rapes, theft, and destruction", committed in the CAR by MLC troops; **P36**: T-214, page 47, line 25 to page 48, line 6, and page 49, lines 4 to 17, testifying that the media, including RFI, reported that the MLC troops were committing large-scale abuses in the CAR, in particular rape, and also pillaging, theft, and appropriation of property; and **P15**: T-208, page 28, lines 1 to 12 and 24 to page 29, line 4, testifying that the media referred to allegations of acts of sexual violence and pillaging and that the allegations of abuse committed by the MLC soldiers against civilians in the CAR were widely disseminated through the international press.

[1777] **EVD-T-OTP-00438/CAR-OTP-0011-0293**, an IRIN Africa article, dated 31 October 2002, stating that the MLC forces were accused of widespread pillaging, particularly in the northern neighbourhoods of Bangui; **EVD-T-OTP-00821/CAR-OTP-0030-0274**, an BBC News article published on 1 November 2002, reporting allegations of serious violence and pillaging by MLC soldiers in the northern suburbs of Bangui; **EVD-T-OTP-00575/CAR-OTP-0031-0093**, track 4, from 00:04:46 to 00:06:32, a RFI programme from 2 November 2002, including the account of a Bangui citizen claiming that Congolese soldiers pillaged his neighbours' property; **EVD-T-OTP-00846/CAR-OTP-0004-0874**, a *communiqué de presse* issued in Paris by the former CAR Prime Minister, Mr Jean-Paul Ngoupande, dated 2 November 2002, containing allegations of crimes, including massacres, rapes, and pillaging, committed in the CAR by MLC troops, in particular, in northern Bangui; **EVD-T-OTP-00575/CAR-OTP-0031-0093**, track 5, RFI programme from 3 November 2002, transcribed and translated into English at **EVD-T-CHM-00019/CAR-OTP-0056-0278**, at 0280, indicating that Mr Bemba's men allegedly abused and were still abusing civilians in the northern neighbourhoods of Bangui, particularly in

the 2002-2003 CAR Operation and throughout its duration, Mr Bemba followed

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Bégoua and PK12, where several hundred men had pillaged and raped women and children; **EVD-T-OTP-00427/CAR-OTP-0008-0413**, a BBC article published on 4 November 2002, stating that residences in the northern neighbourhoods of Bangui were looted by MLC soldiers, and that rumours were circulating about assailants on the run and acts of violence, including rape of young girls, attributed to MLC combatants; **EVD-T-OTP-00575/CAR-OTP-0031-0093**, track 6, from 00:05:49 to 00:08:24, a RFI programme from 4 November 2002, stating that Bangui inhabitants had reported killings, pillage, rape and other acts of violence by Mr Bemba's troops; **EVD-T-OTP-00413/CAR-OTP-0005-0133**, a RFI article published on 5 November 2002, including allegations of pillaging and rapes of women and young girls in the northern neighbourhoods of Bangui by MLC soldiers, and stating that the CAR army set up check points to impede MLC soldiers from leaving Bangui with looted goods; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0667 to 0668, a BBC article published on 5 November 2002, stating that MLC soldiers were raping children, pillaging, and killing civilians in the northern neighbourhoods of Bangui and stating that the CAR government had decided to open an inquiry; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0669, a BBC article published on 6 November 2002, mentioning complaints raised by inhabitants of the northern suburbs of Bangui about rape and pillaging allegedly committed by the MLC soldiers, stating that local politicians considered the CAR government responsible for the situation because of its alliance with the MLC, and reporting that the CAR government had announced that the MLC contingent would leave the CAR in two or three days; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0669 to 0671, an AP article published on 8 November 2002, describing allegations of rape and pillaging by MLC soldiers in Bangui; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0671 to 0673, an Contra Costa Times article published on 11 November 2002, stating that Congolese rebels had looted homes and raped entire households in Bangui; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0673 to 0675, a Comtex News article published on 15 November 2002, including allegations of looting, rape, and "many cruel acts against the population" committed by Mr Bemba's troops; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0675 to 0676, a BBC article published on 16 November 2002, referring to reports of "atrocities" allegedly committed by MLC troops; and **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0676 to 0679, a Comtex News article published on 28 November 2002, referring allegations of pillaging, rapes, and theft by Mr Bemba's rebels; **EVD-T-OTP-00576/CAR-OTP-0031-0099**, a RFI programme, dated 5 December 2002, transcribed in French at **EVD-T-CHM-00040/CAR-OTP-0036-0041**, at 0041 to 0048, including allegations of pillaging, rapes, and killings by MLC troops; **EVD-T-OTP-00400/CAR-OTP-0004-0345**, at 0346 to 0348, a RFI programme, dated 5 December 2002, containing information on killings, rapes, and pillaging allegedly committed by the "Banyamulengués" or "Mr Bemba's men" in the Fourth Arrondissement, Gobongo, PK10, PK11, PK12, PK22, Yembi, and Bégoua; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0679 to 0680, an All Africa article, dated 11 December 2002, stating that most of the rapes committed during the fighting in October 2002 in Bangui were attributed to the MLC troops; **EVD-T-OTP-00414/CAR-OTP-0005-0135**, a RFI article published on 13 December 2002, containing information on pillage, rapes, and thefts allegedly committed by the MLC; **EVD-T-OTP-00578/CAR-OTP-0031-0106**, track 3, at 00:09:46 to 00:12:07, a RFI programme, dated 15 December 2002, containing information on rapes, pillaging, and massacres committed by the MLC; **EVD-T-OTP-00418/CAR-OTP-0005-0194**, a RFI article, referring to rapes committed by MLC soldiers since 25 October 2002; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0681, an AP article, dated 21 January 2003, affirming that inhabitants of Bangui reported the commission of rapes and pillage by "Congolese rebels" after 25 October 2002; **EVD-T-OTP-00579/CAR-OTP-0031-0116**, two tracks of a RFI programme from 13 February 2003, transcribed in French at **EVD-T-CHM-00042/CAR-OTP-0057-0243**, reporting crimes in Damara, particularly mass murders, pillage, and rapes allegedly committed by MLC soldiers; **EVD-T-OTP-00415/CAR-OTP-0005-0141**, a RFI article published on 13 February 2003, mentioning pillaging allegedly committed by MLC soldiers after the *coup d'état* in the CAR; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0682 to 0683, an AP article published on 16 February 2003, containing information that MLC soldiers were accused of attacking civilians, raping women and girls, and pillaging homes in the CAR; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0683 to 0684, an article from 17 February 2003, reporting that hundreds of MLC fighters looted parts of Bangui and "went on a spree of violence and rape"; **EVD-T-OTP-00582/CAR-OTP-0031-0124**, track 2, from 00:10:30 to 00:12:45, a RFI programme from 19 February 2003, referring to the recapture of Bossangoa by the MLC forces and mentioning allegations of crimes of murder, rape, and pillage by MLC soldiers in Bangui, Bozoum, and Bossangoa; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0686 to 0687, an article published on 20 February 2003, mentioning rapes and pillaging allegedly committed by the MLC in Bangui since 25 October 2002; **EVD-T-OTP-00423/CAR-OTP-0005-0333**, a *Le Soft Online* article published on 5 March 2003, referring to "atrocities" allegedly committed by MLC soldiers in the CAR; and **EVD-T-OTP-00583/CAR-OTP-0031-0136**, track 1, a RFI programme from 14 March 2003, transcribed and translated into English at **EVD-T-OTP-00734/CAR-OTP-0056-0300**, at 0303, reporting that, on 5 and 6 March 2003, Mongoumba was ransacked by MLC soldiers in a punitive operation against the town's population, which allegedly included pillaging and murder by the MLC soldiers.

these international reports.[1778] Some international media reports directly refer to Mr Bemba's reaction to media allegations.[1779]

577. Local CAR media outlets – whose reports in French were accessible to the MLC troops and others in the CAR – also regularly and consistently reported allegations of crimes committed by the MLC troops in the CAR.[1780]

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[1778] *See, inter alia*, **P213**: T-188, page 23, lines 21 to 22, testifying that Mr Bemba was well-informed about the situation in the CAR and followed events on both the television and radio; **P45**: T-201, page 66, line 17 to page 67, line 12, testifying that Mr Bemba was aware of the allegations against the MLC from RFI news broadcasts and other sources, and stressed that it was a "passion" of Mr Bemba's to follow the news on the television and on the radio, and that Mr Bemba was in telephone contact with everyone, everywhere; **P44**: T-205, page 54, lines 4 to 15; and T-206, page 12, lines 4 to 8, testifying that Mr Bemba must have heard what was being said in the media and that it was impossible for Mr Bemba not to listen to the radio; **P15**: T-209, page 16, lines 17 to 21, testifying that that Mr Bemba, like everyone else, listened to the media and was aware of the reports that were broadcast over RFI, although the witness clarified that he did not know how frequently Mr Bemba listened to RFI; **P36**: T-214, page 47, line 25 to page 48, lines 6, and page 48, lines 18 to 21; and T-215, page 6, lines 3 to 5, testifying that MLC officers were able to follow the media reports about the MLC troops committing crimes in the CAR and that he was sure that Mr Bemba also heard the same reports on the radio or through other sources; **D48**: T-267, page 31, lines 9 to 12; and T-268, page 28, lines 13 to 25, testifying that RFI was the radio station generally listened to by people in his area, the authorities were concerned by the allegations against the MLC soldiers over the radio, and Mr Bemba did not want that behaviour to go unpunished; and **D19**: T-285, page 48, lines 5 to 16, testifying that it was difficult to say that Mr Bemba was not aware of the situation in the field, as the radio broadcasters kept everyone informed.

[1779] **EVD-T-OTP-00821/CAR-OTP-0030-0274**, a BBC article published on 1 November 2002; **EVD-T-OTP-00575/CAR-OTP-0031-0093**, track 6, from 00:08:25 to 00:08:39, a RFI programme, dated 4 November 2002, reporting that, when interviewed by RFI, Mr Bemba said that, if his soldiers had committed massacres, they would be arrested and prosecuted before the MLC courts-martial; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0667 to 0668, a BBC article published on 5 November 2002, quoting Mr Bemba as saying, "[i]f my men have committed atrocities, they will be arrested and undergo trial under our movement's military laws"; **EVD-T-OTP-00413/CAR-OTP-0005-0133**, a RFI article published on 5 November 2002, stating that Mr Bemba declared that he gave instructions and imposed sanctions against all soldiers convicted of abuse; and **EVD-T-OTP-00825/CAR-V20-0001-0165**, at 0167, a *Le Citoyen* article, dated 14 March 2003, quoting a statement given by Mr Bemba, in which Mr Bemba argues that MLC troops in a boat on the Oubangui River had been stopped, and food, uniforms, boots, and medicine had been pillaged from them and, therefore, the MLC troops reacted in order to recover their goods; the article goes on to state that the MLC had been accused of pillaging in Mongoumba and that Mr Bemba had affirmed that an inquiry carried out by President Patassé had sanctioned certain CAR officers.

[1780] **EVD-T-OTP-00446/CAR-OTP-0013-0082**, at 0082 to 0089, a *Le Citoyen* article, dated 5 November 2002, containing details of the chronology of the intervention of the MLC troops in the days following 25 October 2002, including numerous allegations of rapes, pillage, and murder of civilians in different neighbourhoods of Bangui and PK12; **EVD-T-OTP-00847/CAR-OTP-0013-0012**, a *Le Confident* article, dated 7 November 2002, detailing allegations of rapes and killings committed in the CAR by MLC troops against girls and women, and stating that FIDH called for light to be shed on such allegations; **EVD-T-OTP-00849/CAR-OTP-0013-0320**, *Le Citoyen* articles, dated 8 November 2002, containing information on crimes allegedly committed by the MLC troops and Mr Miskine's troops in the CAR, including rapes, killings, and pillaging; **EVD-T-OTP-00399/CAR-OTP-0004-0343**, at 0344, a *Le Citoyen* article published on 13 November 2002, containing the transcription of a letter allegedly sent on 10 November 2002 on behalf of the population of PK12, PK13, and PK22 to General Cissé, requesting the opening of an urgent international inquiry against the CAR government and Mr Bemba for crimes, including pillaging, killings, rapes, robbery, and destruction, allegedly committed by the "Banyamulengués" in Bégoua, PK12 and PK22; **EVD-T-OTP-00819/CAR-OTP-0013-0118**, a *L'Agence Centrafrique Presse* article from the week of 21 to 27 November 2002, providing information regarding a meeting allegedly occurring on 20 November 2002 between CAR authorities in Bégoua and Colonel Moustapha on the topic of abuse, pillaging, and rape committed by MLC troops against the population of Bégoua, where Colonel Moustapha presented his excuses for the behaviour of his soldiers; **EVD-T-OTP-00398/CAR-OTP-**

578. Many media reports contained detailed accounts from alleged victims and, while not necessarily providing specific information on the identities of the individual perpetrators, they generally identified them as "Banyamulengués", "Bemba's men", or "MLC soldiers".[1781] As confirmed by P44, international and

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**0004-0336**, at 0338, a *Le Citoyen* article published on 26 November 2002, reproducing a speech by President Patassé in which he recalls that he had requested Mr Bemba's support, and states that he knows that "some things have happened" and that he will create a commission of inquiry; **EVD-T-OTP-00445/CAR-OTP-0013-0065**, at 0065 to 0066, a *Le Citoyen* article published on 27 November 2002, describing, *inter alia*, the arrival of the MLC soldiers in Bossembélé, and reporting that, as soon as the city fell under the control of the "Banyamulengués", they began to systematically loot shops, stores, and houses, and beat people to extort money and take their goods; **EVD-T-OTP-00400/CAR-OTP-0004-0345**, at 0349, a *Le Citoyen* article published on 6 December 2002, describing abuse allegedly committed by the "Banya" or "Nyama Mulengués" in the northern areas of the capital, containing details of pillage and systematic rapes, and referring to a protest by the inhabitants of Gobongo, Fouh, PK10, and PK12 against the crimes committed by the "Banyamulengués"; **EVD-T-OTP-00848/CAR-OTP-0013-0051**, two *Le Citoyen* articles, dated 14 December 2002, referring to pillaging, rapes, and killings attributed to "*des hommes de Jean Pierre Bemba*" in several areas, such as Bégoua, Boy-Rabé, Gobongo, Fouh, and Bossembélé, and reporting that the leader of the "Nyamamulengués" affirmed that the order had been given to strip individuals entering Bangui to ensure that no "needle" entered the capital; **EVD-T-OTP-00852/CAR-OTP-0013-0052**, a *Le Citoyen* article, dated 21 January 2003, providing details of incidents of pillaging, murder, rape, hostage-taking, beatings, and other abuse allegedly carried out by the "Nyamamulengué" in Gbakéré, Bossembélé, Yaloké, Damara, PK10, and Vangué Fleurs; **EVD-T-CHM-00049/CAR-OTP-0013-0098**, a *Le Citoyen* article, dated 29 January 2003, stating that Mr Bemba's soldiers chose the civilian population of Bossembélé as their enemy, rather than General Bozizé's troops, and that Mr Bemba's "Nyamamulengués" were accused of pillaging, murders, and rapes; **EVD-T-OTP-00448/CAR-OTP-0013-0161**, a *Le Confident* article published on 24 February 2003, and **EVD-T-OTP-00443/CAR-OTP-0013-0005**, a *Le Citoyen* article published on 24 February 2003, both containing an interview with President Patassé, where he recognised that rapes were committed by Mr Bemba's soldiers (in Bangui), affirmed that Mr Bemba went to Bangui and punished those responsible, and that those crimes are "the consequences of war"; **EVD-T-OTP-00854/CAR-OTP-0013-0113**, a *Le Citoyen* article published on 28 February 2003, referring to abuse committed by "*les hommes de Jean Pierre Bemba*" and providing details of pillaging in the Fourth Arrondissement of Bangui, Bégoua, Damara, Sibut, Bossembélé, and Bozoum; **EVD-T-OTP-00820/CAR-OTP-0013-0114**, a *Le Citoyen* article, dated 6 March 2003, stating that, on 4 March 2003, FACA forces boarded two "*baleinières*" containing looted goods taken by MLC soldiers from the population in the towns of Damara, Sibut, Bossembélé, Bossangoa, and Bozoum, and that "*éléments de Jean-Pierre Bemba*" came back to the CAR the day after, on 5 March 2003, and opened fire on the town in order to avenge the insult of the previous day and to find the two "*baleinières*" that were taken from them; **EVD-T-OTP-00855/CAR-OTP-0013-0115**, a *Le Citoyen* article, dated 8 March 2003, referring to an "*opération de représailles*" carried out on 5 March 2003 by 500 "Nyamamulengués", and providing information on destruction, pillaging, and murder carried out by "*les hommes de Jean-Pierre Bemba*"; **EVD-T-V20-00006/CAR-V20-0001-0177**, at 0181, a *Le Citoyen* article from 10 March 2003, containing information regarding an attack on the town of Mongoumba allegedly committed by MLC troops, referring to pillaging house-by-house, three killings, and the rape of four girls; and **EVD-T-OTP-00825/CAR-V20-0001-0165**, at 0169 to 0170, a *Le Citoyen* article from 14 March 2003, containing an interview with the deputy of Mongoumba, who describes in detail the arrival of the MLC in Mongoumba and the crimes of pillaging and murder allegedly committed by the MLC soldiers.

[1781] **P45**: T-204, page 9, line 25 to page 10, line 16, testifying that the media had made allegations against MLC soldiers and mentioned rapes, pillaging, and killing, but without indicating the names of specific soldiers; **P15**: T-208, page 28, lines 1 to 12; and T-209, page 16, lines 10 to 16, and page 17, lines 21 to 25, testifying that the RFI and FIDH reported on acts of sexual violence and pillaging by the MLC soldiers against civilians, but that he did not know whether Mr Bemba was aware of "specific facts", for example, the "number of victims and types of demonstrations, or types of actions"; **P36**: T-218, page 33, lines 12 to 16, and page 34, lines 7 to 15, testifying that mention was made on the radio of MLC soldiers "engaging in misconduct in Bangui", but no specific names, or companies, battalions, or platoons were mentioned; and **D48**: T-267, page 34, lines 8 to 22, testifying that the information broadcast by RFI was vague, in that it referred to the "Banyamulengué" or the MLC soldiers in the CAR, without giving specific information about the alleged perpetrators, or even the victims or their locations.

local media often focused on allegations of MLC crimes.[1782] A limited number of the media reports in evidence refer to crimes committed by unidentified individuals,[1783] or the USP, Mr Miskine's troops, and loyalist forces in general.[1784] Of those media reports in evidence, contradictory information concerning the identity of perpetrators was only broadcast in relation to one incident.[1785] Further, media reports in evidence reporting alleged crimes by General Bozizé's rebels usually refer to crimes committed at locations that were not under MLC control at the time.[1786] In light of the above, the Chamber is not persuaded by the Defence submissions that media reports of alleged crimes by other loyalist forces or General Bozizé's rebels would have generally caused confusion as to the identity of the alleged perpetrators.[1787]

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[1782] **P44**: T-205, page 53, line 23 to page 54, line 3, stating that "practically all [the] broadcasts denounced the abuses committed by [those whom] the population referred to as 'the Banyamulengues'", and they talked about rapes, theft, and destruction at length. *See also* paras 576 to 577.

[1783] **EVD-T-CHM-00023/CAR-OTP-0005-0125**, at 0125, a RFI article apparently published on 27 October 2002, mentioning that the population of Bangui tried to flee the combat zone during the counter-offensive and that some testimonies suggest that there might be some civilian victims; and **EVD-T-CHM-00024/CAR-OTP-0005-0127**, at 0127, a RFI article apparently published on 29 October 2002, mentioning that, according to some testimonies, when civilians abandoned their houses in the northern parts of Bangui, some "small delinquents" started pillaging their houses.

[1784] **EVD-T-OTP-00577/CAR-OTP-0031-0104**, track 2, a RFI programme in December 2002 (exact date not specified), alleging that Libyan forces did not differentiate between military targets and civilians, and track 3, from 00:04:30 to 00:05:54, a RFI programme on 11 December 2002, containing an interview with former CAR Prime Minister, who appeals to CAR citizens to rise against President Patassé's government, due to the massive abuses, shelling, rapes, and massacres committed against the civilians under President Patassé's regime; **EVD-T-OTP-00578/CAR-OTP-0031-0106**, track 3, from 00:10:35 to 00:12:07, a RFI programme, dated 15 December 2002, mentioning abuses allegedly committed by Libyans, namely, shelling of civilian population, by Mr Miskine's men, and by some USP soldiers; **EVD-T-OTP-00849/CAR-OTP-0013-0320**, at 0321 and 0323, *Le Citoyen* articles, dated 8 November 2002, containing information on crimes allegedly committed by Mr Miskine's troops and MLC soldiers; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0686, a BBC article published on 20 February 2003, referring to a Chadian ministry statement that civilians fleeing the massacres towards Chad were killed by MLC soldiers, Mr Miskine's combatants, and other militias; and **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0689, an All Africa article, dated 21 February 2003, stating that the MLC, Mr Miskine's troops, and other loyalist forces had "hunted down" Chadians, Muslims, and CAR nationals suspected of being rebel accomplices.

[1785] *See* **EVD-T-OTP-00821/CAR-OTP-0030-0274**; **EVD-T-OTP-00575/CAR-OTP-0031-0093**, track 6, at 00:05:20 to 00:08:10; **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0669 to 0670, and 0674; **EVD-T-OTP-00446/CAR-OTP-0013-0082**, at 0086; **EVD-T-OTP-00849/CAR-OTP-0013-0320**; and **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0667 to 0668.

[1786] **EVD-T-OTP-00398/CAR-OTP-0004-0336**, at 0337 to 0338; **EVD-T-OTP-00577/CAR-OTP-0031-0104**, track 5, from 00:08:05 to 00:09:25; **EVD-T-OTP-00578/CAR-OTP-0031-0106**, track 1, from 00:09:46 to 00:12:07; **EVD-T-CHM-00004/CAR-DEF-0001-0205**; and **EVD-T-OTP-00832/CAR-OTP-0013-0106**.

[1787] *See contra* Defence Closing Brief, paras 855 and 859, alleging that media reports also documented the crimes committed by Bozizé's rebels and that conflicting reports regarding the identity of the perpetrators may have caused confusion.

579. In relation to the Defence's submission concerning the reliability of RFI reports,[1788] the Chamber notes that D18 questioned the reliability of such reports, referring to RFI's retraction of certain allegations it made before the 2002-2003 CAR Operation.[1789] However, D18 also stated that he and others within the MLC heard about thefts in Bangui over RFI and that people were speaking about it.[1790] He stated that everyone knew that, during the 2002-2003 CAR Operation, crimes were committed.[1791]

580. P15 also testified that RFI was often "excessive",[1792] and within the MLC, there was considerable suspicion regarding the impartiality of RFI and the truth of its reports.[1793] However, an analysis of media reports published throughout the conflict[1794] demonstrates that the information on crimes by MLC soldiers from other media outlets was generally consistent with that reported by RFI.

