

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 27 June 2013

**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**

**Decision on the admission into evidence of items deferred in the Chamber's  
"Decision on the Prosecution's Application for Admission of Materials into  
Evidence Pursuant to Article 64(9) of the Rome Statute" (ICC-01/05-01/08-2299)**

No. ICC-01/05-01/08

1/18

27 June 2013

**Decision 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

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Mr Peter Haynes

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Ms Marie-Edith Douzima Lawson  
Mr Assingambi Zarambaud

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
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Victims**

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**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* hereby issues the Decision on the admission into evidence of items deferred in by the Chamber’s “Decision on the Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute” (ICC-01/05-01/08-2299) (“Decision”).

## I. Background and Submissions

1. On 28 February 2012 the Office of the Prosecutor (“prosecution”) filed its “Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute” (“Prosecution Application”),<sup>1</sup> in which it requested, pursuant to Articles 64(9) and 69(2), (3) and (4) of the Rome Statute (“Statute”) and Rule 63(2) and (5) of the Rules of Procedure and Evidence (“Rules”), the admission into evidence of 97 items.<sup>2</sup>
2. On 19 March 2012, the defence of Mr Jean-Pierre Bemba Gombo (“defence”) filed its “Defence Response to the Prosecution’s Application for Admission of Evidence from the Bar Table” (“Defence Response”),<sup>3</sup> in

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<sup>1</sup> Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, 28 February 2012, ICC-01/05-01/08-2147 with two annexes ICC-01/05-01/08-2147-Conf-AnxA and ICC-01/05-01/08-2147-AnxB, and public redacted version of Annex A ICC-01/05-01/08-2147-AnxA-Red, filed on 21 September 2012.

<sup>2</sup> ICC-01/05-01/08-2147, paragraph 1.

<sup>3</sup> Defence Response to the Prosecution’s Application for Admission of Evidence from the Bar Table, 19 March 2012, ICC-01/05-01/08-2168 with two confidential annexes ICC-01/05-01/08-2168-Conf-AnxA and ICC-01/05-01/08-2168-Conf-AnxB, and public redacted versions of Annexes A and B ICC-01/05-01/08-2168-AnxA-Red and ICC-01/05-01/08-2168-AnxB-Red, filed on 4 October 2012.

which it requests the Chamber to reject the admission of 67 items and admit into evidence the remaining 30 items submitted by the prosecution.<sup>4</sup>

3. On 30 March 2012, as authorised by the Chamber,<sup>5</sup> the prosecution filed its “Prosecution’s Reply to ‘Defence Response to the Prosecution’s Application for Admission of Evidence from the Bar Table’” (“Prosecution Reply”),<sup>6</sup> in which it reiterates its request to admit into evidence all the submitted items.<sup>7</sup>
  
4. On 6 September 2012, the Chamber issued its “Decision on the Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute” (“6 September 2012 Decision”),<sup>8</sup> in which it decided on the admission into evidence of 91 of the items submitted by the prosecution, and deferred its decision with regard to items related to events that occurred during the year 2001 – the *coup d’état* against the government of former President Patassé and the related previous intervention of the *Mouvement de Libération du Congo* (“MLC”) in the Central African Republic (“CAR”) – and to the 2002 Mambasa attack.<sup>9</sup>

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<sup>4</sup> ICC-01/05-01/08-2168, paragraph 50.

<sup>5</sup> Decision on the “Prosecution’s request for leave to reply to ‘Defence Response to the Prosecution’s Application for Admission of Evidence from the Bar Table’”, 23 March 2012, ICC-01/05-01/08-2173 in relation to Prosecution’s Request for leave to reply to “Defence Response to the Prosecution’s Application for Admission of Evidence from the Bar Table”, 22 March 2012, ICC-01/05-01/08-2171.

<sup>6</sup> Prosecution’s Reply to “Defence Response to the Prosecution’s Application for Admission of Evidence from the Bar Table”, 30 March 2012, ICC-01/05-01/08-2184 with a public annex ICC-01/05-01/08-2184-AnxA.

<sup>7</sup> ICC-01/05-01/08-2184, paragraph 28.

<sup>8</sup> Decision on the Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, 6 September 2012, ICC-01/05-01/08-2299-Conf, and public redacted version, ICC-01/05-01/08-2299-Red, filed on 8 October 2012.

<sup>9</sup> ICC-01/05-01/08-2299-Red, paragraph 13.

5. The items for which an admissibility assessment was deferred (“Deferred Items”), are the following:
- a. The United Nations (“UN”) Report of the Special Investigation Team on the events in Mambasa from 31 December 2002 to 20 January 2003, contained in document **DRC-OTP-0100-0314** (at ERN pages DRC-OTP-0100-0315 to DRC-OTP-0100-0348);
  - b. Document **CAR-OTP-0029-0499**, a paper authored by Paul Melly, an independent researcher from the UK, entitled “Central African Republic – Uncertain Prospects”;
  - c. Document **CAR-OTP-0011-0422**, the *Fédération Internationale des Droits de l’Homme* (“FIDH”) Report number 324 from February 2002, entitled “*Droits de l’Homme en République Centrafricaine ‘Discours et réalité : un fossé béant’*” ;
  - d. Document **CAR-OTP-0004-0577**, the Amnesty International (“AI”) Report Index AFR 19/001/2002 entitled “Central African Republic: Refugees flee amid ethnic discrimination as perpetrators go unpunished”;
  - e. Document **CAR-OTP-0008-0409**, which is apparently a copy of a result of a keyword search made through NewsBank InfoWeb, including a news article apparently published by the British Broadcasting Corporation (“BBC”) on 10 July 2001, citing as the original source of information *Radio France Internationale* (“RFI”); and
  - f. Document **CAR-OTP-0017-0366**, which is an MLC Report, dated 26 February 2003 and entitled “*Rapport sur le déroulement du procès des*

*militaires de l'Armée de