581. The Chamber therefore finds that the testimonies of D18 and P15 are insufficient to support any suggestion that Mr Bemba or others contemporaneously following RFI's allegations of crimes committed during the 2002-2003 CAR Operation disbelieved such reports. Likewise, this evidence does not undermine the reliability of these reports for purposes of this Judgment.

### 2. Mondonga Inquiry

582. During the initial days of the 2002-2003 CAR Operation, Mr Bemba and senior MLC officials discussed media allegations of MLC crimes in the CAR.[1795] In

[1788] Defence Closing Brief, paras 860 to 866.
[1789] **D18**: T-319, page 28, lines 6 to 12.
[1790] **D18**: T-319bis, page 19, lines 19 to 23, and page 20, lines 18 to 21.
[1791] **D18**: T-319bis, page 14, lines 15 to 16; and T-319bis-Conf, page 14, lines 17 to 23, page 15, lines 14 to 20, page 19, line 22 to page 20, line 1, page 20, line 18 to page 21, lines 3, and page 21, lines 17 to 21.
[1792] **P15**: T-210, page 52, lines 1 to 8.
[1793] **P15**: T-209, page 36, lines 6 to 12.
[1794] *See* paras 576 to 577.
[1795] **D49**: T-271, page 19, lines 4 to 23, testifying that members of the General Staff reported to Mr Bemba on what he described as "rumours" – including information sent by Colonel Moustapha about some "war booty" – and Colonel Mondonga became involved and conducted an investigation; and **P45**: T-201, page 66, line 1 to page 67, line 5; T-202, page 13, line 23 to page 14, line 11; T-203, page 69, line 22 to page 70, line 14; T-204,

response, Mr Bemba established and had authority over a commission of inquiry, headed by Colonel Mondonga, which was sent to Bangui to investigate the allegations ("Mondonga Inquiry").[1796] Mr Bemba's motivations in establishing the Mondonga Inquiry allegedly included (i) countering media allegations by showing that only minor items had been looted from the CAR;[1797] (ii) demonstrating that action was taken to address allegations of crimes;[1798] (iii) vindicating the MLC leadership of responsibility for alleged acts of violence;[1799] and (iv) generally rehabilitating the MLC's image.[1800]

583. In letters to the FIDH President, Mr Sidiki Kaba, and the UN representative in the CAR, General Cissé, Mr Bemba later stated that, as soon as he heard of media allegations of MLC crimes, he ordered the Mondonga Inquiry and the

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page 8, line 12 to page 10, line 2; and T-204-Conf, page 20, lines 5 to 25, testifying that, in a meeting held in Gbadolite on a date he was uncertain about, Mr Bemba and some of his close advisors discussed the allegations in the media and the ideas to "arrest certain individuals", organize a trial "in order to shift the blame", and show that people have "been arrested and tried" were discussed. *See also* **P15**: T-208, page 47, lines 1 to 11, testifying that, after having heard from RFI about the presence of MLC troops in the CAR, the issue was raised during discussions with Mr Bemba, although, as best as he could recall, reports of abuse or violence were not discussed. *See also* Section V(D)(1).

[1796] **P36**: T-214, page 48, lines 18 to 25; T-215, page 6, lines 3 to 15; and T-218, page 35, lines 14 to 15, and page 38, lines 21 to 25; **D49**: T-271, page 19, lines 12 to 20; **D19**: T-290, page 52, lines 20 to 25; and T-292-Conf, page 53, line 22 to page 54, line 2; **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0002, stating that the order to conduct the investigation was received "*following rumours of pillaging* committed in Bangui in the CAR during the Bangui Operation by a number of officers and soldiers of the 28th Battalion Zongo" (emphasis added); **EVD-T-OTP-00391/CAR-DEF-0001-0152**, at 0152; and **EVD-T-OTP-00453/CAR-OTP-0017-0363**, at 0364.

[1797] **P45**: T-204-Conf, page 39, line 19 to page 40, line 3, testifying that the joint commission of inquiry to Bangui and the trial which followed were conducted for the purpose of denying the allegations in the media, noting that the trial convicted the accused for the theft of "a few tablets or a few litres of fuel".

[1798] **P36**: T-216-Conf, page 7, line 25 to page 8, line 4, testifying that Mr Bemba "really was counting on this court-martial in the sense that one day he would then be in a position to say that the court-martial had been set up and had the court-martial not completed or conducted its duty then it was not his fault"; and **P213**: T-188-Conf, page 44, line 14 to page 45, line 1, testifying that Mr Bemba set up the court martial to allow himself to later "defend himself by saying that he had had people court-martialled" as he was "only too aware" that he might one day be prosecuted for events in the CAR.

[1799] **P45**: T-201, page 65, line 22 to page 66, line 16; T-202, page 13, lines 9 to 10, and page 14, lines 3 to 20; and T-204, page 9, lines 10 to 19, page 15, lines 8 to 12, page 19, line 11 to page 20, line 4, and page 41, line 24, testifying that Mr Bemba thought the allegations were unfounded and the result of a vilification campaign orchestrated by France. The objective of the trial was to demonstrate to the international community that the leadership of the MLC had no responsibility for acts of violence allegedly perpetrated by the MLC. The idea was to conduct a trial to show that only minor things had been stolen and that the serious charges levelled against the MLC were not true in order to clear the MLC and Mr Bemba's image. *See* **P45**: T-204, page 22, line 22 to page 24, line 13; and **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0046 to 0048, in his final pleadings, the lawyer of the suspects stated that his clients were used and qualified as suspects only for the purpose of the commission of inquiry set up by the MLC in Bangui, and that the military leaders of MLC were behind it.

[1800] **P45**: T-204, page 19, line 11 to page 20, line 4; **P33**: T-159-Conf, page 9, lines 11 to 18, testifying that in his view the trial was conducted in order to "polish the image of the movement […] and of the ALC in particular". *See* **P45**: T-204: page 22, line 20 to page 24, line 13.

arrest of soldiers as a preventive measure.[1801] In this regard, the Chamber notes that D16 and D19 both indicated that Colonel Moustapha was responsible for the arrests.[1802] Recalling its general concerns as to the credibility of D19 and the reliability of his evidence,[1803] the Chamber notes that his testimony on this specific issue is corroborated by that of D16 and the Chamber's findings that Colonel Moustapha exercised some level of disciplinary authority in the field.[1804] Taking into account the contemporaneous documentary evidence in which Mr Bemba claimed that he ordered the arrests, and the Chamber's findings that he, generally, had authority over, *inter alia*, operations, strategy, and discipline in the MLC, including over the MLC contingent in the CAR,[1805] the Chamber finds that Mr Bemba ordered the arrest of the soldiers, which Colonel Moustapha executed.

584. D21 testified that the MLC delegation had to obtain authorisation from the CAR authorities; "to his knowledge" it was a CAR inquiry that was set up and Colonel Mondonga was to be a part of it.[1806] However, when confronted with Mr Bemba's letter stating that Mr Bemba had ordered the Mondonga Inquiry and the related arrests, D21 agreed that the letter was not in line with his understanding.[1807] Noting its concerns in relation to other parts of D21's testimony,[1808] and recalling its findings, based on corroborated and reliable

[1801] **EVD-T-OTP-00391/CAR-DEF-0001-0152**, at 0152, where Mr Bemba stated that, as soon as he had heard in radio broadcasts of the alleged implication of certain MLC soldiers in "human rights violations", he ordered a commission of inquiry in order to verify the veracity of the facts and identify the perpetrators; and **EVD-T-OTP-00453/CAR-OTP-0017-0363**, at 0364, where Mr Bemba stated that the MLC's intervention in the CAR created negative reactions and that – although he was of the view that public opinion had been manipulated and misinformed – as a preventive measure, he had ordered the arrest of eight soldiers whose behaviour in Bangui was contrary to the orders given to both officers and soldiers before they left for the CAR.
[1802] **D19**: T-285-Conf, page 33, lines 13 to 20, and page 34, lines 17 to 18; and T-289-Conf, page 22, lines 17 to 25; and **D16**: T-278, page 13, line 8 to page 14, line 5. *See also* **D19**: T-287-Conf, page 24, lines 8 to 9.
[1803] *See* Section IV(E)(7)(c)(6).
[1804] *See* Section V(B)(2)(d).
[1805] *See* Sections V(A) and V(B)(2).
[1806] **D21**: T-302, page 26, lines 2 to 6; and T-306, page 38, lines 17 to 25, testifying that "people aren't going to go about on a foreign territory under such circumstances without the approval or the agreement of the local authorities". *See also* **D19**: T-285, page 41, lines 10 to 23; and T-290, page 54, lines 7 to 11, testifying that the commission of inquiry was comprised of all Central Africans except for Mondonga.
[1807] **D21**: T-306, page 37, line 13 to page 38, line 16.
[1808] *See* Sections V(B)(2)(c), para. 435 and V(B)(2)(d), para. 448.

evidence, that Mr Bemba had authority over military operations, strategy, and discipline,[1809] the Chamber finds D21's testimony on this point unpersuasive and unreliable.

585. D19 testified that Mr Bemba "set up Germain Mondonga's commission, along with the Central African team", i.e. the CAR authorities.[1810] However, the Chamber recalls its overall concerns as to D19's credibility and the reliability of his testimony.[1811] The Chamber further notes that his evidence on issues related to the Mondonga Inquiry – including the circumstances surrounding the related arrests[1812] and the timing of Colonel Mondonga's arrival in the CAR[1813] –was evasive and contradictory. Accordingly, the Chamber considers that D19's testimony on this issue is unreliable. In light of the above, the Chamber finds that the testimonies of D19 and D21 do not undermine the Chamber's findings that Mr Bemba established and had authority over the Mondonga Inquiry and related matters.

586. On 27 November 2002, Colonel Mondonga transmitted a file containing information related to the proceedings against Lieutenant Willy Bomengo and other soldiers of the 28th Battalion arrested in Bangui on 30 October 2002 on charges of pillaging ("Bomengo case file") to the MLC Chief of General Staff, copying Mr Bemba, who reviewed it.[1814] The Bomengo case file contains the

[1809] *See* Sections V(A) and V(B)(2).
[1810] **D19**: T-292-Conf, page 53, lines 22 to 25. *See also* T-290, page 52, line 20 to page 53, line 19.
[1811] *See* Section IV(E)(7)(c)(vi).
[1812] **D19**: T-285, page 33, lines 6 to 20; and T-287, page 9, lines 12 to 17. *See also* T-285-Conf, page 34, lines 14 to 21; T-287-Conf, page 24, lines 8 to 9; and T-289-Conf, page 22, lines 17 to 25.
[1813] **D19**: T-285-Conf, page 41, line 10 to page 42, line 3, indicating that Colonel Mondonga arrived *before* the arrest of the soldiers; T-287, page 9, line 18 to page 10, line 7; and T-290, page 53, lines 6 to 14, testifying that Colonel Mondonga arrived in the CAR *after* the arrest of the soldiers.
[1814] **EVD-T-OTP-00393/CAR-DEF-0002-0001**; and **P36**: T-218, page 37, lines 15 to 16. The first questioning of the suspects accused of pillaging was carried out in Zongo on 17 November 2002 by Oscar Tobanganga Malaka, *Officier de Renseignement et Officier de Police Judiciaire* in Zongo. The suspects interviewed were: Lieutenant Willy Bomengo, Askari Corporal Ikwa Tonton, Sub-Lieutenant Mbokani Zabo, and Sergeant Faustin Lingimba (all soldiers of the 28th Battalion). *See* **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0012 to 0025 (full handwritten version) and at 0002 to 0007 (typed version, incomplete). A further questioning was conducted on 27 November 2002. **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0026 to 0036, questioning conducted by Mr Carl Lubuele Mpueta, Lieutenant Legal Advisor for the Chief G2 EMG ALC, acting as Prosecutor. The Dossier also contains the record of the proceedings against another group of soldiers from the 28th Battalion,

declarations of seven soldiers, who provided detailed information on alleged crimes committed by MLC soldiers in the initial days of the 2002-2003 CAR Operation. The Bomengo case file indicates, without explanation, that suspect interviews were conducted in the middle of the night.[1815]

587. Regarding pillaging, Lieutenant Bomengo explained that Colonel Moustapha instructed him to collect all the items – including televisions, radios, and cigarettes – looted by the 28th Battalion.[1816] He stated that he loaded these items into three vehicles and handed them over to Colonel Moustapha.[1817] Another suspect, Sub-Lieutenant Mbokani Zabo, also claimed that he acted on Colonel Moustapha's orders.[1818]

588. According to Lieutenant Bomengo, the house of the Minister of Defence was also pillaged by both MLC soldiers and civilians, and soldiers stole some money.[1819] He asserted that the money found on him at the time of his arrest originated from this pillaging; the soldiers had given a part of the money to him and a larger amount to Colonel Moustapha.[1820] Other soldiers declared that a MLC Corporal took some items from a CAR civilian and gave them to his Section Chief Sergeant, who shared the money between himself, the Corporal, and a third soldier.[1821] The Section Chief Sergeant was allegedly later arrested by the CAR army and the third soldier supposedly returned his share of the money.[1822]

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arrested during the month of November: Mr Kpalakumu Metonga, Corporal Ngangu Gbede, and Mr Ndonga Bofe. *See* **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0037.

[1815] *See*, *for example*, **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0032, recording that one interview was conducted around 00.50. *See also* **D16**: T-277, page 17, line 10 to page 18, line 3, testifying that he could not explain why interviews were conducted at night.

[1816] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0026.

[1817] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0003, 0014 to 0015, 0024, and 0026 to 0027.

[1818] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0017.

[1819] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0027, 0043, and 0078, identifying the MLC soldiers by name as Tura, Kule, and Ekutsu.

[1820] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0027.

[1821] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0034 to 0036, and 0066.

[1822] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0036 and 0061, testifying that Ndonga Bofe returned only 1,000 CFA francs, and the questioning was conducted by Carl Lubuele Mpueta, Lieutenant Legal Advisor for the Chief G2 EMG ALC, acting as a Public Ministry Officer.

589. The Mondonga Inquiry did not address the responsibility of commanders,[1823] and the investigators did not question the suspects about the crime of murder and did not pursue reports of rape.[1824] Indeed, Sub-Lieutenant Zabo, who was told that a soldier from the *Poudrier* Battalion had raped a girl,[1825] stated that those accused of rape did not appear before the court-martial.[1826] Corporal Ikwa Tonton claimed that Colonel Moustapha behaved preferentially towards his own battalion and was unfair.[1827] He stated that no soldier from Colonel Moustapha's *Poudrier* Battalion was arrested, even though they were alleged to have systematically pillaged and raped civilians.[1828] As a result of the Mondonga Inquiry – which P36 testified was operated in a haphazard fashion, without guidelines or framework[1829] – only seven soldiers were ever arrested and tried, and only in relation to allegations of pillaging of a few minor items and small sums of money.[1830]

### 3. Meeting between Mr Bemba, General Cissé, and President Patassé

590. As confirmed by a number of witnesses,[1831] and corroborated by NGO and media reports,[1832] Mr Bemba visited the CAR in November 2002, including at

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[1823] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0002 to 0007 and 0026 to 0036, the investigators did not question the suspects about the eventual involvement of commanders in pillaging. **EVD-T-OTP-00393/CAR-DEF-0002-0001**, **at 0027**, even when the suspect Willy Bomengo mentioned that he handed over the pillaged goods to "*commandant de brigade"*, no follow-up question was put to him by the investigators on that specific issue.

[1824] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0001 to 0010 and 0026 to 0036, the investigators did not address the crime of murder. The suspects were not questioned on the crime of rape, except for three questions put to the suspect Mbokani Zabo, who declared that a MLC soldier raped one girl; **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0029. When the suspect, Ikwa Tonton, mentioned the cases of rape, the investigators did not ask him any follow-up question on that issue; and **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0032.

[1825] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0029.

[1826] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0029.

[1827] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0032.

[1828] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0032.

[1829] **P36**: T-218, page 35, lines 14 to 23.

[1830] **P36**: T-218, page 35, lines 14 to 23. *See also* **EVD-T-OTP-00393/CAR-DEF-0002-0001**.

[1831] *See*, *inter alia*, **P38**: T-36, page 17, lines 18 to 23; **P23**: T-52, page 15, lines 19 to 25; **P81**: T-55, page 25, line 23 to page 26, line 15; **P42**: T-65, page 11, lines 15 to 17; **P112**: T-130, page 5, lines 11 to 18; **P36**: T-215, page 19, lines 1 to 5; **D19**: T-285, page 5, lines 20 to 21; and **D49**: T-274, page 41, lines 8 to 23.

[1832] **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0049; **EVD-T-OTP-00575/CAR-OTP-0031-0093**, track 5 at 00:02:55 to 00:03:04; **EVD-T-CHM-00019/CAR-OTP-0056-0278**, at 0280; **EVD-T-OTP-00444/CAR-OTP-0013-0053**, at 0054; **EVD-T-OTP-00400/CAR-OTP-0004-0345**, at 0348; **EVD-T-OTP-00448/CAR-OTP-0013-0161**, at 0163.

least one visit at the beginning of November 2002.[1833] On or around 2 November 2002, after hearing reports of crimes committed by the MLC troops in the CAR, Mr Bemba decided to travel to the CAR and meet with President Patassé.[1834]

591. P36 testified that various officials were present during Mr Bemba's visit to President Patassé.[1835] FACA Colonel Thierry Lengbe (P31) testified that he saw Mr Bemba with President Patassé in Bangui at the beginning of November 2002, in the presence of various authorities, including General Cissé, the UN representative in the CAR.[1836] This testimony is further corroborated by an interview of *Le Citoyen* with General Cissé, recorded on 8 November 2002 and published by *Le Citoyen* on 14 November 2002.[1837] The interview indicates that (i) Mr Bemba made a commitment that his troops' withdrawal would be done in a progressive and organized manner;[1838] and (ii) in relation to the population's complaints about MLC abuses, Mr Bemba said that those who committed crimes would be punished, noting that some had already been identified, disciplined, and brought to Gbadolite.[1839] The RFI and BBC reported that he made similar statements during previous interviews.[1840]

592. The Defence questions the occurrence of this meeting with General Cissé on 2 November 2002, claiming that (i) it is unlikely that it took *Le Citoyen* 12 days to report on it; (ii) the airport was closed on that date; and (iii) P36 only testified that Mr Bemba met with President Patassé and did not mention a "Libyan

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[1833] **P36**: T-218-Conf, page 15, lines 18 to 19, page 42, lines 9 to 12, and page 42, line 22 to page 43, line 3; **P6**: T-96, page 16, lines 22 to 25, page 36, lines 11 to 20, and page 37, lines 2 to 13; **P31**: T-183, page 33, line 21 to page 34, line 6; and **D19**: T-285, page 5, line 14 to page 6, line 7.
[1834] **P36**: T-216-Conf, page 20, lines 9 to 16; T-218, page 33, lines 1 to 7; and **D19**: T-292-Conf, page 53, lines 19 to 22. *See* **EVD-T-OTP-00575/CAR-OTP-0031-0093**, track 5, from 00:02:55 to 00:03:04; **EVD-T-CHM-00019/CAR-OTP-0056-0278**, at 0280; and **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0049. *See also* Section V(B(2)(b), para. 426.
[1835] **P36**: T-215-Conf, page 19, lines 7 to 20; and T-218-Conf, page 25, lines 8 to 13.
[1836] **P31**: T-183, page 33, line 19 to page 34, line 3.
[1837] **EVD-T-OTP-00444/CAR-OTP-0013-0053**, at 0054. According to this article, the meeting involved Mr Bemba, General Cissé, President Patassé, and a Libyan general.
[1838] **EVD-T-OTP-00444/CAR-OTP-0013-0053**, at 0053 to 0054.
[1839] **EVD-T-OTP-00444/CAR-OTP-0013-0053** at 0054.
[1840] **EVD-T-OTP-00407/CAR-OTP-0004-0667**, at 0668; and **EVD-T-OTP-00413/CAR-OTP-0005-0133**. *See* **EVD-T-OTP-00575/CAR-OTP-0031-0093**, track 5, from 00:02:55 to 00:03:04; and **EVD-T-CHM-00019/CAR-OTP-0056-0278**.

General", a "working session", or "General Cissé".[1841] However, noting the general situation in the CAR in the days surrounding this interview,[1842] the Chamber considers that the late publication of the *Le Citoyen* article does not negatively impact on its reliability.[1843] Further, the airport was reopened on 2 November 2002.[1844] Finally, as noted above and contrary to the Defence submissions, P36 testified that various officials were present during Mr Bemba's visit to President Patassé, and never foreclosed the possibility that others were present when they met or that Mr Bemba met with other officials, such as General Cissé, separately.[1845]

593. In view of the above, the Chamber finds that Mr Bemba visited the CAR at the beginning of November 2002, and, on or about 2 November 2002, met with a number of authorities, including General Cissé and President Patassé, in Bangui.

### 4. Mr Bemba's speech at PK12

594. Sometime in November 2002, Mr Bemba addressed MLC troops and civilians at PK12,[1846] referring to, *inter alia*, allegations of crimes by MLC soldiers against the civilian population in the CAR.[1847] He specifically mentioned the MLC troops'

[1841] Defence Closing Brief, para. 893, referring to **EVD-T-OTP-00444/CAR-OTP-0013-0053**, at 0054.
[1842] *See* Section V(C).
[1843] The interview was published 6 days after its recording and 13 days after the meeting.
[1844] **EVD-T-OTP-00585/CAR-OTP-0045-0002**, at 0076 to 0077, containing data for the logbook of Bangui's Airport for arrivals and departures on 25 October 2002; the next entry is dated 2 November 2002, although no flights are registered on that date, the fact that the date is stamped indicates that the airport was re-opened on that date; **EVD-T-OTP-00427/CAR-OTP-0008-0413**, article published by BBC Monitoring International Reports on 4 November 2002, citing as its source a report from RFI of 3 November, stating that "[t]he airport has been reopened since yesterday"; and **D19**: T-285, page 6, lines 3 to 5, stating that before getting to PK12 the MLC freed the airport and that this was the airport where Mr Bemba landed.
[1845] **P36**: T-215-Conf, page 19, lines 7 to 20; and T-218-Conf, page 25, lines 8 to 13.
[1846] The Chamber notes that the Defence acknowledges the fact that Mr Bemba addressed his troops in PK12. *See* Defence Closing Brief, para. 97. *See also* Section V(B(2)(b), para. 426. P23 and P42 stated that the MLC soldiers were gathered at the maternity clinic of Bégoua, and P38 and P112 stated that Mr Bemba addressed his troops on the Bégoua football field or stadium. This apparent contradiction was however clarified by a drawing of PK12 made in-court by P38, who positioned the football field right across from the hospital. *Compare* **P23**: T-52, page 16, lines 6 to 11; and **P42**: T-65, page 13, lines 5 to 13; *with* **P38**: T-34, page 29, lines 4 to 6; and **P112**: T-131, page 20, lines 19 to 23. *See* **EVD-T-OTP-00596/CAR-ICC-0001-0001**. *See also* Defence Closing Brief, para. 843.
[1847] **P23**: T-52, page 18, lines 16 to 21; and T-54, page 17, lines 16 to 25, testifying that he was told by a community delegate who presented complaints of civilians to Mr Bemba. According to P23, Mr Bemba declared

"misbehaviour", "stealing", and "brutalis[ing]" of the civilian population, and warned his troops against further misconduct.[1848] During the speech, the civilian audience was unenthusiastic and did not applaud.[1849]

595. P38 testified that, before the speech, Colonel Moustapha calmed the civilians with promises that their grievances would be reported to Mr Bemba.[1850] Although they selected a delegate to present their complaints directly to Mr Bemba,[1851] stringent security measures imposed by MLC soldiers, before and during Mr Bemba's speech prevented the PK12 civilians from doing so.[1852] When leaving PK12, Mr Bemba's convoy passed a noisy demonstration of more

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that he was concerned by the suffering and complaints of civilians and that he was going to "take care of the matter", this was the reason why Mr Bemba assembled his troops to address them. **P23**: T-52, page 20, line 1 to page 21, line 12; **P81**: T-55, page 40, line 16 to page 41, line 15, page 45, lines 7 to 23, and page 49, line 9 to page 50, line 10, testifying that Mr Bemba advised the population to defend themselves if attacked by soldiers; **P6**: T-96, page 16, lines 22 to 25, stating that when there was an outcry concerning the acts of violence and abuse that occurred, Jean-Pierre Bemba came to Bangui to conduct a review of the troops; **P42**: T-65, page 14, line 3 to page 15, line 19 and page 20, lines 15 to 18; **P36**: T-215, page 20, line 14 to page 24, line 5; T-216, page 20, lines 17 to 24; and T-218, page 26, lines 21 to 24, testifying that after having received information on the crimes committed, Mr Bemba warned his troops to stop with the violence and to behave correctly towards the population; **D51**: T-261, page 55, lines 23 to 25, and page 56, lines 11 to 17, explaining that Mr Bemba told his troops in PK12 that they have to have "respect for the command and also for the population". The above evidence on Mr Bemba addressing his troops in PK12 is further supported by a RFI broadcast of 3 November 2002, reporting that on 2 November 2002, Mr Bemba had visited the northern neighbourhoods of Bangui to lecture his troops. **EVD-T-OTP-00575/CAR-OTP-0031-0093**, track 5, at 00:02:55 to 00:03:04; and **EVD-T-CHM-00019/CAR-OTP-0056-0278**, **at 0280**. *See contra* Defence Closing Brief, paras 848 to 849.

[1848] **P36**: T-215, page 20, line 14 to page 21, line 20, and page 66, lines 12 to 21, testifying that when Mr Bemba addressed the troops, he told them that he had heard about misbehaviour on the part of the MLC troops and told them that they should no longer steal, should behave well, and should collaborate with the population and CAR soldiers and officers; **P23**: T-52, page 16, line 22 to page 17, line 1, page 18, lines 13 to 21, and page 20, lines 16 to 20, explaining that Mr Bemba spoke a little in French to the population and then continued speaking in Lingala to his troops and told the population in French that he was concerned about their complaints and their suffering and that he would take care of the matter; and **P42**: T-65, page 13, line 25 to page 15, line 8, confirming that Mr Bemba spoke to his troops in Lingala, that he arrived at the gathering at the moment when Mr Bemba said, "If you brutalise the population and the population rises up against you, where are you going to find food to eat?". The witness explained that he did not understand Lingala, but that workers who had come from Zaire translated what Mr Bemba was saying. *See also* **D19**: T-285, page 5, lines 20 to 25; and T-293, page 12, lines 21 to 24, testifying that Mr Bemba inspected the troops, talked to them about courage and conduct, and reminded them that their mission in the CAR was to protect the population and their property, to wage war "as if it were our war", and to respect the CAR hierarchy.

[1849] **P36**: T-218, page 26, lines 20 to 24; and **P38**: T-36, page 23, line 3, testifying that "there were no ovations or clapping" from the population.

[1850] **P38**: T-34-Conf, page 25, line 1 to page 26, line 6.

[1851] **P23**: T-52, page 19, line 24 to page 20, line 8; and T-54, page 17, lines 16 to 19; and **P38**: T-34-Conf, page 25, lines 1 to page 27, line 2.

[1852] **P38**: T-36, page 22, lines 6 to 15; and **P112**: T-131, page 20, lines 11 to 23, testifying that the people followed the soldiers to the place where they were gathered, but again were prevented from presenting their grievances as they could not cross the security cordon of the troops, that frightened people and measures were so stringent that civilians were not able to get close to Mr Bemba.

than one hundred civilians, standing by the roadside with, *inter alia*, posters and placards.[1853]

596. P23 and P81 testified that, at least in some areas of PK12, crimes by MLC soldiers diminished in frequency following Mr Bemba's speech and the situation generally improved.[1854] Nevertheless, the Chamber notes that (i) neither P23, nor P81 testified that mistreatment of the civilian population by MLC soldiers ceased completely; (ii) P42 testified that the situation became worse and the number of crimes increased;[1855] and (iii) P36 and P38 both confirmed that the situation in PK12 did not improve.[1856] In light of the above, and recalling its findings on events in PK12 after Mr Bemba's speech, in particular, in late November 2002,[1857] the Chamber finds that crimes by MLC soldiers in PK12 and allegations thereof continued after the Mr Bemba's speech to his troops in PK12.

### 5. Trial at the Gbadolite Court-Martial

597. On 5 December 2002, the seven soldiers detained in Bangui and accused of pillaging[1858] appeared before a MLC court-martial in Gbadolite.[1859] Mr Bemba appointed the presiding judge, Mr Bule Mohamed, and the prosecutor, Madam Mika Ebenga.[1860] During the trial, the members of the court-martial reported on its activities to Mr Bemba.[1861] The trial and its judgment were public and broadcast over the radio.[1862]

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[1853] **P38**: T-34, page 25, line 16 to page 33, line 20; and **P112**: T-130, page 5, line 22 to page 6, line 6, testifying that the crowd was stopped before reaching Mr Bemba's convoy.
[1854] **P23**: T-52, page 20, line 23 to page 21, line 7; and **P81**: T-55, page 45, lines 7 to 23.
[1855] **P42**: T-65, page 20, lines 15 to 18, testifying that the message that Mr Bemba conveyed to his soldiers stimulated them to commit even more crimes.
[1856] **P36**: T-216, page 20, lines 17 to 24; and **P38**: T-34, page 27, line 24 to page 28, line 6.
[1857] *See* Section V(C)(4).
[1858] *See* Section V(D)(2).
[1859] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0041.
[1860] **P45**: T-202, page 12, lines 2 to 16.
[1861] **P36**: T-215, page 14, line 6 to page 15, line 5, stating that the trial was held before a public and independent war commission, which reported to Mr Bemba on its activities; **P45**: T-202, page 13, lines 13 to 16, and page 14, line 21 to page 15, line 10, explaining that Mr Bemba was not present during the trial but at the end of each hearing, the members of the court went to his house to present a report; and **P33**: T-159, page 7, line 19 to page

598. During the proceedings, Lieutenant Bomengo stated that the pillaged items were returned to the CAR authorities, which was inconsistent with his previous declaration that such goods were given to Colonel Moustapha.[1863] Another accused declared that he discovered a big suitcase belonging to the Brigade Commander (Colonel Moustapha) containing numerous looted items.[1864] In his oral closing statements, Lieutenant Bomengo's lawyer argued that his clients were portrayed as suspects only for the purpose of the Mondonga Inquiry, and

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8, line 6: testifying that "[i]t was well-known that judges were there simply to implement or execute orders, but that these orders had to be dressed in a military or judicial-looking system so that they do not appear to be arbitrary, whether it be within the context of military justice or not, but the truth of the matter is that these were simply orders that the judges were bound to implement and to execute". When asked who the orders came from, P33 identified Mr Bemba. The fact that the court-martial members reported to Mr Bemba is also corroborated by the unchallenged fact that he received a report at the conclusion of the trial, and other evidence as to the general practice of the court-martial, which reported to Mr Bemba in relation to other cases and activities during the period of the charges. *See, inter alia*, **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1642 to 1643, message dated 21 December 2002 at 07.00, from the Commander Sector South-Ubangi, to Chief EMG ALC, with Mr Bemba copied for information, stating that a court-martial had arrived in Gemena, offering some details of the case, which involved the killing of Mr Bwanmanda-Mborna by a MLC soldier in Gemena, giving initial details of the planning for the upcoming days, and saying that it will keep him informed; at 1643 to 1644, message dated 21 December 2002 at 09.15, from the President of the court-martial, to Chief EMG ALC, with Mr Bemba copied for information, confirming the arrival of a court-martial and some details of the case, suggesting that the hierarchy provides some social assistance to the deceased's family and requesting some provisions for the delegation; at 1649, message dated 22 December 2002 at 09.30, from the Chief EMG ALC, to the President of the court-martial, with Mr Bemba copied for information, stating that the request for social assistance to the deceased's family and provisions for the commission will be discussed with Mr Bemba; at 1649, message dated 22 December 2002 at 15.15, from the Chief EMG ALC, to the President of the court-martial, with Mr Bemba copied for information, stating what Mr Bemba had approved an amount of money to be given to the deceased's family and to the members of the court-martial and ordering that he be informed of the execution; and at 1650, message dated 23 December 2002 at 09.30, from the President of the court-martial to the Chief EMG ALC, with Mr Bemba copied for information, confirming the execution of the convicted soldier and requesting the court-martial's return as of the following day. *See also* **EVD-T-OTP-00703/CAR-D04-0002-1641**, at 1646, message dated 21 December 2002 at 18.30 from the President of the court-martial, to Mr Bemba requesting his authorisation to impose the death penalty as sentence, with Mr Bemba responding on 22 December 2002, at 09.40: "*ok pour peine capitale*"; and at 1648, message dated 22 December 2002 at 10.00 from the President of the court-martial, to Mr Bemba, informing him that following his message, the execution had been ordered; **D16**: T-276, page 15, line 8 to page 16, line 3, and page 17, line 15 to page 18, line 9, explaining that the messages related to an event in which a court-martial acted as a mobile chamber in Gemena and they were sent because it was necessary to have the agreement of the President of the MLC for the application of death penalty; and T-276-Conf, page 3, line 23 to page 4, line 8, and page 8, line 9 to page 9, line 3.

[1862] **D16**: T-275, page 41, lines 10 to 12, page 43, lines 14 to 20, page 44, line 25 to page 45, line 8, and page 46, line 25 to page 47, line 4.

[1863] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0043. Willy Bomengo stated that the house of the CAR Minister of Defence was pillaged by different armies ("different soldiers that were on the field") and the population, and that he was charged by the Commander a few days later to search and collect the looted items. He asserted that the items looted from that house were given back to the CAR authorities and that he received the money that was found on him as a reward for his work. He further asserted that he loaded three jeeps with looted items "in order to evacuate the recovered goods" in the direction of PK12, and that they were returned to a "Centrafrican Colonel", not mentioning Colonel Moustapha as the person receiving the vehicles with the looted goods.

[1864] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0044 and 0045.

that the MLC hierarchy was behind it.[1865] Two accused and one of their lawyers indicated that evidence relating to the pillaging was in Zongo.[1866]

599. All seven accused were convicted and sentenced to between three and 24 months of detention exclusively on the basis of their own statements; no other witnesses or victims were interviewed and no physical evidence was collected.[1867] P36 and D48 testified that, in their opinion, the sentences were proportionate to the crimes of pillaging for which the soldiers were convicted and the trial was not of an unusual or summary length.[1868]

600. The report of the court-martial was sent to Mr Bemba on 12 December 2002.[1869] Mr Bemba attached it to a letter he sent to the UN representative, General Cissé, on 4 January 2003.[1870] In addition, in a letter sent on 20 February 2003 to the FIDH President, Mr Kaba,[1871] Mr Bemba referred to the indictment, trial, and sentencing of soldiers accused of pillaging by the court-martial.[1872]

### 6. Zongo Commission

601. During the Gbadolite trial, Lieutenant Bomengo, his lawyer, and another accused all publicly indicated that evidence of pillaging could be discovered in Zongo,[1873] where goods pillaged in Bangui were allegedly taken to be sold.[1874] Shortly after the Gbadolite trial concluded, and following further media allegations of pillaging, rape, and murder,[1875] Mr Bemba sent an investigative

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[1865] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0046 to 0048.
[1866] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0043 to 0046.
[1867] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0002 to 0007, 0026 to 0036, and 0103. *See* **EVD-T-OTP-00391/CAR-DEF-0001-0152**, at 0152; and **EVD-T-OTP-00584/CAR-OTP-0033-0209**.
[1868] **P36**: T-215, page 15, lines 15 to 23; and **D48**: T-267, page 59, line 16 to page 60, line 2, and page 64, lines 2 to 16.
[1869] **EVD-T-OTP-00711/CAR-OTP-0017-0358**.
[1870] **EVD-T-OTP-00584/CAR-OTP-0033-0209**.
[1871] *See* **EVD-T-OTP-00391/CAR-DEF-0001-0152**. *See also* Section V(D)(8).
[1872] **EVD-T-OTP-00391/CAR-DEF-0001-0152**, at 0152.
[1873] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0043 to 0046.
[1874] **EVD-T-OTP-00393/CAR-DEF-0002-0001**, at 0046.
[1875] **D48**: T-267, page 31, lines 8 to 17, page 34, lines 8 to 22, page 48, lines 6 to 12, and page 49, lines 14 to 19; and T-268, page 24, lines 9 to 11, page 29, lines 1 to 4, page 30, lines 6 to 9, page 32, lines 17 to 23, and page 32, line 24 to page 33, line 2. *See also* **EVD-T-OTP-00392/CAR-DEF-0001-0155**, at 0156, the Report of the commission of inquiry states that it was set up pursuant to the orders of the "*Président National du MLC*", i.e.

commission to Zongo ("Zongo Commission") to collect information related to the allegations that pillaged goods from the CAR were entering the DRC through Zongo.[1876]

602. The Zongo Commission was limited to investigations in Zongo,[1877] and only concerned allegations of pillaging.[1878] All members were MLC officials,[1879] including two persons who were involved in the Gbadolite trial.[1880] Between 25 and 28 December 2002, the Zongo Commission was in Zongo, questioning witnesses about pillaged goods.[1881] In this regard, the Chamber notes evidence indicating the definition of pillaging which may have been applied by the Zongo Commission. D48, a senior MLC official[1882] with knowledge of the Zongo Commission, explained that, in his understanding, theft only constitutes pillaging when things are stolen on a "wide or large scale".[1883] In his view, stealing animals or a mattress for one's own use is not pillaging, but merely stealing.[1884]

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Mr Bemba, following the accusations transmitted via the RFI that the MLC had committed pillaging and rape in the CAR.

[1876] **D48**: T-267, page 30, line 24 to page 31, line 18, page 36, line 25 to page 37, line 6; and page 47, lines 4 to 19; T-267-Conf, page 35, line 19 to page 36, line 14; and T-268, page 15, line 14 to page 16, line 4.

[1877] **EVD-T-OTP-00392/CAR-DEF-0001-0155**; and **D48**: T-268, page 15, line 14 to page 16, line 4. *See* **D48**: T-267, page 37, line 15 to page 39, line 3.

[1878] **EVD-T-OTP-00392/CAR-DEF-0001-0155**. *See* **D48**: T-267, page 47, lines 4 to 19.

[1879] **EVD-T-OTP-00392/CAR-DEF-0001-0155**, at 0156, the members of the commission were (i) Mr Paul Musafiri, *Secrétaire national á la Justice et Garde des Sceaux*; (ii) Mr Pascal Zanzu Sele, *Président du Tribunal de Grande Instance de Gbadolite*; (iii) Mr Jean Kamba Tujibikiie, *Procureur de la République près le Tribunal de Grande Instance de Gbadolite*; and (iv) Mr Mongapa, *Colonel et Officer de l'ALC*; (v) Mr Egide Kongoli, *G2 de l'ALC*.

[1880] **EVD-T-OTP-00392/CAR-DEF-0001-0155**, at 0158; and **D48**: T-267-Conf, page 31, lines 4 to 22.

[1881] **D48**: T-267, page 37, lines 4 to 6, and page 38, lines 18 to 23; T-267-Conf, page 37, lines 3 to 8, and page 43, lines 9 to 12; and T-268, page 81, lines 8 to 16, stating that the objective of the commission was to question people about looted goods, identify the goods, and, if necessary, return them to the CAR authorities who would return the items to their owners. While D48 first stated that he could only recall that the commission took place in December and could not recall the exact dates, he later testified that the investigation took place from 25 to 28 December. *See also* **D48**: T-267, page 32, line 24 to page 33, line 5, and page 33, lines 15 to 19; and T-268, page 65, lines 16 to 25, testifying that the commission received reports from soldiers incriminating fellow soldiers in pillaging, and it was expected by members of the MLC that those incriminated would be questioned and brought before a court-martial. MLC members did not expect the Zongo inquiry to put an end to the investigations and expected further investigations by the UN given the seriousness of the accusations.

[1882] **D48**: T-270-Conf, page 13, lines 1 to 17.

[1883] **D48**: T-268, page 58, lines 19 to page 59, line 11; T-269, page 43, lines 6 to page 44, line 14, testifying that pillaging happens when "there are lots of people who are stealing at the same time and they're taking goods in all different directions".

[1884] **D48**: T-269, page 43, lines 6 to page 44, line 14. The witness indicated that stealing is a lesser offence than pillaging.

603. On 17 January 2003, the head of the Zongo Commission sent a report, which is dated 3 January 2003,[1885] to the Secretary General, copying Mr Bemba, explaining that pillaged goods did not arrive in Zongo.[1886] The report contains a summary of interviews with eight Zongo officials, who exercised public functions or directly worked for the MLC.[1887] The report does not refer to interviews with any soldiers, despite the commission's ability to summon soldiers before it.[1888] All those listed in the report provided reasons as to why pillaged goods did not arrive in Zongo. However, several of those interviewed implied – and none denied – that MLC soldiers had pillaged goods in the CAR.[1889] One reported the crossing of pillaged items near Imese and Dongo.[1890] The Report concludes that (i) the Zongo Commission was unable to establish that MLC soldiers committed the crime of pillaging, and (ii) France and the political opponents of the CAR had developed a campaign of "demonization"[1891] to tarnish President Patassé's regime.[1892]

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[1885] **EVD-T-OTP-00392/CAR-DEF-0001-0155**, at 0155 to 0158. The report is signed by the President of the Gbadolite Tribunal de Grande Instance, Mr Pascal Zanzu Sele, and the Prosecutor before the Gbadolite Tribunal de Grande Instance, Mr Jean Kamba Tujibikile on 3 January 2003. The report was transmitted by the MLC *Secrétaire national à la Justice et Garde des Sceaux*, Mr Paul Musafiri, to the MLC *Secrétaire General* in Gbadolite in a letter, dated 17 January 2003.

[1886] **EVD-T-OTP-00392/CAR-DEF-0001-0155**. *See also* **D48**: T-267, page 53, line 1 to page 54, line 11, testifying that it was possible that Mr Bemba saw the report on 3 January, the same day that it was written.

[1887] **EVD-T-OTP-00392/CAR-DEF-0001-0155**, at 0156 to 0157. The individuals interviewed by the commission were: (i) Vicky Engembe, *Secrétaire du MLC*; (ii) Nzula Mambyanga, *Maire a.i. de Zongo*; (iii) Yoko Godaba, *Président des piroguiers de Zongo*; (iv) Nzala Tadee, *Inspecteur Urbain de la Police Nationale de Zongo*; (v) Mangwalanya, *Chef des Notables de Zongo*; (vi) Papy Bokula, *Chef de Poste Principal de BSI*; (vii) Isaac Baaka, *Chef de Poste BSF*; and (viii) Ezenge Sobinzi, *Commandant second a.i. de 28éme Bataillon de l'ALC.*

[1888] **D48**: T-267-Conf, page 36, lines 18 to 23; and **EVD-T-OTP-00392/CAR-DEF-0001-0155**.

[1889] **EVD-T-OTP-00392/CAR-DEF-0001-0155**, at 0157, containing the declarations of (i) the Mayor of Zongo, stating that he heard the allegations of pillage from foreign radio channels, but did not see any loot coming from Bangui to Zongo; (ii) the "President of the boatmen", confirming the statement of the Mayor, but adding that he was ordered by the commander of the marines to forbid the soldiers' wives to cross the Oubangui River to Bangui and asserted that the boats were not allowed to cross the river in order to avoid the arrival of looted items from Bangui; and (iii) the Police Inspector, stating that he ordered the control of Zongo's port in order to avoid the possibility that the looted items would cross the river to Zongo; and **EVD-T-OTP-00392/CAR-DEF-0001-0155**, at 0157 to 0158, containing the declaration of the "*Chef de Poste Principal BSI*" in Zongo, stating that it was impossible for looted items to have crossed the river because the joint commission composed of MLC and FACA soldiers recovered the items looted by Congolese and CAR soldiers in the area between PK12 and the Parliament and returned them to the CAR population. He added that a part of the looted items was sold in the Bangui square by Central Africans and confirmed the systematic control and search of soldiers coming from Bangui to Zongo by the marines.

[1890] **EVD-T-OTP-00392/CAR-DEF-0001-0155**, at 0157.

[1891] "*Diabolisation*" in the French original.

### 7. Correspondence between Mr Bemba and General Cissé

604. Aware of the seriousness of the accusations against the MLC troops in the CAR, Mr Bemba discussed with senior MLC officials his decision to send a letter to the UN representative in the CAR, General Cissé.[1893] On 4 January 2003, Mr Bemba wrote and sent a letter to General Cissé.[1894] According to P15 and P45, Mr Bemba intended this letter to demonstrate good faith and maintain the image of the MLC, particularly, against a backdrop of negotiations in the DRC as to, *inter alia*, the role of the MLC in the transitional institutions.[1895]

605. In the letter, Mr Bemba explained that (i) the negative reactions to the MLC intervention in the CAR had been orchestrated by the same individuals who tried to destabilise the CAR authorities; (ii) he had reasons to believe that there had been misinformation and manipulation of public opinion with regard to allegations of crimes by MLC soldiers; (iii) the MLC could not ignore violations of the military code governing the troops, especially when such conduct results in serious human rights violations; and (iv) he had ordered the arrest, as a preventative measure, of eight soldiers whose behaviour in Bangui was proven to be contrary to the instructions given to the officers and rank and file soldiers before their departure to the CAR.[1896] Mr Bemba requested assistance in conducting an investigation – involving the CAR population, their religious communities, and other credible NGOs – in order to bring to light what "really happened" in the field.[1897] He claimed that the results of such a transparent

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[1892] **EVD-T-OTP-00392/CAR-DEF-0001-0155**, at 0158.
[1893] **P45**: T-204, page 39, line 5 to page 41, line 4; **P15**: T-209, page 42, lines 3 to 12; **D21**: T-302, page 20, lines 10 to 23; and **D48**: T-267, page 53, line 22 to page 54, line 11, and page 73, line 24 to page 74, line 11; T-268, page 66, line 24, to page 67, line 2; and T-269, page 55, lines 2 to 8.
[1894] **EVD-T-OTP-00453/CAR-OTP-0017-0363**.
[1895] **P45**: T-204, page 39, line 18 to page 42, line 1, stating that Mr Bemba wrote the letter "in order to see how he was going to extricate himself from that trap"; and **P15**: T-209, page 42, lines 3 to 12, page 44, lines 12 to 16, and page 45, lines 14 to 23; and T-210, page 28, line 23 to page 29, line 1, testifying, *inter alia*, that the letter served to maintain the credibility and image of the MLC, demonstrating that the MLC did not remain indifferent or do nothing in response to allegations of violence or abuse.
[1896] **EVD-T-OTP-00453/CAR-OTP-0017-0363**, at 0364.
[1897] **EVD-T-OTP-00453/CAR-OTP-0017-0363**, at 0364.

investigation would enable him to bring those at fault before the ALC court-martial.[1898]

606. In a letter dated 27 January 2003, General Cissé responded to Mr Bemba, copying President Patassé.[1899] General Cissé answered that he would bring the content of Mr Bemba's letter to the UN Secretary General's attention, offered to participate in any initiative relating to an investigation, and recalled that the CAR and Chad had agreed to create an international commission of inquiry.[1900]

### 8. Mr Bemba's reaction to the FIDH Report

607. On 13 February 2003, the FIDH issued a report on its investigative mission in Bangui between 25 November and 1 December 2002 entitled *Crimes de guerre en République Centrafricaine "Quand les éléphants se battent, c'est l'herbe qui souffre"* ("FIDH Report").[1901] It is based on interviews with various individuals, including CAR authorities, representatives of international organizations and NGOs, medical personnel, and numerous victims.[1902]

608. The FIDH Report describes the events in the CAR following 25 October 2002.[1903] It states that a number of civilians were injured during the first days of the fighting, alleging that they were most likely victims of MLC troops.[1904] One section is dedicated solely to analysing the crimes of rape, pillaging, and murder allegedly committed by MLC troops, including the detailed accounts of

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[1898] **EVD-T-OTP-00453/CAR-OTP-0017-0363**, at 0364.
[1899] **EVD-T-OTP-00584/CAR-OTP-0033-0209**.
[1900] **EVD-T-OTP-00584/CAR-OTP-0033-0209**, at 0210 to 0216. A copy of Mr Bemba's letter, the MLC decree number 035 of 16 November 2002 and the Report of the Martial Court in Gbadolite, dated 12 December 2002 are attached to the letter from General Cissé.
[1901] **EVD-T-OTP-00395/CAR-OTP-0001-0034**, the upper side of each page contains the date on which the document was faxed from the number 0143551880, which is the telephone number of FIDH in Paris.
[1902] *See* **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0039, and 0070. Annex 1 to the FIDH report contains a list of persons interviewed, separate from the unidentified victims mentioned through the report.
[1903] **EVD-T-OTP-00395/CAR-OTP-0001-0034**.
[1904] **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0044, stating, based on testimonies allegedly collected in hospitals of the area, that after 30 October 2002 patients mainly came from PK13, which would indicate that they were victims of Bemba's soldiers who occupied the area after General Bozizé's rebels retreated. *See also* **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0046, stating that, according to the information provided by one NGO, out of the 400 patients it treated, 30% were wounded before General Bozizé's rebels withdrew from Bangui, while the remaining 70% were injured while Bangui was under the control of Mr Bemba's troops.

victims in, *inter alia*, PK12, PK22, and Boy-Rabé.[1905] Based on the testimony of 79 alleged rape victims, the report provides detailed, individual accounts. These include a 15-year-old girl who describes her rape and that of her sister on 1 November 2002 in PK12,[1906] and a 17-year-old girl who describes how she was gang raped in Bangui on 30 October 2002.[1907] The FIDH Report analyses, *inter alia*, Mr Bemba's individual criminal responsibility for the alleged crimes.[1908]

609. On 17 February 2003, the local newspaper *Le Citoyen* reported that Mr Bemba told the press that the FIDH allegations were "of a political character" and that "France had never supported [the] intervention in the CAR".[1909] Referring to the allegations of rape, Mr Bemba is reported as "defy[ing] anyone to say that Jean-Pierre Bemba raped one girl in Central Africa" or that he gave "orders to commit rape".[1910] In addition, Mr Bemba is reported as referring to the fact that he had arrested eight soldiers for crimes committed in the CAR and that "he expected an investigation to be initiated between Chad and the CAR".[1911]

610. After seeking legal advice, Mr Bemba wrote a letter, dated 20 February 2003, to the FIDH President, Mr Sidiki Kaba, referring to a previous telephone conversation during which they discussed allegations of human rights violations in the CAR by MLC soldiers.[1912] In the letter, Mr Bemba stated that, as soon as he learned via the radio of the allegations that certain ALC soldiers were involved in human rights violations, he immediately ordered the establishment of a commission of inquiry charged with verifying allegations,

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[1905] **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0048 to 0057.
[1906] **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0051 to 0052.
[1907] **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0052.
[1908] **EVD-T-OTP-00395/CAR-OTP-0001-0034**, at 0048 to 0057.
[1909] **EVD-T-OTP-00832/CAR-OTP-0013-0106**, at 0109. The article, published in the CAR newspaper *Le Citoyen* on 17 February 2003, contains a series of sections focused on the allegations made in the FIDH report and some answers given by Mr Bemba to the press on 14 February 2003.
[1910] **EVD-T-OTP-00832/CAR-OTP-0013-0106**, at 0109.
[1911] **EVD-T-OTP-00832/CAR-OTP-0013-0106**, at 0109.
[1912] **EVD-T-OTP-00391/CAR-DEF-0001-0152**, at 0152; and **P15**: T-211, page 12, lines 6 to 17, page 13, lines 11 to 12, and page 15, lines 3 to 7, testifying that, since the FIDH was one of the main accusers against the MLC and was given a lot of coverage concerning the allegations, Mr Bemba thought it would be useful to have a discussion with the FIDH President, consulted his lawyers to the find the right terms to deal with the accusations, and had a telephone conversation with Mr Kaba.

identifying those implicated, and putting them at the disposal of the MLC's military justice system.[1913] Mr Bemba also referred to his correspondence with General Cissé and the MLC's intention to work with an international commission of inquiry that was yet to be established.[1914] Mr Bemba complained that the FIDH had not contacted the MLC in order to obtain information that would have allowed for an impartial assessment.[1915] Mr Bemba then offered to work with the FIDH to establish the truth concerning the events in Bangui.[1916]

611. In his response letter, dated 26 February 2003, Mr Kaba noted that the MLC had prosecuted eight individuals accused of pillaging, but expressed serious reservations as to the legitimacy, impartiality, and independence of those proceedings.[1917] Mr Kaba also informed Mr Bemba of the FIDH's mandate to assist in the establishment of the truth, justice, reparations for the victims, and deterrence.[1918] He informed Mr Bemba that, in light of its mandate, the FIDH formally seized the ICC with the matter on 13 February 2003.[1919] Lastly, Mr Kaba encouraged Mr Bemba to transmit the information at his disposal to the ICC.[1920]

### 9. Sibut Mission

612. RFI radio broadcasts aired on 18 and 19 February 2003 reported that, on 13 February 2003, CAR forces supported by the MLC recaptured the towns of Sibut and Bozoum from General Bozizé's rebels, and the local population had fled the combat zones *en masse*, reporting large-scale abuse.[1921] The broadcasts

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[1913] **EVD-T-OTP-00391/CAR-DEF-0001-0152**, at 0152.
[1914] **EVD-T-OTP-00391/CAR-DEF-0001-0152**, at 0152 to 0153.
[1915] **EVD-T-OTP-00391/CAR-DEF-0001-0152**, at 0153.
[1916] **EVD-T-OTP-00391/CAR-DEF-0001-0152**, at 0153. Specifically, Mr Bemba states "I am ready, if you deem it useful, to try with you, in a spirit of transparency and responsibility, to establish the truth – the whole truth – concerning the events that took place in Bangui in CAR during these last months".
[1917] **EVD-T-OTP-00690/CAR-DEF-0001-0154**.
[1918] **EVD-T-OTP-00690/CAR-DEF-0001-0154**.
[1919] **EVD-T-OTP-00690/CAR-DEF-0001-0154**.
[1920] **EVD-T-OTP-00690/CAR-DEF-0001-0154**.
[1921] **EVD-T-OTP-00580/CAR-OTP-0031-0120**, track 1, from 00:01:19 to 00:01:50, track 2, from 00:00:00 to 00:00:39, and from 00:02:05 to 00:02:34; and **EVD-T-OTP-00582/CAR-OTP-0031-0124**, track 1, from

refer in more detail to crimes allegedly committed in Bozoum, including the shooting of two imams and the ransacking of the Chadian consul's house.[1922] According to the broadcasts, people then fled to Gore, Chad where they were assisted by the United Nations High Commissioner for Refugees ("UNHCR").[1923]

613. The UNHCR representative, interviewed by RFI, described the recent arrival of people of Chadian origin from Bozoum and Paoua who had allegedly fled from massacres directed against the Muslim population by the "Rwandans", which he understood to mean the MLC and CAR forces.[1924] RFI also interviewed the CAR government spokesman. He stated that, after the rebels had "occupied" these towns, the people who remained were all considered accomplices ("they are rebels").[1925] He also referred to the "collateral effects" of war.[1926]

614. In response to the media reports, Mr Bemba dispatched a delegation of MLC soldiers and officials, accompanied by reporters, to Sibut ("Sibut Mission").[1927] Thomas Luhaka, the Secretary General of the MLC at the time,[1928] headed the Sibut Mission,[1929] and was accompanied by Valentin Senga,[1930] Gabriel Kahn, a

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00:14:00 to 00:14:17. *See* **EVD-T-OTP-00580/CAR-OTP-0031-0120**, track 1, from 00:01:50 to 00:02:34, track 2, from 00:02:34 to 00:03:23, the broadcasts also stated that shops had been pillaged and burnt down and that the civilian population had been massacred by Mr Bemba's men who assailed both Central Africans and Chadians and anyone suspected of helping or giving shelter to Bozizé's rebels was targeted, apparently handpicked with the help of informers from the area. *See also* Section V(C)(9).

[1922] The Chamber notes that Sibut and Bozoum are more than 400 kilometres away from each other by road. Although both are located north of Bangui, Sibut is located towards the east of the country, while Bozoum is towards the west, closer to Chad and Cameroon and on the route towards Paoua in the CAR and the refugee camp of Gore in Chad.

[1923] **EVD-T-OTP-00580/CAR-OTP-0031-0120**, track 1, from 00:02:34 to 00:02:47, track 2, and from 00:03:05 to 00:03:31.

[1924] **EVD-T-OTP-00580/CAR-OTP-0031-0120**, track 2, from 00:03:31 to 00:04:26; and **EVD-T-OTP-00581/CAR-OTP-0031-0122**, track 1, from 00:08:40 to 00:09:48.

[1925] **EVD-T-OTP-00581/CAR-OTP-0031-0122**, track 1, from 00:09:48 to 00:11:13, and track 2, from 00:08:32 to 00:10:10; and **EVD-T-OTP-00582/CAR-OTP-0031-0124**, track 1, from 00:14:17 to 00:15:32.

[1926] **EVD-T-OTP-00581/CAR-OTP-0031-0122**, track 1, from 00:09:48 to 00:11:13, track 2, and from 00:08:32 to 00:10:10; and **EVD-T-OTP-00582/CAR-OTP-0031-0124**, track 1, from 00:14:17 to 00:15:32.

[1927] **P15**: T-208, page 31, lines 3 to 12; and **D21**: T-302, page 22, lines 21 to 24, and page 23, lines 11 to page 27, line 18; T-304, page 48, line 24 to page 49, line 2, and page 50, line 14 to page 51, line 13; and T-305, page 55, line 19 to page 56, line 2.

[1928] **P15**: T-208, page 5, lines 10 to 23.

[1929] **P15**: T-208, page 31, lines 4 to 12. *See also* **P15**: T-208, page 50, lines 9 to 16, testifying that at that time Colonel Luhaka was the MLC Secretary of Defence.

[1930] **D21**: T-306, page 3, lines 11 to 21, testifying that Valentin Senga was a minister within the MLC.

RFI reporter,[1931] and a photographer from a Ugandan press agency.[1932] Mr Bemba provided a helicopter for transportation.[1933] The CAR authorities also cooperated with the Sibut Mission.[1934]

615. D21 testified that the Sibut Mission, which was not an investigation, included meetings with local authorities and the population.[1935] D21 claimed that, from these discussions, it became apparent that – as later reported to Mr Bemba[1936] – General Bozizé's soldiers were generally responsible for abuses; the population considered themselves "liberated" by the MLC soldiers; only some MLC soldiers had "misbehaved"; and such "misbehaviours" had already been addressed by the relevant MLC officers.[1937] The Chamber notes that D21's account is partially corroborated by P15, who testified that the Sibut Mission did not discover any civilian abuse attributable to the MLC.[1938]

616. An hour long video provides some record of the Sibut Mission.[1939] The video shows the delegation arriving in Sibut via helicopter and being welcomed by Mr Lionel Gan-Befio, an affiliate of President Patassé, and others, including photographers and armed soldiers, with a large crowd in the background.[1940] The video shows armed soldiers circulating close to the population, while a

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[1931] **D21**: T-304, page 52, line 24 to page 53, line 9. The same day that the allegations of crimes in Sibut and Bozoum were aired by RFI, the commencement of the trials in Gbadolite for the allegations raised against the MLC for crimes committed in Ituri was also reported by RFI, with Gabriel Khan reporting directly from Gbadolite. *See* **EVD-T-OTP-00580/CAR-OTP-0031-0120**, track 1, from 00:02:48 to 00:03:21, track 2, from 00:00:40 to 00:00:56, and from 00:05:46 to 00:06:52; **EVD-T-OTP-00581/CAR-OTP-0031-0122**, track 1, from 00:05:40 to 00:06:25, and track 2, from 00:00:38 to 00:00:51, and from 00:06:26 to 00:08:32; and **EVD-T-OTP-00582/CAR-OTP-0031-0124**, track 1, from 00:12:25 to 00:13:04.
[1932] **P15**: T-210, page 55, lines 6 to 12, testifying that Mr Bemba invited journalists because he saw the mission as a clear opportunity to make use of their presence. *See also* **D21**: T-302, page 24, lines 5 to 17; and page 52, lines 14 to 23; and T-304, page 55, lines 10 to 18.
[1933] **D21**: T-304, page 52, lines 9 to 13; and **P15**: T-208, page 31, lines 6 to 12.
[1934] **D21**: T-302, page 23, line 11 to page 24, line 4; and T-304-Conf, page 54, line 11 to page 55, line 7.
[1935] **D21**: T-302, page 28, lines 14 to 19; and T-306, page 59, lines 3 to 7.
[1936] **D21**: T-304-Conf, page 62, line 17 to page 63, line 6, testifying also that Mr Bemba spoke to members of the international press who accompanied the mission immediately upon their return to Gbadolite; and **EVD-T-CHM-00027/CAR-OTP-0046-0229**. *See also* **D21**: T-304, page 57, line 7 to page 58, line 5, clarifying that the only CAR official the delegation met was the Mayor of Sibut and that the delegation also met with a representative of President Patassé's, likely Mr Lionel Gan-Befio.
[1937] **D21**: T-302, page 29, line 16 to page 30, line 8, and page 31, line 16 to page 36, line 3, and page 41, lines 7 to 13; and T-304, page 64, line 12 to page 65, line 1.
[1938] **P15**: T-210, page 55, line 24 to page 56, line 4.
[1939] **EVD-T-D04-00008/CAR-DEF-0001-0832**.
[1940] **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:00:00 to 00:04:43.

series of persons are interviewed by the reporters that accompanied the delegation, with armed guards near the persons being interviewed.[1941] The interviewees report, *inter alia*, that (i) Sibut was liberated by the MLC troops, that the MLC troops had not committed crimes, and that the population was thankful towards the MLC;[1942] (ii) crimes were committed by General Bozizé's rebels prior to the MLC's arrival;[1943] and (iii) the MLC also committed some crimes in Sibut.[1944] For example, an elderly lady, identifying herself as the president of the *Organisation des Femmes de Centrafrique*, stated that the children who could be heard in the background during her interview were screaming with joy because, thanks to the MLC, they no longer had to hide in the bush.[1945]

617. Another person, who identified himself as the Mayor of Sibut,[1946] stated that, since the loyalists arrived, the "abuses" were only "partial, not like among the rebels".[1947] Similarly, when a young man was asked by the journalist about the crimes reported in the media, especially by RFI,[1948] he stated that there has been "not as much abuse", but that, at the beginning, there were four or five soldiers lacking control and with bad intentions who took their provisions, although the

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[1941] **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:04:51 to 00:05:15, from 00:05:57 to 00:07:11, from 00:12:20 to 00:12:26, from 00:13:35 to 00:16:30, from 00:21:20 to 00:21:25, from 00:30:44 to 00:30:47, from 00:31:00 to 00:31:04, from 00:33:03 to 00:33:07, and from 00:38:20 to 00:42:15.

[1942] **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:05:15 to 00:05:20, from 00:07:09 to 00:08:12, from 00:09:05 to 00:09:11, from 00:18:20 to 00:21:32, from 00:30:50 to 00:30:57, from 00:34:18 to 00:38:16, from 00:39:20 to 00:40:13, from 00:40:22 to 00:41:37, from 00:41:45 to 00:42:15, from 00:42:55 to 00:42:58, from 00:43:14 to 00:43:42, from 00:44:47 to 00:44:53, and from 00:46:23 to 00:46:32; and **P173**: T-149, page 4, line 16 to page 5, line 1. *See also* **D21**: T-302, page 29, line 16 to page 30, line 8, page 31, line 16 to page 33, line 2, page 34, lines 19 to 24, and page 35, line 6 to page 36, line 3.

[1943] **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:05:32 to 00:06:27, from 00:08:42 to 00:08:05 from 00:12:02 to 00:12:45, from 00:12:50 to 00:13:40, from 00:14:09 to 00:14:27, from 00:15:20 to 00:18:19, from 00:22:40 to 00:23:22, from 00:23:50 to 00:25:01, from 00:27:32 to 00:29:20, from 00:33:08 to 00:34:14, from 00:34:29 to 00:35:35, from 00:38:51 to 00:39:15, from 00:45:46 to 00:46:18, and from 00:46:34 to 00:46:44; and T-149-Conf, page 4, line 20 to page 5, line 1. *See also* **D21**: T-302, page 29, line 16 to page 30, line 8, page 31, line 16 to page 33, line 2, page 34, lines 19 to 24, and page 35, line 6 to page 36, line 3.

[1944] **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:22:26 to 00:26:27. The reporter did not follow up as to what the person meant by "not much abuse". *See* **D21**: T-302, page 29, line 16 to page 30, lines 8, page 31, line 16 to page 33, line 2, page 34, lines 4 to 24, and page 35, line 6 to page 36, line 3, testifying that during the discussions with the local authorities and the population, it was indicated that the abuse was generally committed by Bozizé's soldiers and that the MLC soldiers in fact "liberated" Sibut. *See also* **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:12:50 to 00:13:40, from 00:14:09 to 00:14:27.

[1945] **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:27:32 to 00:29:20.

[1946] **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:21:32 to 00:21:37.

[1947] **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:14:27 to 00:14:46.

[1948] **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:25:25 to 00:25:44.

major and the lieutenant who were with the population tried to save them from such behaviour.[1949] He asserted that there was not as much abuse as was reported on the radio.[1950]

618. Next, a young man states that the soldiers of Mr Bemba stole and broke their goods, indicating discreetly with his chin towards people next to the crowd; the answer is difficult to hear and the journalist had to question him again.[1951] He then asserts that the MLC came into the town and stole their goods.[1952] The journalist asks him why he is saying that, while others say that the MLC protected them.[1953] The young man answers that, in effect, the MLC protected the population but that they stole from them as well, taking their goats.[1954]

619. P173 and Mr Judes Mbetigou (V2) challenged the veracity of the video's content, claiming that those interviewed were appointed by or linked to President Patassé.[1955] V2 asserted that "[a]ny right-thinking, normal person cannot make such a statement. If the inhabitants of Sibut were to find out that these were the type of statements that were made by these people, they would have burnt down their houses".[1956] Further, V2 testified that the declared Mayor

[1949] **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:25:45 to 00:26:22.
[1950] **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:26:23 to 00:26:27.
[1951] **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:45:02 to 00:45:26.
[1952] **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:45:26 to 00:45:28.
[1953] **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:45:33 to 00:45:38.
[1954] **EVD-T-D04-00008/CAR-DEF-0001-0832**, at 00:45:39.
[1955] **P173**: T-149, page 3, line 25 to page 28, line 12, expressing doubts about the credibility of the statements included in the video, noting that the persons speaking were appointed to their positions by President Patassé and thus would never say anything against the Patassé regime; and **V2**: T-224, page 28, line 21 to page 29, line 3; and T-225, page 41, line 14 to page 42, line 4, and page 50, line 15 to page 51, line 3. V2 testified that a few days after the arrival of the "Banyamulengués", their leader called the inhabitants of Sibut to the Town Hall and told them that the President, Mr Bemba, would visit the city to check whether it was free of rebels. **V2**: T-222, page 49, lines 7 to 17, and page 51, line 19 to page 52, line 2. The witness stated that Mr Bemba arrived in Sibut the sixth day after the arrival of the "Banyamulengués", in a blue and white helicopter. **V2**: T-222, page 51, line 19 to page 52, line 2; and T-225, page 11, line 22 to page 12, line 23. Since he did not know Mr Bemba, he asked a "Banyamulengué" soldier that was amongst the population to point out Mr Bemba to him. **V2**: T-224, page 28, lines 21 to 25. The witness was asked to identify Mr Bemba in some photographs and the person he identified as Mr Bemba was in fact one of the members of the mission, i.e. Valentin Senga or Thomas Luhaka. **V2**: T-225, page 32, line 3 to 23, referring to **EVD-T-CHM-00041/CAR-OTP-0046-0196**; and **V2**: T-224, page 37, lines 1 to 24, referring to **EVD-T-OTP-00687/CAR-OTP-0046-0203**. However, the witness's confusion as to whether one member of the mission was Mr Bemba casts no doubt on his credibility or the reliability of his testimony, noting that he sufficiently explained the source of his confusion in court.
[1956] **V2**: T-225, page 50, line 22 to page 51, line 1.

of Sibut,[1957] who recounted crimes committed by General Bozizé's rebels,[1958] was in fact the Mayor's assistant.[1959] V2 also testified that some of the "Banyamulengués" were not wearing military uniforms and were mixed with the population.[1960] He stressed that the interviews were taken around the same location, i.e. around the home of one of the interviewees and not at a central location, such as the town hall.[1961]

620. The Defence, relying on a RFI article published on 26 February 2003,[1962] submits that there was a "turnaround" in RFI's reporting after the Sibut Mission.[1963] The article explains that the MLC took over Sibut without fighting on 14 February, but relates an interviewee's account of isolated thefts committed by General Bozizé's rebels and by "Congolese" rebels.[1964] The article notes that, to reassure the population, "Lionel Ganne Beffio" spoke with an automatic weapon in his right hand.[1965] Contrary to the Defence's submission on a "turnaround" in RFI's reporting, the Chamber finds that the RFI article published after the Sibut Mission raised further allegations of MLC crimes in Sibut and was sceptical of the MLC's actions to reassure the population.

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[1957] **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:12:02 to 00:12:45, and from 00:21:32 to 00:21:37.
[1958] **EVD-T-D04-00008/CAR-DEF-0001-0832**, from 00:12:50 to 00:13:40, and from 00:14:09 to 00:15:20.
[1959] **V2**: T-225, page 5, lines 6 to 19, and page 6, line 19 to page 8, line 25.
[1960] **V2**: T-224, page 28, line 21 to page 29, line 3; and T-225, page 41, line 14 to page 42, line 4, and page 50, line 15 to page 51, line 3.
[1961] **V2**: T-223, page 42, lines 23 to 24; and T-225, page 6, line 19 to page 7, line 11. *See also* **D21**: T-302, page 28, lines 11 to 19; T-306, page 59, lines 3 to 7; and T-306-Conf, page 4, lines 18 to 21.
[1962] **EVD-T-OTP-00416/CAR-OTP-0005-0147**.
[1963] Defence Closing Brief, para. 864.
[1964] **EVD-T-OTP-00416/CAR-OTP-0005-0147**, at 0147.
[1965] **EVD-T-OTP-00416/CAR-OTP-0005-0147**, at 0148.

# VI. LEGAL FINDINGS

621. Having set out the applicable law and facts of the case, the Chamber analyses below the legal elements of the crimes and mode of liability charged, entering its findings thereupon.

## A. MURDER

622. In the Confirmation Decision, the Pre-Trial Chamber found that there was sufficient evidence to establish substantial grounds to believe that MLC soldiers committed the crime against humanity of murder as part of a widespread attack directed against the civilian population in the CAR from on or about 26 October 2002 to 15 March 2003.[1966] The Pre-Trial Chamber also found that there was sufficient evidence to establish substantial grounds to believe that, on the territory of the CAR and from on or about 26 October 2002 to 15 March 2003, MLC soldiers committed the war crime of murder in the context of, and in association with, an armed conflict not of an international character.[1967] In Section II(B), the Chamber identified those underlying acts of murder that fall within the scope of the charges and of which the Defence had adequate notice. Below, in considering the charges of murder as a war crime and crime against humanity, the Chamber limits its analysis to these alleged underlying acts.

623. The Chamber recalls that, on the basis of the evidence available, it was unable to enter findings in relation to the alleged killings of (i) an unidentified woman in PK12 as witnessed by P110;[1968] (ii) P42's cousin in PK22;[1969] (iii) P68's uncle in Damara;[1970] (iv) an unidentified woman in Mongoumba as witnessed by V1;[1971]

[1966] Confirmation Decision, para. 129.
[1967] Confirmation Decision, para. 272.
[1968] *See* Section V(C)(4)(d), para. 505.
[1969] *See* Section V(C)(5)(a), para. 521.
[1970] *See* Section V(C)(6), para. 526.
[1971] *See* Section V(C)(11)(b), paras 550 and 554.

and (v) an unidentified child in Bangui as witnessed by P169.[1972] Accordingly, the Chamber has not taken these alleged underlying acts into account in reaching its conclusions on the charges of murder.

624. The Chamber has found that perpetrator(s) killed the following persons:

a. P87's "brother" in Bangui at the end of October 2002;[1973]

b. P69's sister in PK12 the day after the MLC's arrival in PK12;[1974] and

c. an unidentified "Muslim" man on 5 March 2003 in Mongoumba.[1975]

625. In respect of murder as a war crime, the Chamber notes that these victims, who were not armed and were not taking part in hostilities, were killed in their homes, in the absence of armed groups other than the perpetrators.[1976] The killings were part of larger events targeting other members of their families, including both women and men, and/or accompanied by acts of pillaging and/or rape.[1977] The Chamber is therefore satisfied beyond reasonable doubt that (i) P87's ''brother'', P69's sister, and the unidentified "Muslim" man were civilians not taking active part in hostilities at the time of their killings; and (ii) the perpetrators were aware of the factual circumstances that established the protected status of these victims.

626. In relation to the identity of the perpetrators, the Chamber notes that they wore CAR military uniforms or other clothing similar thereto.[1978] In this regard, the Chamber recalls that, upon their arrival in the CAR, MLC soldiers were provided with CAR military uniforms.[1979] The Chamber emphasises, however, that a number of the forces operating in the CAR during the period of the charges wore such uniforms. Therefore, this factor alone, whilst narrowing the

[1972] *See* Section V(C)(13), para. 561.
[1973] *See* Section V(C)(3)(c), paras 475 to 479.
[1974] *See* Section V(C)(4)(b), paras 496 and 501.
[1975] *See* Section V(C)(11)(b), paras 549 and 554.
[1976] *See* Sections V(C)(3)(c), V(C)(4)(b), and V(C)(11)(b).
[1977] *See* Sections V(C)(3)(c), V(C)(4)(b), and V(C)(11)(b).
[1978] *See* Sections V(C)(3)(c), para. 472, V(C)(4)(b), para. 496, and V(C)(11)(b), para. 546.
[1979] *See* Section V(B)(2)(a), para. 412.

range of possible perpetrators, is not a sufficient basis for concluding that MLC troops were responsible for the acts identified above. Nonetheless, the witnesses of the acts identified above had interactions with MLC soldiers before and/or after the specific acts.[1980] The witnesses themselves identified the perpetrators as "Banyamulengués" or MLC soldiers.[1981] V1 testified that the perpetrators in Mongoumba identified themselves to her, stating that their "President" was "Mr Bemba".[1982] Further, the acts of murder addressed above occurred after the arrival of MLC troops in a given area.[1983] In PK12 and Mongoumba, the MLC was the only armed group after its arrival.[1984] Likewise, during the relevant time period, P87 testified that the MLC was the only armed group present in the Fourth Arrondissement of Bangui.[1985]

627. Moreover, the perpetrators spoke languages other than Sango (the language commonly spoken in the CAR), namely, Lingala (the language commonly spoken in the DRC) or French, to each other and the victims.[1986] V1, who spoke both Sango and Lingala, was forced to act as an interpreter for the perpetrators.[1987] Finally, the Chamber notes that the perpetrators' actions are consistent with evidence of the MLC's *modus operandi* and the general motives of MLC soldiers during the 2002-2003 CAR Operation.[1988]

628. In light of the foregoing factors, taken together, the Chamber finds beyond reasonable doubt that the perpetrators of the acts identified above were MLC soldiers.

629. Finally, in respect of each of the acts identified above, considering the circumstances of these events, the Chamber finds beyond reasonable doubt that

[1980] *See* Sections V(C)(3)(c), paras 471 to 472, V(C)(4)(b), para. 496, and V(C)(11)(b), para. 546.
[1981] *See* Sections V(C)(3)(c), paras 471 to 472, V(C)(4)(b), para. 496, and V(C)(11)(b), para. 546.
[1982] *See* Section V(C)(11)(b), para. 546.
[1983] *See* Sections V(C)(3)(c), V(C)(4)(b), and V(C)(11)(b).
[1984] *See* Sections V(C)(4), para. 485, and V(C)(11), para. 543.
[1985] *See* Section V(C)(3)(c), para. 471.
[1986] *See* Sections V(C)(3)(c), paras 471 to 472, V(C)(4)(b), para. 496, and V(C)(11)(b), para. 546.
[1987] *See* Section V(C)(11)(b), para. 547.
[1988] *See* Section V(C)(14), para. 564.

the perpetrators knowingly and intentionally killed P87's "brother", P69's sister, and an unidentified "Muslim" man in Mongoumba.

630. Accordingly, noting its findings below on the contextual elements of war crimes and crimes against humanity,[1989] the Chamber finds beyond reasonable doubt that MLC soldiers committed the war crime of murder and the crime against humanity of murder in the CAR between on or about 26 October 2002 and 15 March 2003.

## B. RAPE

631. In the Confirmation Decision, the Pre-Trial Chamber found that there was sufficient evidence to establish substantial grounds to believe that MLC soldiers committed the crime against humanity of rape as part of a widespread attack directed against the civilian population in the CAR from on or about 26 October 2002 to 15 March 2003.[1990] The Pre-Trial Chamber also found that there was sufficient evidence to establish substantial grounds to believe that, on the territory of the CAR and from on or about 26 October 2002 to 15 March 2003, MLC soldiers committed the war crime of rape in the context of, and in association with, an armed conflict not of an international character.[1991] In Section II(B), the Chamber identified those underlying acts of rape that fall within the scope of the charges and of which the Defence had adequate notice. Below, in considering the charges of rape as a war crime and crime against humanity, the Chamber limits its analysis to these alleged underlying acts.

632. The Chamber recalls that, on the basis of the evidence available, it was unable to enter findings in relation to the alleged second and third incidents of rape about which P47 testified.[1992] Accordingly, the Chamber has not taken these

[1989] *See* Sections VI(D) and VI(E).
[1990] Confirmation Decision, para. 160.
[1991] Confirmation Decision, para. 282.
[1992] *See* Section V(C)(3)(d), para. 484.

alleged underlying acts into account in reaching its conclusions on the charges of rape.

633. The Chamber has found that perpetrator(s), by force, invaded the bodies of the following victims by penetrating their vaginas and/or anuses, and/or other bodily openings with their penises:

a. P68 and P68's sister-in-law in Bangui at the end of October 2002;[1993]

b. two unidentified girls aged 12 and 13 years in Bangui on or around 30 October 2002;[1994]

c. P87 in Bangui on or around 30 October 2002;[1995]

d. eight unidentified women at the Port Beach naval base in Bangui at the end of October or beginning of November 2002;[1996]

e. P23, P80, P81, P82, and two of P23's other daughters in PK12 in early November 2002;[1997]

f. P69 and his wife in PK12 at the end of November 2002;[1998]

g. P22 in PK12 on or around 6 or 7 November 2002;[1999]

h. P79 and her daughter in PK12 several days after the MLC arrived in PK12;[2000]

i. P42's daughter in PK12 around the end of November 2002;[2001]

j. a woman in the bush outside of PK22 in November 2002;[2002]

k. P29 in Mongoumba on 5 March 2003;[2003] and

[1993] *See* Section V(C)(3)(a), paras 462 to 466.
[1994] *See* Section V(C)(3)(b), paras 467 to 469.
[1995] *See* Section V(C)(3)(c), paras 472 to 473.
[1996] *See* Section V(C)(3)(d), paras 480 to 483.
[1997] *See* Section V(C)(4)(a), paras 487 to 494.
[1998] *See* Section V(C)(4)(b), paras 498 to 501.
[1999] *See* Section V(C)(4)(e), para. 509.
[2000] *See* Section V(C)(4)(f), paras 510 to 513.
[2001] *See* Section V(C)(4)(g), paras 516 and 519.
[2002] *See* Section V(C)(5)(b), paras 522 to 523.

l. V1 in Mongoumba on 5 March 2003.[2004]

634. The perpetrators of the acts involving P69 and his wife, P87, and V1 were of the same group and possessed the same identifying characteristics as the MLC soldiers who murdered civilians, as addressed above.[2005] The Chamber therefore incorporates those findings. Moreover, the same identifying characteristics were also present in respect of the perpetrators of the other acts identified above, namely, the repeated interactions between the victims and witnesses and the MLC soldiers, the fact that the victims and witnesses identified the perpetrators as "Banyamulengués" or MLC, the troop movements and exclusive presence of the MLC in the relevant locations at the time of the crimes, the perpetrators' language, their uniforms,[2006] and/or the fact that their actions accorded with evidence of the MLC's *modus operandi* and the perpetrators' general motives in targeting the civilian population.[2007] Further, P119 testified that soldiers arriving at her house in PK12 – in the immediate vicinity of which two of the acts identified above occurred – told her that they were sent by "Papa Bemba".[2008]

635. The Chamber notes that P29 testified that the foreign dialect spoken by her attackers was probably not Lingala.[2009] Nevertheless, the Chamber notes that she could not identify or understand the language the perpetrators spoke, that they used hand gestures to communicate with her, and that the other factors set out above are fully applicable to P29's attackers. In these circumstances, the Chamber considers that there are sufficient factors enabling it to identify P29's attackers.

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[2003] *See* Section V(C)(11)(a), para. 545.
[2004] *See* Section V(C)(11)(b), paras 548, 551, and 553.
[2005] *See* Section VI(A), paras 626 to 627.
[2006] *See* Sections V(C)(3)(a), V(C)(3)(b), V(C)(3)(c), V(C)(3)(d), V(C)(4)(a), V(C)(4)(b), V(C)(4)(e), V(C)(4)(f), V(C)(4)(g), V(C)(5)(b), V(C)(11)(a), and V(C)(11)(b).
[2007] *See* Section V(C)(14), para. 564.
[2008] *See* Section V(C)(3)(b), para. 467.
[2009] *See* Section V(C)(11)(a), para. 545.

636. In light of the foregoing factors, taken together, the Chamber finds beyond reasonable doubt that the perpetrators of the acts identified above were MLC soldiers.

637. Finally, in respect of each of the acts identified above, considering the circumstances of the events, the Chamber finds beyond reasonable doubt that the perpetrators knowingly and intentionally invaded the bodies of the victims by forcefully penetrating their vaginas and/or anuses, and/or other bodily openings with their penises.

638. Accordingly, noting its findings below on the contextual elements of war crimes and crimes against humanity,[2010] the Chamber finds beyond reasonable doubt that MLC soldiers committed the war crime of rape and the crime against humanity of rape in the CAR between on or about 26 October 2002 and 15 March 2003.

## C. PILLAGING

639. In the Confirmation Decision, the Pre-Trial Chamber found that there was sufficient evidence to establish substantial grounds to believe that, on the territory of the CAR and from on or about 26 October 2002 to 15 March 2003, MLC soldiers committed the war crime of pillaging in the context of, and in association with, an armed conflict not of an international character.[2011] In Section II(B), the Chamber identified those underlying acts of pillaging that fall within the scope of the charges and of which the Defence had adequate notice. Below, in considering the charge of the war crime of pillaging, the Chamber limits its analysis to these alleged underlying acts.

640. The Chamber has found that perpetrator(s) appropriated items of property, identified in Section V(C), from the following victims, without their consent:

[2010] *See* Sections VI(D) and VI(E).
[2011] Confirmation Decision, para. 315.

a. P68 and her sister-in-law in Bangui at the end of October 2002;[2012]

b. P119 in Bangui after 30 October 2002;[2013]

c. P87 and her family in Bangui on or around 30 October 2002;[2014]

d. P23, P80, P81, and P82 in Bangui in early November 2002;[2015]

e. P69's sister in PK12 the day after the MLC arrived;[2016]

f. P69 in PK12 in November 2002;[2017]

g. P108 in PK12 during the MLC's presence;[2018]

h. P110 in PK12 the day after the MLC arrived;[2019]

i. P112 in PK12 in November 2002;[2020]

j. P22 and her uncle in PK12 on or around 6 or 7 November 2002;[2021]

k. P79 and her brother in PK12 several days after the MLC's arrival;[2022]

l. P73 in PK12 at the end of November 2002;[2023]

m. P42 and his family in PK12 at the end of November 2002;[2024]

n. a woman in the bush outside PK22 in November 2002;[2025]

o. V2 in Sibut in the days after the MLC's arrival;[2026] and

[2012] *See* Section V(C)(3)(a), para. 463.
[2013] *See* Section V(C)(3)(b), para. 470.
[2014] *See* Section V(C)(3)(c), para. 471.
[2015] *See* Section V(C)(4)(a), para. 495.
[2016] *See* Section V(C)(4)(b), paras 496 and 501.
[2017] *See* Section V(C)(4)(b), paras 497 and 501.
[2018] *See* Section V(C)(4)(c), paras 502 and 503
[2019] *See* Section V(C)(4)(d), para. 506.
[2020] *See* Section V(C)(4)(d), para. 507.
[2021] *See* Section V(C)(4)(e), para. 509.
[2022] *See* Section V(C)(4)(f), paras 511 and 513.
[2023] *See* Section V(C)(4)(g), paras 514 and 519.
[2024] *See* Section V(C)(4)(g), paras 515, 517, and 519.
[2025] *See* Section V(C)(5)(b), paras 522 and 523.
[2026] *See* Section V(C)(9), para. 533.

p. V1, a church, nuns, priests, an unidentified "Muslim" man and his neighbour, the gendarmerie, and mayor in Mongoumba on 5 March 2003.[2027]

641. The Chamber notes that V2, P69, P110, and P112 were absent at the time their property was appropriated. When V2, P69, P110, and P112 returned, they saw that their homes and, in the case of V2, his store had been broken into and their goods taken.[2028] In Sibut, V2 also saw pillaged items stockpiled by the MLC at their bases and heard about pillaging committed by MLC troops from others who were present.[2029] Likewise, P69, P110, and P112 observed other acts of pillaging in PK12 and heard about pillaging committed by MLC troops.[2030] Noting further that the MLC troops constituted the sole armed group present in PK12 and Sibut at the relevant times,[2031] the Chamber finds that the only reasonable conclusion is that V2, P69, P110, and P112 were able to identify those who pillaged their belongings.

642. Concerning all acts identified above,[2032] the perpetrators were of the same group and/or possessed the same identifying characteristics as the MLC soldiers who raped and murdered civilians.[2033] The Chamber therefore relies on the same factors and reasoning in considering the identity of the perpetrators, namely, the repeated interactions between the victims and witnesses and the MLC soldiers, the fact that the witnesses and victims identified the perpetrators as "Banyamulengués" or MLC, the troop movements and exclusive presence of the MLC in a location, the perpetrators' language, their uniforms,[2034] and the fact that their actions accorded with evidence of the MLC's *modus operandi* and

[2027] *See* Section V(C)(11)(b).
[2028] *See* Sections V(C)(4)(b), V(C)(4)(d), and V(C)(9).
[2029] *See* Section V(C)(9), para. 532.
[2030] *See* Sections V(C)(4)(b), V(C)(4)(d), and V(C)(9).
[2031] *See* Sections V(C)(4), para. 485, and V(C)(9), para. 531.
[2032] *See* para. 640.
[2033] *See* Sections VI(A), paras 626 to 627, and VI(B), paras 634 to 636.
[2034] *See* Sections V(C)(3), V(C)(4), V(C)(5), V(C)(9), and V(C)(11).

the perpetrators' general motives in targeting the civilian population.[2035] The Chamber further notes that, after the pillaging of his house in PK12 by the same soldiers who stayed in it until mid-February 2003, P108 found documents which contained headings and titles referring to the MLC.[2036] In light of the foregoing factors, taken together, the Chamber finds beyond reasonable doubt that the perpetrators of the acts identified above were MLC soldiers.

643. Regarding the requirement that the appropriated items are intended for personal or private use, the Chamber recalls that MLC soldiers personally used pillaged goods, in particular, food, beverages, and livestock, as well as furniture, and other wooden items, that could be burned as firewood.[2037] The Chamber has further found that MLC troops traded certain pillaged goods for other items, such as alcohol, or forced civilians to buy back goods taken from them or their neighbours.[2038] Pillaged goods were also sent to the DRC where they were, *inter alia*, kept by the soldiers who had pillaged them, distributed to other soldiers or commanders, placed at the "disposal of the party", or sold.[2039] The items were appropriated from civilians after the departure of General Bozizé's rebels from the relevant area, and were clearly not appropriated out of military necessity. The uses noted above, when considered in conjunction with the nature of the items appropriated – namely, personal effects, household items (including appliances and furniture), business supplies, tools, money, vehicles, and/or livestock – indicate that the perpetrators intended to deprive civilians of their property for their own personal use and that of other MLC soldiers and commanders, or the private use of the MLC entity.

644. The above is also consistent with the Chamber's findings regarding the motives of the perpetrators, in particular, self-compensation in the absence of adequate

[2035] *See* Section V(C)(14).
[2036] *See* Section V(C)(4)(c), para. 502.
[2037] *See* Section V(C)(14), para. 566.
[2038] *See* Section V(C)(14), para. 566.
[2039] *See* Section V(C)(14), para. 566.

payment and rations.[2040] In this regard, the Chamber notes that there is insufficient evidence to support a finding that the so-called Article 15, although applied by the MLC soldiers, was a formalised system of compensation adopted by the MLC.[2041] At most, the Chamber considers that the MLC hierarchy, which created the relevant circumstances, tacitly approved the measures that MLC soldiers took, including pillaging, to "make ends meet".[2042]

645. In light of the foregoing considerations, taken together, the Chamber finds beyond reasonable doubt that the perpetrators of the acts identified above intended to appropriate the property for private or personal use.

646. Concerning the scale and consequences of the pillaging, the Chamber notes its findings that MLC soldiers appropriated property from, *inter alia*, individual victims, their families, a church, nuns' and priests' residences, and a gendarmerie. The perpetrators took numerous items from the victims, including administrative documents, clothing, furniture, tools, radios, televisions, items of personal value, money, livestock, food, vehicles, and fuel. In P42's words, they took "everything" and some victims were left with nothing.[2043] The consequences on victims were far-reaching, impacting various aspects of their personal and professional lives.[2044] Further, the Chamber notes the consistent evidence that MLC soldiers committed many acts of pillaging throughout the 2002-2003 CAR Operation and throughout the areas in which they were present.[2045] In light of the above considerations, taken together, the Chamber finds beyond reasonable doubt that the appropriation of civilian property by MLC soldiers in the CAR was on a large scale with grave consequences for the victims.

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[2040] *See* Section V(C)(14), para. 565. *See*, *similarly*, *Katanga* Trial Judgment, paras 951-952.
[2041] *See* Section V(C)(14), para. 565.
[2042] *See* Section V(C)(14), para. 565.
[2043] *See* Section V(C)(14), para. 566.
[2044] *See* Section V(C)(14), para. 566.
[2045] *See* Section V(C)(14).

647. Finally, in respect of each of the acts identified above, considering the circumstances of the events, the Chamber finds beyond reasonable doubt that the perpetrators knowingly and intentionally appropriated the items of property identified in Section V(C), without the consent of the owners, and intended to deprive them of this property.

648. Accordingly, noting its findings below on the contextual elements of war crimes,[2046] the Chamber finds beyond reasonable doubt that MLC soldiers committed the war crime of pillaging a town or place in the CAR between on or about 26 October 2002 and 15 March 2003.

## D. CONTEXTUAL ELEMENTS OF WAR CRIMES

649. In the Confirmation Decision, the Pre-Trial Chamber found that there was sufficient evidence to establish substantial grounds to believe that "an armed conflict not of an international character existed between the organized armed group of Mr Bozizé on the one hand, and troops supporting Mr Patassé, including the USP and the FACA, a group of 500 predominantly Chadian mercenaries, 100 Libyan troops, together with approximately 1,500 MLC soldiers on the other hand, in the period from on or about 26 October 2002 to 15 March 2003, on the territory of the CAR".[2047]

### 1. Existence of an "armed conflict not of an international character"

650. By 25 October 2002, there was a resort to armed force in the CAR between the FACA and other forces supporting President Patassé, and General Bozizé's rebels.[2048] Hostilities continued after the MLC's arrival in support of President Patassé on 26 October 2002, with a large-scale offensive commencing on 30 October 2002, during which General Bozizé's rebels were driven out of

[2046] *See* Sections VI(D) and VI(E).
[2047] Confirmation Decision, para. 212.
[2048] *See* Section V, para. 379.

Bangui.[2049] Afterwards, as highlighted by the Defence[2050] and as found by the Chamber, there were breaks in hostilities and, at various points, General Bozizé's rebels fled as the MLC approached. Nevertheless, these breaks were not the result of "a peaceful settlement"[2051] and were merely temporary lulls in active engagements between the parties.

651. After the MLC established a base in PK12, in early November 2002, the regular use of armed force continued between, on the one hand, the forces supporting President Patassé, in particular, the MLC and the small number of CAR forces frequently accompanying them, and, on the other hand, General Bozizé's rebels along the road to PK22 in the first half of November 2002,[2052] around Damara in early December 2002,[2053] along the Bossembélé-Bozoum axis between mid-December and February 2003,[2054] on the road to and around Sibut in late February 2003,[2055] and along the Bossembélé-Bossangoa axis in late February or early March 2003.[2056] On or about 6 March 2003, the MLC troops began to retreat towards Bangui, engaging General Bozizé's rebels along the way until the MLC's withdrawal from the CAR on 15 March 2003.[2057] The Chamber further incorporates by reference its findings below as to the protracted nature of the violence.[2058]

652. Noting the Defence submissions that only hostilities between the MLC and General Bozizé's rebels may be considered in assessing whether there was an armed conflict,[2059] the Chamber emphasises that the conflict was between the forces supporting President Patassé and General Bozizé's rebels. The MLC, with

[2049] *See* Sections V(C)(2) and V(C)(3), para. 460.
[2050] Defence Closing Brief, paras 415 to 416, 418 to 420, and 423; and Defence Reply Brief, para. 62.
[2051] *See* Section III(F)(1), para. 128.
[2052] *See* Section V(C)(5), para. 520.
[2053] *See* Section V(C)(6), para. 524.
[2054] *See* Section V(C)(7), paras 527 to 528.
[2055] *See* Section V(C)(9), para. 531.
[2056] *See* Section V(C)(10), para. 534.
[2057] *See* Section V(C)(13), para. 560.
[2058] *See* Section VI(D)(3).
[2059] *See*, *inter alia*, Defence Closing Brief, para. 413.

a limited number of CAR forces frequently accompanying them, operated independently of other armed forces in the field. However, it is irrelevant that, for example, before the arrival of the MLC troops in the CAR, forces other than the MLC were engaged, in support of President Patassé, in hostilities with General Bozizé's rebels. At all times relevant to the charges, there was a resort to armed force and protracted violence between the forces supporting President Patassé and General Bozizé's rebels. At no time during the period of the charges was a peaceful settlement reached between the parties to the conflict. In light of the above, the Chamber finds beyond reasonable doubt that during the time period relevant to the charges – namely, from on or about 26 October 2002 to 15 March 2003 – and regardless of whether the armed conflict started before 25 October 2002, there was an armed conflict on the territory of the CAR.

653. The armed conflict was confined to the territory of the CAR.[2060] The FACA, USP, MLC, some Libyan troops, and several militias – including the group headed by Mr Abdoulaye Miskine, the Sarawi, the Balawa, the SCPS, the Karako and Captain Paul Barril's troop – all fought on behalf of President Patassé.[2061] The CEMAC forces were also charged with his protection.[2062] On the other hand, General Bozizé's rebels, supported by Chadian troops, fought on behalf of General Bozizé.[2063] The Chamber also notes that there were CEN-SAD forces present in the CAR during the 2002-2003 CAR Operation; however, they were neither engaged in, nor party to the armed conflict.[2064] In turn, their presence cannot impact on the characterisation of the armed conflict as either international or not international.

654. Recalling that a conflict will only be transformed to an international armed conflict where a second state is involved, directly or indirectly, on an *opposing*

[2060] *See* Section V and paras 650 to 651.
[2061] *See* Section V(B)(1).
[2062] *See* Section V(B)(1), para. 409.
[2063] *See* Section V(B)(3).
[2064] *See* Section V(B)(1), para. 409.

side of the conflict, the Chamber focuses its analysis on whether General Bozizé's rebels, or any aligned forces, were acting on behalf of a foreign government.

655. The Chamber notes that General Bozizé's rebels included some Chadian nationals, comprising a limited number of the troops acting on General Bozizé's behalf.[2065] Recalling, however, the relevant test set out in Section III(F)(1), the Chamber rejects the Defence submission that the mere involvement of non-CAR nationals would be sufficient in itself to transform the conflict into an international armed conflict.[2066] The Chamber notes that many of General Bozizé's rebels' resources were captured from the FACA. While the Chadian government also provided some troops, arms, ammunition, and vehicles, there is no evidence that the Chadian government had any role in organizing, coordinating, or planning the military actions of General Bozizé's rebels.[2067] Accordingly, the Chamber finds that General Bozizé's rebels were not acting on behalf, i.e. under the "overall control", of any foreign government.[2068]

656. In light of the above, the armed conflict, which was confined to the territory of the CAR, cannot be viewed as one in which two or more states opposed each other, or one in which territory was occupied by a hostile, foreign state. The Chamber thus finds beyond reasonable doubt that the armed conflict in the context of the 2002-2003 CAR Operation was not of an international character.

### 2. Governmental authorities and organized armed groups

657. The parties to the armed conflict consisted of the forces supporting President Patassé – namely, the FACA, USP, MLC, some Libyan troops, and militias supporting President Patassé – on the one hand, and, on the other, General Bozizé's rebels.

[2065] *See* Section V(B)(3).
[2066] Defence Closing Brief, para. 413.
[2067] *See* Section V(B)(3).
[2068] *See* Section III(F)(1), para. 130.

658. The MLC contingent in the CAR, invited by and acting in support of President Patassé, had an internal hierarchy, command structure, rules, and available military equipment, including means of transport, communications devices, and weapons.[2069] The MLC had the ability to impose discipline, and plan and carry out military operations.[2070] As to the extent, seriousness, and intensity of its military involvement, the MLC troops, and the limited number of CAR troops frequently accompanying them, conducted military operations, which lasted approximately four and a half months, involved regular periods of active hostilities, and covered a large geographical area.[2071] The MLC forces in the CAR, as an organized armed group, and other aligned troops and militias as identified above, fought in support of the governmental authorities of the CAR, headed by President Patassé.

659. General Bozizé's rebels acted in opposition to the CAR governmental authorities and supporting forces. General Bozizé's rebels had a command structure and available military equipment, including communications devices and weapons.[2072] Further, although General Bozizé's rebels were not paid, were undisciplined, and received minimal, if any, training, the Chamber finds that the ability to plan and carry out military operations is the only reasonable conclusion to be drawn from the extent, seriousness, and intensity of the military involvement of General Bozizé's rebels in the conflict.

660. Indeed, General Bozizé's rebels were able to, by 25 October 2002, take control of sizeable territory in the CAR, including large areas of Bangui.[2073] From on or about 26 October 2002, General Bozizé's rebels were engaged in regular hostilities, for example, in Bangui at the end of October 2002, along the road to PK22 in the first half of November 2002, around Damara in early December,

[2069] *See* Sections V(A) and V(B)(2).
[2070] *See* Sections V(A) and V(B)(2).
[2071] *See* Sections V(C) and VI(D)(1).
[2072] *See* Section V(B)(3).
[2073] *See* Section V, para. 379.

and along the Bossembélé-Bozoum axis from mid-December 2002.[2074] By January 2003, there was a turning point in the conflict, as the rebels were able to once again advance towards Bangui and re-capture various areas of the CAR, prompting CAR officials to travel to Gbadolite and request further reinforcements and supplies from Mr Bemba.[2075] Ultimately, by 15 March 2003, General Bozizé's rebels were able to gain control of Bangui, leading to the final withdrawal of the MLC from the CAR.[2076] The Chamber therefore finds that General Bozizé's rebels had a sufficient degree of organization in order to enable it to carry out protracted armed violence, and thus constituted an organized armed group within the meaning of Article 8(2)(f).

661. In light of the above, the Chamber finds beyond reasonable doubt that the armed conflict was between the CAR governmental authorities, supported by forces including the MLC, an organized armed group, on the one hand, and, on the other, the organized armed group of General Bozizé's rebels.

### 3. Intensity threshold and protracted character of the conflict

662. As set out above, the armed conflict commenced with hostilities between General Bozizé's rebels and the forces supporting President Patassé. President Patassé's forces responded with a bombing campaign against General Bozizé's rebels,[2077] before the phased deployment of MLC troops to the CAR, in support of President Patassé, beginning on 26 October 2002.[2078] More MLC reinforcements were sent to the CAR in late January or early February 2003.[2079] Throughout the armed conflict, the forces supporting President Patassé, including the MLC, mobilised and distributed weapons and other logistics. The armed conflict covered a large geographical area of the CAR, lasted more than

[2074] *See* Section V.
[2075] *See* Sections V(C)(7) and V(C)(8).
[2076] *See* Section V(C)(13).
[2077] *See* Section V, para. 379.
[2078] *See* Section V(C)(2).
[2079] *See* Section V(C)(8).

four and a half months, and was characterised by regular hostilities, resulting in numerous casualties, including hundreds killed and wounded in action.[2080] The armed conflict attracted the attention of the UN, local and international media, and NGOs, such as FIDH.[2081]

663. In light of the above, the Chamber finds beyond reasonable doubt that the armed conflict reached a sufficient level of intensity for purposes of Articles 8(2)(d) and 8(2)(f), namely, one exceeding "situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature". On the basis of the length of the armed conflict, namely more than four and a half months, and the regular hostilities, the Chamber also finds beyond reasonable doubt that the armed conflict was "protracted" within the meaning of Article 8(2)(f).

**4. The "nexus" requirement**

664. MLC soldiers committed the underlying acts of murder, rape, and pillaging against civilians in the CAR after their arrival in a given area in the context of the MLC's military campaign against General Bozizé's rebels. The armed conflict therefore played a major part in the perpetrators' ability to commit the crimes insofar as their presence and their control in those areas can be attributed to their involvement in the armed conflict. Moreover, the Chamber notes the evidence that MLC perpetrators targeted their victims in order to self-compensate absent adequate payment and rations from the MLC organization, and/or to destabilise, humiliate, or punish suspected rebels, rebel sympathisers, or those who resisted pillaging and rape.[2082] In the Chamber's view, the armed conflict played a major part in the perpetrators' decision to commit the crimes and the manner in which the crimes were committed.

[2080] *See* Section V(C)(14).
[2081] *See* Sections V(C)(14), V(D)(1), V(D)(7), and V(D)(8).
[2082] *See* Section V(C)(14).

665. Moreover, specifically in relation to the crimes committed during the attack on Mongoumba, the Chamber notes that the attack was carried out as punishment and retribution for the seizure by FACA forces of pillaged goods the MLC soldiers were taking by boat back to the DRC.[2083] Considering that these goods were obtained in the course of the MLC's involvement in the armed conflict, the timing of this attack on CAR territory, and the evidence of the perpetrators' general motives for appropriating goods during the armed conflict, in particular, as compensation, the Chamber finds that the armed conflict played a major part in the perpetrators' decision to commit the crimes in Mongoumba, their ability to do so, and the manner in which the crimes were committed.

666. In light of the above, the Chamber finds beyond reasonable doubt that the acts of murder, rape, and pillaging set out above were committed by the MLC forces in the context of and in association with the armed conflict not of an international character that occurred on the territory of the CAR between forces supporting President Patassé and General Bozizé's rebels from on or about 26 October 2002 to 15 March 2003.

### 5. Awareness of factual circumstances that established the existence of an armed conflict

667. The perpetrators were MLC soldiers fighting in support of President Patassé against General Bozizé's rebels.[2084] In these circumstances, the Chamber finds beyond reasonable doubt that the perpetrators were aware of the factual circumstances that established the existence of the armed conflict, namely resort to armed force by and protracted violence between the forces supporting President Patassé and General Bozizé's rebels.[2085]

[2083] *See* Section V(C)(11).
[2084] *See* Sections VI(A), VI(B), and VI(C).
[2085] *See* Section VI(D)(1).

### 6. Conclusion

668. In view of the above, the Chamber finds beyond reasonable doubt that the contextual elements of war crimes are satisfied.

## E. CONTEXTUAL ELEMENTS OF CRIMES AGAINST HUMANITY

669. In the Confirmation Decision, the Pre-Trial Chamber found that there was sufficient evidence to establish substantial grounds to believe that MLC troops[2086] conducted a widespread[2087] attack[2088] directed against the civilian population in the CAR,[2089] from on or about 26 October 2002 to 15 March 2003,[2090] involving the commission of multiple criminal acts against a large number of victims.[2091] It found substantial grounds to believe that the attack was conducted pursuant to an "organizational policy", since the MLC soldiers carried out the criminal acts "following the same pattern".[2092] The Pre-Trial Chamber also found substantial grounds to believe that the MLC soldiers knew that their individual acts were part of a broader attack directed against the civilian population in the CAR.[2093]

### 1. Existence of an "attack directed against any civilian population"

670. For purposes of this element, the Chamber addresses below the sub-elements set out in Article 7(2)(a), namely whether there was (i) "a course of conduct involving the multiple commission of acts referred to in [Article 7(1)]"; (ii) directed "against any civilian population"; and (iii) "pursuant to or in furtherance of a State or organizational policy to commit such attack". Together,

[2086] Confirmation Decision, paras 101 to 106.
[2087] Confirmation Decision, paras 117 to 124.
[2088] Confirmation Decision, paras 91 to 92.
[2089] Confirmation Decision, paras 94 to 99.
[2090] Confirmation Decision, paras 91 to 92.
[2091] Confirmation Decision, para. 108.
[2092] Confirmation Decision, paras 110 to 115.
[2093] Confirmation Decision, para. 126.

these sub-elements, if established, demonstrate the existence of an "attack directed against any civilian population".

**a) Course of conduct involving the multiple commission of acts referred to in Article 7(1)**

671. There is consistent and corroborated evidence that MLC soldiers committed many acts of rape and murder against civilians during the 2002-2003 CAR Operation.[2094] Moreover, such acts were consistent with evidence of a *modus operandi* on the part of MLC soldiers throughout the 2002-2003 CAR Operation and throughout the areas of the CAR in which they were present.[2095] The Chamber underlines that the specific acts addressed in Sections VI(A), VI(B), and VI(C) constitute only a portion of the total number of acts of murder and rape MLC soldiers committed, as also addressed below in Section VI(E)(2). In light of the above, including the identity of the perpetrators and the circumstances in which the acts were committed, the Chamber is satisfied that these multiple acts constituted a course of conduct, and not merely isolated or random acts.

672. Accordingly, the Chamber finds beyond reasonable doubt that there was a "course of conduct involving the multiple commission of acts referred to in [Article 7(1)]".

**b) Directed against any civilian population**

673. The Chamber recalls that MLC soldiers committed acts of murder, rape, and pillaging when they were the only armed force present in a given area, and after confirming that General Bozizé's rebels had departed.[2096] There is no evidence that non-civilians were present in the relevant areas at the relevant

[2094] *See* Section V(C)(14), para. 563.
[2095] *See* Section V(C)(14), para. 564.
[2096] *See* Sections V(C)(3), V(C)(4), V(C)(5), V(C)(9), V(C)(11), and V(C)(14), para. 564.

times. Moreover, the victims, in particular, those addressed in Sections VI(A), VI(B), and VI(C), were not taking part in hostilities at the relevant time. MLC soldiers targeted civilians, without regard for age, gender, or social status in civilian neighbourhoods and residences, on temporary MLC bases established in the CAR, or in isolated locations, such as the bush. Entire families were victimised; victims included the elderly, women, children, and men. The acts of murder and rape were regularly committed together with, or during the course of, the commission of acts of pillaging against the civilian population.[2097] In addition to the multiple commission of acts specified in Article 7(1), the Chamber finds that the acts of pillaging committed against civilians are also indicative of the attack being directed against the civilian population.

674. In light of the above, the Chamber finds beyond reasonable doubt that the civilian population was the primary, as opposed to incidental, target of the attack, and in turn, that the attack was directed against the civilian population in the CAR.

**c) Pursuant to or in furtherance of a State or organizational policy to commit such attack**

675. Mr Bemba founded the MLC in 1998. It numbered in the tens of thousands and had objectives and goals, as reflected in the MLC Statute.[2098] The MLC had an internal hierarchy, command structure, rules, and resources.[2099] It governed an important part of the territory in the DRC.[2100] Further, the MLC contingent in the CAR comprised approximately 1,500 soldiers in total, was structured into units under the control of designated commanders, and had the clear goal of assisting President Patassé in defeating General Bozizé's rebels.[2101] In light of the

[2097] *See* Sections V(C)(3), V(C)(4), V(C)(5), V(C)(9), V(C)(11), and V(C)(14), paras 563 to 564.
[2098] *See* Section V(A), para. 382.
[2099] *See* Section V(A).
[2100] *See* Section V(A), para. 382.
[2101] *See* Section V(B)(2).

above, the Chamber finds beyond reasonable doubt that the MLC was an organization within the meaning of Article 7(2)(a).

676. Turning to the matter of policy, the Chamber does not consider that the policy to attack the civilian population was formalised. Nonetheless, the Chamber is satisfied that the existence of a policy to attack the civilian population is the only reasonable conclusion from a cumulative consideration of the following factors. First, the acts of rape and murder were committed consistent with evidence of a *modus operandi* employed throughout the 2002-2003 CAR Operation: after General Bozizé's rebels had departed an area, MLC soldiers searched "house-to-house" for remaining rebels, raping civilians, pillaging their belongings, and occasionally killing those who resisted.[2102] Often, multiple perpetrators were involved in the same incidents of murder, rape, or pillaging.[2103] This *modus operandi* was apparent from the earliest days of the 2002-2003 CAR Operation and continued consistently throughout it.

677. Second, MLC soldiers committed the underlying acts repeatedly during a four and a half month period and over a broad geographic area, encompassing each of the locations that fell under their control. The Chamber considers that this recurrent pattern of violence, carried out by MLC forces, is indicative of a policy.

678. Third, there is consistent evidence of the perpetrators' general motives,[2104] which the Chamber considers indicative of the attack being, at least, condoned by the MLC hierarchy. The MLC troops in the CAR did not receive adequate financial compensation and, in turn, self-compensated through acts of pillaging and rape.[2105] Moreover, MLC soldiers committed acts of murder and rape in

[2102] *See* Section V(C)(14), para. 564.
[2103] *See* Sections V(C)(3), V(C)(4), V(C)(5), V(C)(9), V(C)(11), and V(C)(14).
[2104] *See* Section V(C)(14), paras 565 to 567.
[2105] *See* Section V(C)(14), paras 565 to 567.

order to punish civilians who were suspected rebels or rebel sympathisers, or for MLC losses, and against those who resisted acts of pillaging.[2106]

679. Fourth, the Chamber has considered the scale on which, and degree of organization with which, the acts of pillaging – during the course of which many of the acts of rapes and murder were committed – were carried out, as well as the level of knowledge and involvement of the MLC hierarchy. In PK12, for example, where the MLC maintained a presence for most of the 2002-2003 CAR Operation, pillaged goods were stored at MLC bases.[2107] Further, pillaged goods were regularly transported back to the DRC, in particular, through Zongo, for distribution or sale.[2108] Moreover, there is consistent evidence that senior MLC commanders in the CAR benefited from and condoned acts of pillaging.[2109]

680. The Chamber notes similar indications relating to acts of murder and rape, which were consistent with the pattern of violence and *modus operandi* addressed above. In particular, such acts were committed in areas where MLC commanders and their troops were based throughout the 2002-2003 CAR Operation. For example, at the end of October or beginning of November 2002, 22 MLC soldiers raped eight women on a ferry docked at the Port Beach naval base.[2110] It was from this location, which was the initial military base of the MLC upon arrival in the CAR, that MLC soldiers were ferried to and from the DRC throughout the 2002-2003 CAR Operation.[2111] Further examples include the consistent and corroborated evidence of acts of rape, murder, and pillaging committed in PK12, where the MLC troops, including MLC commanders like

[2106] *See* Section V(C)(14), paras 565 to 567.
[2107] *See* Section V(C)(4).
[2108] *See*, *inter alia*, Sections V(C)(14), para. 566, V(D)(5), and V(D)(6).
[2109] *See*, *inter alia*, Sections V(C) and V(D)(2).
[2110] *See* Section V(C)(3)(d).
[2111] *See* Sections V(B)(2)(a) and V(C)(2).

Colonel Moustapha, were based for a long period of time during the 2002-2003 CAR Operation.[2112]

681. Fifth, the Chamber recalls that, in the final weeks of the conflict, MLC soldiers waged a punitive attack on Mongoumba, where only civilians were present at the relevant time. This attack, carried out under Colonel Moustapha's command and with Mr Bemba's knowledge, was conducted in retaliation for the seizure by the FACA forces of allegedly pillaged goods that MLC soldiers were transporting back to the DRC.[2113]

682. Sixth, the Chamber recalls its finding that MLC troops in the CAR received orders to exercise vigilance against civilians in the CAR, including the use of force towards them.[2114] The Chamber finds this to be indicative that, at least, the commanders on the ground were aware of and authorised such treatment.

683. Seventh, the Chamber notes its findings regarding apparent inadequacies in the Code of Conduct and the inconsistent training of MLC troops.[2115]

684. Finally, the Chamber notes its finding that senior MLC commanders, including Mr Bemba, were aware of the crimes being committed by the MLC troops and that Mr Bemba failed to take all necessary and reasonable measures to prevent or repress the crimes, or to submit the matter to the competent authorities.[2116] Similarly, there is no evidence that any other MLC leader took measures – other than those addressed in Sections V(D) and VI(F)(4) – to prevent or repress the crimes.

685. The Chamber considers that, in light of the above factors, taken together, any suggestion that the crimes were the result of an uncoordinated and spontaneous decision of the perpetrators, acting in isolation, is not a reasonable conclusion to be drawn from the evidence. In the Chamber's view, in such

[2112] *See* Section V(C)(4).
[2113] *See* Section V(C)(11).
[2114] *See* Section V(C)(14), para. 573.
[2115] *See* Section V(A)(2), paras 391 to 393.
[2116] *See* Section VI(F)(4).

circumstances, the fact that Mr Bemba, on occasion, warned the MLC troops against such ''misconduct'',[2117] although consistent with the MLC not having formalised the policy, does not undermine this finding. The Chamber is therefore satisfied that the attack against the civilian population by MLC forces reflected an organizational policy. In the circumstances, the Chamber is further satisfied that the failure on the part of Mr Bemba and other senior MLC commanders to take action was deliberately aimed at encouraging the attack. The Chamber, in fact, finds that the MLC, in particular through the actions of its commanders on the ground as recounted above, actively encouraged the attack.

686. In addition, and considering, in particular, that the perpetrators (i) acted consistently with evidence of motives and a *modus operandi*; (ii) as discussed further below, were aware of the attack; and (iii) were MLC soldiers acting on behalf of the MLC organization at the relevant time, the Chamber is also satisfied that there is a sufficient link between the course of conduct and the organizational policy.

687. The Chamber therefore finds beyond reasonable doubt that the attack was committed pursuant to or in furtherance of an organizational policy.

**2. Widespread nature of the attack**

688. The Chamber notes the consistent and corroborated evidence that, during the 2002-2003 CAR Operation, MLC soldiers committed many acts of rape, murder, and pillaging against civilians over a large geographical area, including in and around Bangui, PK12, PK22, Bozoum, Damara, Sibut, Bossangoa, Bossembélé, Dékoa, Kaga Bandoro, Bossemptele, Boali, Yaloke, and Mongoumba.[2118] On this basis, as already noted above in Section VI(E)(1)(a), the Chamber is satisfied that the specific underlying acts addressed in Sections VI(A), VI(B), and VI(C)

[2117] *See* Sections V(D)(1) and V(D)(4).
[2118] *See* Section V(C)(14), para. 563.

are only a portion of the total number of crimes committed by the MLC forces in the course of the 2002-2003 CAR Operation.

689. Accordingly, in light of the number of victims and the geographical scope of the attack, the Chamber finds beyond reasonable doubt that the attack against the civilian population in the CAR in the context of the 2002-2003 CAR Operation was widespread.

### 3. Acts committed as "part of" the attack (nexus)

690. Emphasising that the perpetrators' acts were consistent with evidence of general motives and a *modus operandi*, and recalling its findings concerning the link between the course of conduct and the organizational policy,[2119] the Chamber finds beyond reasonable doubt that the acts of murder and rape set out above were committed by the MLC soldiers as "part of" a widespread attack against the civilian population in the CAR in the context of the 2002-2003 CAR Operation.

### 4. Knowledge of the attack

691. The attack, lasting four and half months, was widespread, committed over a large geographical area, and resulted in a large number of victims. The areas affected included those in which the MLC contingent in the CAR was, often exclusively, present. The perpetrators' acts were consistent with evidence of general motives and a *modus operandi*, and were linked to the organizational policy to commit an attack against the civilian population. The attack drew the attention of both local and international media. In these circumstances, the Chamber finds beyond reasonable doubt that the perpetrators had knowledge of the attack, and knew that their conduct was, or intended their conduct to be, part of the widespread attack directed against the civilian population.

[2119] *See* Section VI(E)(1)(c), para. 686.

### 5. Conclusion

692. In view of the above, the Chamber finds beyond reasonable doubt that the contextual elements of crimes against humanity are satisfied.

## F. INDIVIDUAL CRIMINAL RESPONSIBILITY

693. In the Confirmation Decision, the Pre-Trial Chamber found that there was sufficient evidence to establish substantial grounds to believe that, from on or about 26 October 2002 to 15 March 2003, (i) MLC forces committed crimes within the jurisdiction of the Court;[2120] (ii) Mr Bemba effectively acted as a military commander and had effective authority and control over the MLC troops in the CAR;[2121] (iii) Mr Bemba knew that MLC troops were committing or about to commit the crimes against humanity of murder and rape and the war crimes of murder, rape, and pillaging in the CAR;[2122] (iv) Mr Bemba failed to take all necessary and reasonable measures within his power to prevent or repress the commission of the crimes by MLC troops in the CAR;[2123] and (v) Mr Bemba's failure to fulfil his duties to prevent crimes increased the risk of their commission by the MLC troops in the CAR.[2124]

### 1. MLC forces committed crimes within the jurisdiction of the Court

694. The Chamber has found beyond reasonable doubt that MLC soldiers committed crimes within the jurisdiction of the Court – namely, the war crime and crime against humanity of murder, the war crime and crime against humanity of rape, and the war crime of pillaging – between on or about 26 October 2002 and 15 March 2003 on the territory of the CAR.[2125]

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[2120] Confirmation Decision, paras 72 and 202.
[2121] Confirmation Decision, paras 446 to 477.
[2122] Confirmation Decision, para. 478.
[2123] Confirmation Decision, paras 426 and 490.
[2124] Confirmation Decision, para. 501.
[2125] *See* Sections VI(A), VI(B), and VI(C).

695. The Chamber notes that, in making findings on the identity of the perpetrators, it took into account the Defence submissions[2126] and evidence[2127] relating to crimes allegedly committed by other forces in the CAR, in particular, by other loyalist forces and General Bozizé's rebels, some of whom spoke Lingala or wore uniforms similar to those worn by the MLC contingent in the CAR. The Chamber emphasises that its conclusions as to the perpetrators' identities were reached based on a cumulative assessment of relevant identification criteria, including the consistent and corroborated evidence, taken together, of the MLC soldiers' uniforms, language, *modus operandi*, motives, and, often exclusive, presence in a given area at a given time.[2128] Many of the witnesses and victims who identified MLC soldiers as perpetrators had repeated and ongoing interactions with the MLC and other armed forces, and were therefore able to distinguish between them.[2129] In light of the above, the fact that other forces may have committed crimes during the relevant time period or had some characteristics in common with the MLC soldiers cannot, without further specification, undermine the Chamber's findings beyond reasonable doubt that the perpetrators of the crimes charged were MLC soldiers.[2130]

### 2. The Accused was a person effectively acting as a military commander and had effective authority and control over the MLC forces that committed the crimes

696. As noted in Section III(H), there is an overlap between the factors relevant to assessing (i) the status of someone effectively acting as a military commander, and (ii) a person's effective authority and control. The Chamber therefore addresses its findings on both of those elements in this section. In doing so, the

[2126] Defence Closing Brief, *inter alia*, paras 259 to 262, 314 to 315, and 521 to 593.
[2127] *See*, *inter alia*, the relevant testimony provided by P6, P31, P38, D2, D3, D4, D6, D7, D19, D13, D23, D26, D29, D30, D36, D54, D56, D57, D64, and D65.
[2128] *See* Sections VI(A), VI(B), and VI(C).
[2129] *See* Sections VI(A), VI(B), and VI(C).
[2130] In this regard, the Chamber notes ICTY jurisprudence that evidence of crimes committed by other parties to a conflict is irrelevant unless a party demonstrates how it would prove or disprove allegations against an accused. *See* ICTY, *Kunarac et al.* Appeal Judgment, page 88, *citing* ICTY, *Kupreškić et al.*, Decision on Evidence of the Good Character of the Accused and the Defence of *Tu Quoque*.

Chamber first considers Mr Bemba's position in the MLC generally, and then turns to considerations specific to the MLC contingent in the CAR.

697. Mr Bemba was the President of the MLC and Commander-in-Chief of the ALC throughout the period relevant to the charges, and held the rank of Divisional General.[2131] The Chamber has found that, in these capacities, Mr Bemba had broad formal powers, ultimate decision-making authority, and powers of appointment, promotion, and dismissal.[2132] Mr Bemba additionally controlled the MLC's funding, had direct lines of communication to commanders in the field, had well-established reporting systems, received operational and technical advice from the MLC General Staff, and both could, and did, issue operational orders.[2133] Furthermore, the Chamber has found that Mr Bemba had disciplinary powers over MLC members, including the power to initiate inquiries and establish courts-martial, and had the ability to send or withdraw troops from the CAR.[2134] These findings establish that Mr Bemba effectively acted as a military commander and had effective authority and control over the MLC, including ALC troops, during the time period of the charges.

698. As noted by the Defence,[2135] it is, however, necessary for it to be established that this effective control extended over the specific MLC forces operating in the CAR. In this regard, the Chamber considers that it is important to distinguish the military principle of "unity of command" from the assessment of effective control.[2136] The principle of "unity of command" or "singleness of command" suggests that, "[f]or the proper functioning of an army, there can be only one individual in command of any particular unit at one time."[2137] However, the

[2131] *See* Section V(A)(1), paras 384 to 389.
[2132] *See* Section V(A).
[2133] *See* Section V(A).
[2134] *See* Sections V(A)(4), V(A)(5), V(B)(2)(c), V(B)(2)(d), V(C)(1), and V(C)(12).
[2135] *See* Defence Closing Brief, paras 594 to 607. *See also* Defence Closing Brief, para. 677, submitting that the Prosecution fails to distinguish between Mr Bemba's powers in the DRC and in the CAR, bases its submissions almost entirely on events and practices in the DRC, and ignores the command structure over the contingent of MLC troops deployed to the CAR.
[2136] *See*, *similarly*, ICTY, *Popović et al.* Trial Judgment, paras 2023, and 2025 to 2026.
[2137] ICTY, *Popović et al.* Trial Judgment, para. 2025.

determination of whether a person has effective authority and control rests on that person's material power to prevent or repress the commission of crimes or to submit the matter to a competent authority. This need not be an exclusive power and multiple superiors can be held concurrently responsible for their subordinates' actions.[2138]

699. The Chamber notes that the MLC forces, including the MLC contingent in the CAR, communicated and co-operated with the CAR authorities throughout the 2002-2003 CAR Operation.[2139] Indeed, the Chamber considers that such liaison is logical in a situation where a contingent of foreign forces is unfamiliar with the terrain and enemy. While the exact level of assistance and whether it persisted throughout the entirety of the 2002-2003 CAR Operation is unclear, the Chamber considers that it is reasonable to conclude that it was a regular feature of the operations. However, the Chamber recalls that the MLC troops were not "resubordinated"[2140] to the CAR military hierarchy, insofar as this would imply that Mr Bemba's authority over the MLC contingent in the CAR was displaced.[2141]

700. From the entirety of the evidentiary record, the Chamber is satisfied that Mr Bemba exercised effective control over the MLC contingent in the CAR at all relevant times of the 2002-2003 CAR Operation. Mr Bemba ordered the initial deployment of the MLC troops to the CAR, including, in consultation with the General Staff, selecting the units and commanders to be deployed.[2142] Following deployment, Mr Bemba maintained regular, direct contact with senior commanders in the field on the state of operations, and additionally received numerous detailed operations and intelligence reports.[2143] Further, the MLC hierarchy in the DRC, controlled by Mr Bemba, continued to provide logistical

[2138] *See* Section III(H)(3), para. 185.
[2139] *See* Section V(B)(2).
[2140] *See*, *for example*, Defence Closing Brief, para. 628. *See also* Section III(H)(3), para. 185.
[2141] *See* Section V(B)(2).
[2142] *See* Sections V(C)(1) and V(C)(2).
[2143] *See* Section V(B)(2)(b).

support and equipment to the MLC troops in the CAR.[2144] The Chamber recalls in this regard its factual findings regarding the MLC contingent in the CAR, including that the MLC troops, with the small number of CAR troops frequently accompanying them, mainly operated independently of other armed forces in the field[2145] and that throughout the 2002-2003 CAR Operation command remained with the MLC hierarchy.[2146] Whether or not Mr Bemba issued direct operational orders to the MLC forces in the CAR is not determinative, but the Chamber nonetheless notes its finding that Mr Bemba did issue such orders, which were relayed and implemented by Colonel Moustapha.[2147]

701. The Chamber recalls that the MLC's General Staff played a significant role in (i) implementing Mr Bemba's orders, (ii) providing Mr Bemba with military advice and suggestions, (iii) reporting to Mr Bemba on the progress of operations, and (iv) providing him with military intelligence.[2148] However, the Chamber does not find this to diminish Mr Bemba's ultimate authority over the military operations.[2149] Indeed, the Chamber notes that Mr Bemba, at times, bypassed the MLC's General Staff and contacted commanders in the field directly to issue instructions or orders and receive reports.[2150]

702. Moreover, the Chamber notes that, rather than referring all matters to President Patassé and the CAR authorities, as would be consistent with a complete re-subordination of the forces, Mr Bemba continued to represent the MLC forces in the CAR in external matters, including, for example, in discussions with the UN

[2144] *See* Section V(B)(2)(a).
[2145] *See* Section V(B)(2), para. 411.
[2146] *See* Section V(B)(2)(c).
[2147] *See* Sections V(B)(2)(b) and V(B)(2)(c).
[2148] *See* Sections V(A) and V(B)(2).
[2149] *See* Sections V(A)(4) and V(B)(2)(c).
[2150] *See* Section V(B)(2)(c).

representative in the CAR, General Cissé, and in responding to media, and other reports, of alleged crimes.[2151]

703. Further, significantly, the Chamber has found that Mr Bemba retained primary disciplinary authority over the MLC troops in the CAR, including through the establishment of commissions of inquiry, powers of arrest, and the convening of courts-martial.[2152] As considered below in the context of the measures taken by Mr Bemba, such powers were exercised on at least four occasions at different times during the relevant period.[2153] Further, the MLC Code of Conduct remained applicable to the MLC contingent in the CAR throughout the 2002-2003 CAR Operation.[2154] Regardless of the extent to which it was actually exercised, there is no basis for finding that Mr Bemba at any time during the 2002-2003 CAR Operation lost the material power to discipline or punish members of the MLC contingent in the CAR.

704. Finally, the Chamber recalls that, as evidenced both by Mr Bemba's discussions with General Cissé in November 2002 and in the final withdrawal in March 2003, Mr Bemba retained the power and authority to order the withdrawal of the MLC troops from the CAR. Once Mr Bemba actually ordered the withdrawal of the troops, that decision was complied with.[2155]

705. In light of the above and the evidence as a whole, the Chamber finds beyond reasonable doubt that Mr Bemba was both a person effectively acting as a military commander and had effective authority and control over the contingent of MLC troops in the CAR throughout the 2002-2003 CAR Operation.

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[2151] *See* Sections V(D)(1), V(D)(3), and V(D)(7).
[2152] *See* Sections V(A)(5) and V(B)(2)(d).
[2153] *See* Section VI(F)(4).
[2154] *See* Section V(A)(2).
[2155] *See* Sections V(C)(12) and V(C)(13).

### 3. The Accused knew that the MLC forces were committing or about to commit the crimes

706. Throughout the 2002-2003 CAR Operation, Mr Bemba was predominantly based in Gbadolite, DRC, where the MLC was also headquartered, and was therefore remote from the operations on the ground. Nonetheless, Mr Bemba was the MLC President, Commander-in-Chief of the ALC, and the organization's figurehead, as well as the source of its funding, goals, and aims.[2156] He held broad formal functions and powers under the MLC Statute, including over internal organization and policy in the military and political wings of the MLC.[2157] Indeed, in practice, Mr Bemba had ultimate authority over military operations and strategy, promotions and assignments, logistics, finances, and discipline.[2158]

707. Radios, satellite phones, Thurayas, mobile telephones, and other communications equipment enabled MLC commanders, in particular, Colonel Moustapha, and other individuals linked to the MLC in the CAR to communicate directly with Mr Bemba, the MLC Chief of General Staff, and the MLC headquarters in Gbadolite.[2159] Mr Bemba also visited the CAR on a number of occasions.[2160] Through such channels of communication and throughout the 2002-2003 CAR Operation, there was regular and direct communication between Mr Bemba and Colonel Moustapha, with Colonel Moustapha reporting the status of operations and the situation on the ground.[2161] Other MLC officials in the CAR were also in direct contact with Mr Bemba by radio or Thuraya.[2162] In addition to direct communication with Mr Bemba, Colonel Moustapha and other commanders in the CAR were in direct

[2156] *See* Section V(A)(1).
[2157] *See* Section V(A)(1).
[2158] *See* Sections V(A) and V(B)(2).
[2159] *See* Sections V(A)(3) and V(B)(2)(b).
[2160] *See* Sections V(B)(2)(b), V(D)(3), and V(D)(4).
[2161] *See* Sections V(B)(2)(b) and V(B)(2)(c).
[2162] *See* Sections V(B)(2)(b) and V(B)(2)(c).

contact with the MLC Chief of General Staff, who reported information he received to Mr Bemba.[2163] Likewise, messages sent by the MLC commanders in the CAR through the MLC transmissions centre in Gbadolite were recorded in logbooks and then taken to Mr Bemba.[2164]

708. Military and civilian intelligence services also provided Mr Bemba – either directly or through the General Staff – with information on the combat situation, troop positions, politics, and allegations of crimes.[2165] Significantly, such intelligence reports referred to various acts by "Banyamulengués" and "MLC troops", including theft, pillaging, rape, the killing of civilians, harassment of persons, and the transportation of looted goods, including trucks for Colonel Moustapha, back to the DRC through Zongo and Libengue.[2166]

709. From the early days of the 2002-2003 CAR Operation, Mr Bemba followed and discussed with senior MLC officials international media reports, which often reported his personal reactions to allegations of crimes by MLC soldiers.[2167] Over the course of the 2002-2003 CAR Operation, local and international media and other sources reported allegations of many acts of rape, pillaging and murder by MLC soldiers in the CAR, including in and around Bangui, PK12, PK22, Bozoum, Damara, Sibut, Bossangoa, Bossembélé, Dékoa, Kaga Bandoro, Bossemptele, Boali, Yaloke, and Mongoumba.[2168]

710. The channels of communication and sources reporting crimes by MLC soldiers set out above corroborate the Chamber's factual findings, as recalled below, about Mr Bemba's direct knowledge of crimes by MLC soldiers at various, specific stages throughout the 2002-2003 CAR Operation.

[2163] *See* Sections V(B)(2)(b) and V(B)(2)(c).
[2164] *See* Sections V(B)(2)(b) and V(B)(2)(c).
[2165] *See* Section V(B)(2)(b), para. 425.
[2166] *See* Section V(B)(2)(b), para. 425.
[2167] *See*, *inter alia*, Sections V(D)(1), para. 576, and V(D)(2), para. 582.
[2168] *See* Sections V(C)(14), para. 563, and V(D)(1).

711. For example, in the initial days of the 2002-2003 CAR Operation, Mr Bemba and senior MLC officials discussed media allegations of crimes committed by MLC soldiers in the CAR, and, in response, Mr Bemba established the Mondonga Inquiry to investigate the allegations.[2169] In November 2002, after hearing reports of crimes by MLC soldiers in the CAR, Mr Bemba decided to travel to the CAR, met with the UN representative in the CAR, General Cissé, and President Patassé, and addressed MLC troops and civilians at PK12.[2170] During his speech at PK12, Mr Bemba referred to the MLC troops' "misbehaviour", "stealing", and "brutalis[ing]" the civilian population in the CAR.[2171] After the speech, Mr Bemba's convoy passed a noisy demonstration of more than one hundred civilians, standing by the roadside, with posters and placards.[2172]

712. On 27 November 2002, Colonel Mondonga forwarded the Bomengo case file to the MLC Chief of General Staff, copying Mr Bemba, who reviewed it.[2173] It contained detailed information on acts of pillaging and rape attributed to MLC soldiers in the initial days of the 2002-2003 CAR Operation, and resulted in the establishment of the Gbadolite court-martial. During the publicly broadcast trial at the Gbadolite court-martial, which commenced on 5 December 2002, Mr Bemba continued to receive further information, including directly through members of the court-martial, of pillaging by MLC soldiers.[2174]

713. In light of the allegations of pillaging made during the trial at the Gbadolite court-martial, as well as additional media allegations of crimes of pillaging and rape by MLC soldiers, Mr Bemba established the Zongo Commission. The Zongo Commission's final report to the MLC Secretary General, copying Mr Bemba, was unable to establish that the pillaging was attributable to MLC soldiers. However, it did include further information indicating that pillaging

[2169] *See* Section V(D)(2).
[2170] *See* Sections V(D)(3) and V(D)(4).
[2171] *See* Section V(D)(4).
[2172] *See* Section V(D)(4).
[2173] *See* Section V(D)(2).
[2174] *See* Section V(D)(5).

had been committed by MLC soldiers in the CAR and that pillaged goods crossed from the CAR to the DRC near Imese and Dongo.[2175]

714. In January 2003, in correspondence with General Cissé, Mr Bemba noted some allegations concerning crimes by MLC soldiers in the CAR.[2176] Further, the FIDH Report, released on 13 February 2003 and concerning an investigative mission in Bangui between 25 November and 1 December 2002, included detailed accounts of alleged acts of murder, rape, and pillaging by MLC soldiers against civilians in, *inter alia*, Bangui, PK12, and PK22. In a letter to the FIDH President, dated 20 February 2003, Mr Bemba noted the FIDH Report.[2177]

715. At the end of February 2003, Mr Bemba established the Sibut Mission in response to continued media reports of MLC abuses against the civilian population in Sibut and Bozoum, including murder. Those interviewed during the Sibut Mission largely refuted allegations of crimes by MLC soldiers, but some also claimed that the MLC soldiers committed abuses against civilians in Sibut, in particular, pillaging.[2178]

716. Finally, in March 2003, Mr Bemba knew of the punitive attack on Mongoumba, where only civilians were present at the time, being in constant contact with Colonel Moustapha the day before and the day of the attack.[2179] The Chamber considers this to be indicative that Mr Bemba knew that his forces would commit crimes against civilians in the course of the attack, a fact confirmed afterwards, for example, in media reports.

717. In light of the above factors – in particular, the notoriety of the crimes, Mr Bemba's position, the available channels of communication, the regular contact between Mr Bemba and the MLC officials in the CAR, general sources of information of crimes by MLC soldiers (including media, NGO, and MLC

[2175] *See* Section V(D)(6).
[2176] *See* Section V(D)(7).
[2177] *See* Section V(D)(8).
[2178] *See* Section V(D)(9).
[2179] *See* Section V(C)(11).

intelligence reports), and Mr Bemba's direct knowledge of allegations of murder, rape, and pillaging by MLC soldiers at specific times throughout the 2002-2003 CAR Operation – and the evidence as a whole, the Chamber finds beyond reasonable doubt that, throughout the 2002-2003 CAR Operation, Mr Bemba knew that the MLC forces under his effective authority and control were committing or about to commit the crimes against humanity of murder and rape, and the war crimes of murder, rape, and pillaging.

718. Having so found, the Chamber does not consider that re-characterisation of the charges pursuant to Regulation 55 to include the "should have known" mental element is warranted.[2180]

**4. The Accused failed to take all necessary and reasonable measures to prevent or repress the commission of the crimes or to submit the matter to competent authorities for investigation and prosecution**

719. In reaction to allegations of crimes committed by MLC soldiers, Mr Bemba took a few measures over the course of the 2002-2003 CAR Operation, including the Mondonga Inquiry; a November 2002 visit to the CAR, during which Mr Bemba met with the UN representative in the CAR, General Cissé, and President Patassé; a speech given at PK12 in November 2002; the trial of Lieutenant Willy Bomengo and others at the Gbadolite court-martial; the Zongo Commission; correspondence with General Cissé; correspondence in response to the FIDH Report; and the Sibut Mission.

720. The Chamber considers it appropriate to first recall the indications that all of these measures were limited in mandate, execution, and/or results. For example, the information contained in the Bomengo case file, which was the product of the Mondonga Inquiry, indicates that investigators did not pursue various relevant leads, in particular, the responsibility of commanders, alleged perpetrators among Colonel Moustapha's *Poudrier* Battalion and Colonel

[2180] *See* Sections I(D) and II(C).

Moustapha himself, and reports of rape. No explanation is given for these omissions. Nor is any justification apparent for procedural irregularities, such as the alleged lack of any guidelines and the fact that suspect interviews were conducted in the middle of the night.[2181] As a result of the Mondonga Inquiry, seven low-ranking soldiers were tried before a court-martial in Gbadolite solely on charges of pillaging minor goods and small sums of money.[2182]

721. In relation to Mr Bemba's visit to the CAR in November 2002, there is no evidence that he took any concrete measures in response to allegations of crimes by MLC soldiers during or as a result of meetings with General Cissé or President Patassé.[2183] Likewise, there is no evidence that Mr Bemba followed up on or enforced general warnings he publicly made to his troops against abuse of the civilian population, for example, during his speech at PK12[2184] or as reported in the media at other points during the 2002-2003 CAR Operation.[2185]

722. Further, the Zongo Commission – which Mr Bemba established in light of public allegations of murder, rape, and pillaging by MLC soldiers – was mandated to address only the question of whether pillaged goods from the CAR were entering the DRC through Zongo. It was also comprised solely of MLC officials, and based its report only on interviews with eight Zongo inhabitants who exercised public functions or directly worked for the MLC. Despite its ability to summon soldiers before it, the Zongo Commission's report does not refer to the interviews of any soldiers. There is also evidence indicating that the definition of pillaging applied by the Zongo Commission was limited and did not include, for example, the stealing of animals or mattresses. In this regard, the Chamber notes that livestock and mattresses were items frequently pillaged by MLC soldiers in the CAR. Finally, there is no evidence that any

[2181] *See* Section V(D)(2).
[2182] *See* Section V(D)(5).
[2183] *See* Section V(D)(3).
[2184] *See* Section V(D)(4).
[2185] *See* Sections V(D)(1) and V(D)(8).

action, including by Mr Bemba, was taken to pursue leads uncovered during the Zongo Commission's investigations, in particular, in relation to pillaging in the CAR and the crossing of pillaged items to the DRC near Imese and Dongo.[2186]

723. In response to further allegations of crimes by MLC soldiers, Mr Bemba sent a letter on 4 January 2003 to General Cissé, claiming that appropriate remedial and preventive measures had been taken, and requesting assistance in investigating allegations of crimes by MLC soldiers in the CAR. General Cissé responded that he would participate in any initiative relating to an investigation. However, there is no evidence that Mr Bemba ever took General Cissé up on this offer of assistance, or otherwise took any concrete measures as a result of or in relation to his correspondence with General Cissé.[2187]

724. In response to the FIDH report, which made detailed allegations of murder, rape, and pillaging by MLC soldiers, and analysed Mr Bemba's criminal responsibility for such crimes, Mr Bemba, after seeking legal advice, sent a letter to the FIDH President, Mr Kaba, mirroring the content and tone of the letter sent to General Cissé. Despite the representations he made, there is no evidence that Mr Bemba took any concrete measures in conjunction with or in light of his correspondence with Mr Kaba.[2188]

725. At the end of February 2003, Mr Bemba established the Sibut Mission, which was not an investigation, following media allegations of crimes by MLC soldiers committed in Bozoum and Sibut. Those on the Sibut Mission were met upon landing and then taken directly to a non-central location in town, namely, the home of one of the interviewees. The reporters only spoke to a narrow selection of interviewees, a number of whom exercised public functions and were linked to President Patassé's regime. The interviews were conducted in a

[2186] *See* Section V(D)(6).
[2187] *See* Section V(D)(7).
[2188] *See* Section V(D)(8).

coercive atmosphere with armed MLC soldiers moving among the interviewees and nearby population.[2189]

726. In summary, despite consistent information – as reported internally within the MLC organization and externally in the media – of acts of murder, rape, and pillaging attributed to MLC soldiers throughout the 2002-2003 CAR Operation, Mr Bemba's reactions were limited to general, public warnings to his troops not to mistreat the civilian population, the creation of two investigative commissions, the trial of seven low-ranking soldiers on charges of pillaging of goods of limited value, and the Sibut Mission, which was not an investigation. The mandates of the two investigative commissions were limited to the allegations of pillaging committed in the initial days of the 2002-2003 CAR Operation in Bangui and pillaged goods being transported via Zongo.

727. Further to noting indications that the measures set out above were not properly and sincerely executed, the Chamber finds that the measures Mr Bemba took were a grossly inadequate response to the consistent information of widespread crimes committed by MLC soldiers in the CAR of which Mr Bemba had knowledge. The inadequacy of the minimal measures Mr Bemba took is aggravated by indications, as set out above, that they were not genuine, the manner in which such measures were executed, and the fact that only public allegations of crimes by MLC soldiers prompted any reaction, and then only to limited extent. There is no evidence that Mr Bemba took any measures in response to information transmitted internally within the MLC of crimes by MLC soldiers from, for example, the MLC intelligence services or the leads uncovered during the Mondonga Inquiry, Zongo Commission, or Sibut Mission.

728. The Chamber also notes the corroborated evidence that the above measures were primarily motivated by Mr Bemba's desire to counter public allegations

[2189] *See* Section V(D)(9).

and rehabilitate the public image of the MLC.[2190] The fact that Mr Bemba used the above minimal and inadequate measures as a basis to address *all* allegations of crimes against the MLC,[2191] taken with the evidence as to his motives behind ordering such measures, illustrates that a key intention behind the measures Mr Bemba took was to protect the image of the MLC. His primary intention was not to genuinely take all necessary and reasonable measures within his material ability to prevent or repress the commission of crimes, as was his duty.

729. In addition to or instead of the insufficient measures Mr Bemba did take, and in light of his extensive material ability to prevent and repress the crimes, Mr Bemba could have, *inter alia*, (i) ensured that the MLC troops in the CAR were properly trained in the rules of international humanitarian law, and adequately supervised during the 2002-2003 CAR Operation; (ii) initiated genuine and full investigations into the commission of crimes, and properly tried and punished any soldiers alleged of having committed crimes; (iii) issued further and clear orders to the commanders of the troops in the CAR to prevent the commission of crimes; (iv) altered the deployment of the troops, for example, to minimise contact with civilian populations; (v) removed, replaced, or dismissed officers and soldiers found to have committed or condoned any crimes in the CAR; and/or (vi) shared relevant information with the CAR authorities or others and supported them in any efforts to investigate criminal allegations.

730. Further, the Chamber emphasises that one key measure at Mr Bemba's disposal was withdrawal of the MLC troops from the CAR. There is evidence that he first acknowledged, in November 2002, shortly after the arrival of the MLC troops in the CAR, that he was considering and had the ability to withdraw the troops.[2192] However, it was not until March 2003 that the MLC troops were

[2190] *See* Section V(D).
[2191] *See*, *for example*, Sections V(D)(7) and V(D)(8).
[2192] *See* Sections V(C)(12), V(D)(1), and V(D)(3).

withdrawn on Mr Bemba's order.[2193] Evidence indicates that Mr Bemba's motivations in withdrawing the troops, just as the investigative and other measures he took during the 2002-2003 CAR Operation, were only political and directly related to the negotiation of the Sun City agreements.[2194]

731. In light of the wide range of available measures at his disposal, the Chamber finds that the measures Mr Bemba did take patently fell short of "all necessary and reasonable measures" to prevent and repress the commission of crimes within his material ability.

732. The Defence argues that the Prosecution assertions that Mr Bemba could have conducted investigations must be viewed against the difficulties encountered by the CAR authorities in subsequent investigations when General Bozizé took power.[2195] However, the difficulties faced by members of the CAR national justice system in conducting a criminal investigation in the CAR shortly after an armed conflict, particularly as such investigations were hindered by political considerations,[2196] are irrelevant. Similarly, the Defence's purported comparison between the Prosecution's difficulties in conducting its investigations in 2006 and Mr Bemba's abilities at the time of the 2002-2003 CAR Operation is unpersuasive.[2197] In this regard, the Chamber emphasises that Mr Bemba could and did create commissions and missions in reaction to allegations of crimes, two of which operated on CAR territory at the height of the 2002-2003 CAR Operation.

733. Finally, the Chamber notes that, as he had ultimate disciplinary authority over the MLC contingent in the CAR,[2198] Mr Bemba was the competent authority to investigate and prosecute the crimes. In such circumstances, where he failed to empower other MLC officials to fully and adequately investigate and prosecute

[2193] *See* Sections V(C)(12) and V(C)(13).
[2194] *See* Section V(C)(12).
[2195] Defence Closing Brief, paras 924 to 929.
[2196] *See* Section V(D), para. 575.
[2197] Defence Closing Brief, paras 930 to 932.
[2198] *See* Section V(B)(2)(d).

allegations of crimes, he cannot be said to have submitted the matter to the competent authorities for investigation and prosecution. He also made no effort to refer the matter to the CAR authorities, or cooperate with international efforts to investigate the crimes, despite assertions that he would do so, in particular, in correspondence with General Cissé and Mr Kaba.[2199] The Chamber finds that submitting the matter to competent authorities was neither the intent, nor the effect, of Mr Bemba's letter to General Cissé, which, at most, constituted a request for information.

734. Accordingly, in light of the above considerations and the evidence as a whole, the Chamber finds beyond reasonable doubt that Mr Bemba failed to take all necessary and reasonable measures within his power to prevent or repress the commission of crimes by his subordinates during the 2002-2003 CAR Operation, or to submit the matter to the competent authorities.

### 5. The crimes were committed as a result of the Accused's failure to "exercise control properly" over the MLC forces

735. As the Chamber has found above, Mr Bemba, throughout the 2002-2003 CAR Operation, (i) had effective authority and control over the MLC troops in the CAR; (ii) knew that the forces under his authority and control were committing or about to commit the crimes of murder, rape, and pillaging; and (iii) failed to take all necessary and reasonable measures within his power to prevent and repress the commission of the crimes, and submit the matter to the competent authorities.

736. International humanitarian law contains a clear duty for commanders to ensure that members of armed forces are aware of their obligations under the Geneva Conventions and Additional Protocol I.[2200] This duty is expressly stated to be for the purpose of preventing and suppressing breaches of those treaties. In this

[2199] *See* Sections V(D)(7) and V(D)(8).
[2200] Additional Protocol I, Article 87(2).

regard, the Chamber recalls its finding that the training regime employed by the ALC was inconsistent, resulting in some soldiers receiving no or minimal training. Further, the Code of Conduct used during training did not, in particular, include a prohibition on pillaging. Dissemination of the Code of Conduct was also uneven and some MLC troops, including at least one high-ranking officer, who participated in the 2002-2003 CAR Operation, either did not receive training in or were not familiar with the Code of Conduct.[2201]

737. Despite Mr Bemba's effective authority and control over the ALC, including authority over disciplinary matters,[2202] he failed to take any measures to remedy such deficiencies in training, either prior to deployment of the troops or in response to the consistent reports of crimes occurring from the earliest days of the 2002-2003 CAR Operation. Additionally, the Chamber incorporates by reference its findings regarding Mr Bemba's failure to take all necessary and reasonable measures within his power to prevent and repress the commission of the crimes, and submit the matter to the competent authorities.[2203] Such failures further demonstrate that Mr Bemba failed to exercise control properly over the forces deployed to the CAR.

738. The Chamber emphasises that, as demonstrated by the measures Mr Bemba did take in response to allegations of crimes, including on CAR territory in the midst of the 2002-2003 CAR Operation and despite his remote location, Mr Bemba had the authority and ability to take measures to prevent and repress the commission of crimes. For example, as also noted above in Section VI(F)(4), Mr Bemba could have, *inter alia*, taken measures to ensure consistent and adequate training of MLC troops, including ensuring promulgation of a clear and complete Code of Conduct which reflected the requirements of international law; ensured adequate supervision; issued clear and consistent

[2201] *See* Section V(A)(2), paras 391 to 393.
[2202] *See* Section V(A)(5).
[2203] *See* Section VI(4).

orders to his troops not to commit the crimes; genuinely and fully investigated allegations of crimes; ensured that MLC commanders and soldiers implicated as committing or condoning such crimes were, as appropriate, tried, removed, replaced, dismissed, and punished; and/or shared relevant information with the CAR authorities or others, and supported them in any efforts to investigate criminal allegations.[2204] Such measures would have deterred the commission of crimes, and generally diminished, if not eliminated, the climate of acquiescence – which is inherent where troops have inadequate training, receive unclear orders, and/or observe their commanders committing or collaborating in crimes – surrounding and facilitating the crimes committed during the 2002-2003 CAR Operation. Mr Bemba's failures in this regard directly contributed to, *inter alia*, the continuation and further commission of crimes.

739. Further, clear training, orders, and hierarchical examples indicating that the soldiers should respect and not mistreat the civilian population would have reduced, if not eliminated, crimes motivated by a distrust of the civilian population, as enemies or enemy sympathisers. Recalling Mr Bemba's position of high authority as President of the MLC and Commander-in-Chief of the ALC, as well as of his effective authority and control, the Chamber finds that Mr Bemba's position obligated him to take such measures, both personally and through the hierarchical chain of command. Likewise, if the soldiers had received adequate payment and rations, the risk that they would pillage or rape for self-compensation, and murder those who resisted, would have been reduced, if not eliminated. The Chamber recalls in this regard its finding in relation to Mr Bemba's control over the MLC's financial resources.[2205]

740. Moreover, consistent with evidence of a *modus operandi*, most of the crimes were committed when the MLC was the only armed group in the area.[2206] In

[2204] *See* Section VI(4).
[2205] *See* Section V(A)(1).
[2206] *See* Section V(C)(14), para. 564.

particular, the attack on Mongoumba, of which Mr Bemba knew, but did not take any preventative or remedial action, occurred when only civilians were present.[2207] The redesign of such military operations – for example, avoiding primarily civilian areas, not ordering military operations against areas where only civilians were present, and otherwise limiting contact with civilians – would have minimised the opportunity for the commission of the crimes. Finally, the Chamber notes that Mr Bemba ultimately ended the commission of crimes by MLC soldiers by withdrawing them from the CAR in March 2003. Had he withdrawn them earlier – a possibility he acknowledged as early as November 2002 – crimes would have been prevented.[2208]

741. In light of the above, the Chamber finds that, had Mr Bemba taken, *inter alia*, the measures identified above, the crimes would have been prevented or would not have been committed in the circumstances in which they were. The Chamber therefore finds beyond reasonable doubt that the crimes against humanity of murder and rape, and the war crimes of murder, rape, and pillaging committed by the MLC forces in the course of the 2002-2003 CAR Operation were a result of Mr Bemba's failure to exercise control properly.

### 6. Conclusion

742. The Chamber finds beyond reasonable doubt that Mr Bemba is criminally responsible under Article 28(a) for the crimes against humanity of murder and rape, and the war crimes of murder, rape, and pillaging committed by his forces in the course of the 2002-2003 CAR Operation.

[2207] *See* Section V(C)(11).
[2208] *See* Sections V(C)(12) and V(C)(13).

# VII. CUMULATIVE CONVICTIONS

743. Recalling its findings beyond reasonable doubt that Mr Bemba is criminally responsible under Article 28(a) for (i) rape as both a war crime and crime against humanity based on the same underlying conduct and (ii) murder as both a war crime and crime against humanity based on the same underlying conduct,[2209] the Chamber must consider whether convictions for these offences are impermissibly cumulative.

744. Article 20, entitled "*ne bis in idem*", applies in situations where a person has already been convicted, acquitted, and/or tried before this Court or another court. However, the Defence submits that Article 20 also prohibits cumulative convictions in a single set of proceedings for the same underlying conduct in respect of multiple offences.[2210] This situation is not expressly addressed in the Court's statutory framework, nor does it feature in the *travaux préparatoires*.

745. Trial Chamber II considered that the principle of *ne bis in idem* enshrined in Article 20 meant that cumulative convictions may only be entered against an accused on the basis of the same course of conduct in respect of distinct offences.[2211] In this regard, the Chamber notes that the appeals chambers of the ICTY and Extraordinary Chambers in the Courts of Cambodia ("ECCC") have found that multiple convictions create a very real risk of prejudice to an accused, including the stigma inherent in being convicted of additional crimes and practical consequences, such as a potential impact on sentencing in the same and subsequent proceedings (for example, based on habitual offender laws) and eligibility for early release.[2212] On the other hand, these courts have

[2209] *See* Section VI.
[2210] Defence Closing Brief, paras 1056 to 1060.
[2211] *Katanga* Trial Judgment, para. 1694.
[2212] ICTY, *Kunarac et al.* Appeal Judgment, para. 169; and ECCC, *Kaing Guek Eav alias Duch* Appeal Judgment, para. 295.

also recognised that multiple convictions serve to describe the full culpability of an accused and/or provide a complete picture of his or her criminal conduct.[2213]

746. In *Delalić et al.*, the ICTY Appeals Chamber, considering the different approaches taken to cumulative convictions in various domestic jurisdictions, held that:[2214]

> […] reasons of fairness to the accused and the consideration that only distinct crimes may justify multiple convictions, lead to the conclusion that multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.

747. For purposes of this determination, the ICTY Appeals Chamber has found that all elements, including the contextual elements, should be taken into account,[2215] but not the underlying acts or omissions of an accused.[2216] Where the offences are not materially distinct, the ICTY Appeals Chamber considered that a conviction should be entered under the more specific provision.[2217] This cumulative convictions test has been adopted by Trial Chamber II[2218] and the appeals chambers of the ICTR,[2219] SCSL,[2220] and ECCC.[2221] The Chamber further notes that the European Court of Human Rights ("ECtHR") has found that multiple convictions are permissible for various offences based on the same underlying conduct, so long as each of those offences requires proof of a fact not required by the other.[2222]

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[2213] ICTY, *Kunarac et al.* Appeal Judgment, para. 169; and SCSL, *Brima et al.* Appeal Judgment, para. 215.
[2214] ICTY, *Delalić et al.* Appeal Judgment, paras 412 and 421. *See also* ICTY, *Kunarac et al.* Appeal Judgment, paras 170, 173, and 196; and ICTY, *Đorđević* Appeal Judgment, para. 839.
[2215] ICTY, *Jelisić* Appeal Judgment, para. 82. *See also* ICTR, *Musema* Appeal Judgment, para. 363.
[2216] ICTY, *Kordić and Čerkez* Appeal Judgment, para. 1033; and ICTY, *Đorđević* Appeal Judgment, para. 839.
[2217] ICTY, *Delalić et al.* Appeal Judgment, para. 413; ICTY. *Kunarac et al.* Appeal Judgment, para. 170; and ICTY, *Đorđević* Appeal Judgment, para. 839.
[2218] *Katanga* Trial Judgment, para. 1695.
[2219] ICTR, *Musema* Appeal Judgment, para. 363; and ICTR, *Karemera and Ngirumpatse* Appeal Judgment, paras 610 and 710.
[2220] SCSL, *Sesay et al.* Appeal Judgment, paras 1190 to 1193, and 1197; and SCSL, *Taylor* Appeal Judgment, para. 577.
[2221] ECCC, *Kaing Guek Eav alias Duch* Appeal Judgment, paras 287 to 300.
[2222] ECtHR, *Zolotukhin v. Russia* Judgment, paras 82 to 84, and 94.

748. The Chamber agrees with Trial Chamber II and the *ad hoc* tribunals that convictions for multiple offences are permissible where those offences have materially distinct elements, i.e. each requires proof of a fact not required by the others. Indeed, the Chamber considers that this test ensures that an accused is convicted only for distinct offences and, at the same time, that the convictions entered fully reflect his or her culpability and criminal conduct.[2223]

749. Specific to the issue of whether or not war crimes and crimes against humanity based on the same underlying conduct are impermissibly cumulative, Trial Chamber II found that the war crime of murder and crime against humanity of murder each had materially distinct elements and were therefore permissible. The crime against humanity requires the existence of a widespread or systematic attack against a civilian population and a nexus between the perpetrator's conduct and the attack, while the war crime requires that the victim was either *hors de combat* or was not taking part in hostilities and that the conduct in question was connected to an armed conflict.[2224] Likewise, the ICTY and ICTR Appeals Chambers have repeatedly affirmed that convictions may be entered for both crimes against humanity and war crimes as they have materially distinct elements.[2225]

750. The Chamber concurs with Trial Chamber II and the *ad hoc* tribunals that war crimes and crimes against humanity have materially distinct elements, each requiring proof of a fact not required by the other. Ultimately, the Chamber considers that the permissibility of multiple convictions turns on legislative intent. In adopting contextual elements for war crimes and crimes against humanity that are materially distinct, the Chamber considers that the drafters of

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[2223] ICTY, *Kordić and Čerkez* Appeal Judgment, para. 1033; and ECCC, *Kaing Guek Eav alias Duch* Appeal Judgment, paras 296, 298, and 330.
[2224] *Katanga* Trial Judgment, para. 1696.
[2225] ICTY, *Jelisić* Appeal Judgment, para. 82; ICTY, *Kupreškić et al.* Appeal Judgment, paras 387 to 388; ICTY, *Kunarac et al.* Appeal Judgment, paras 168, 170, 173, 179, and 196; ICTY, *Vasiljević* Appeal Judgment, paras 144 to 146; ICTR, *Rutaganda* Appeal Judgment, paras 583 to 584; ICTR, *Ntagerura et al.* Appeal Judgment, paras 427 to 428; ICTY, *Galić* Appeal Judgment, para. 165; and ICTR, *Bagosora and Nsengiyumva* Appeal Judgment, para. 415.

the Statute intended that convictions for the same conduct be entered under both Articles 7 and 8 if all elements are satisfied.[2226]

751. Recalling that, for purposes of determining whether offences are materially distinct, the focus is on whether each offence requires proof of a fact not required by the other, not the acts or omissions of the Accused,[2227] the Chamber finds that Mr Bemba's conviction, based on his criminal responsibility under Article 28(a), for (i) rape as both a war crime and crime against humanity and (ii) murder as both a war crime and crime against humanity is permissible.

[2226] The ICTY Appeals Chamber followed a similar approach in relation to its statute, which similarly differentiated between crimes against humanity and war crimes. *See* ICTY, *Kunarac et al.* Appeal Judgment, para. 178, considering that "the *chapeaux* elements disclose the animating desire [of the drafters] that all species of such crimes be adequately described and punished".
[2227] ICTY, *Kordić and Čerkez* Appeal Judgment, para. 1033; and ICTY, *Đorđević* Appeal Judgment, para. 839.

# VIII. DISPOSITION

752. For the foregoing reasons and on the basis of the evidence submitted and discussed before the Chamber at trial, and the entire proceedings, pursuant to Article 74(2) of the Statute, the Chamber finds Mr Jean-Pierre Bemba Gombo **GUILTY**, under Article 28(a) of the Statute, as a person effectively acting as a military commander, of the crimes of:

(a) Murder as a crime against humanity under Article 7(1)(a) of the Statute;

(b) Murder as a war crime under Article 8(2)(c)(i) of the Statute;

(c) Rape as a crime against humanity under Article 7(1)(g) of the Statute;

(d) Rape as a war crime under Article 8(2)(e)(vi) of the Statute; and

(e) Pillaging as a war crime under Article 8(2)(e)(v) of the Statute.

753. Judge Sylvia Steiner and Judge Kuniko Ozaki append separate opinions to this Judgment on discrete issues.

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

**Judge Sylvia Steiner**

**Judge Joyce Aluoch**

**Judge Kuniko Ozaki**

Dated this 21 March 2016

At The Hague, The Netherlands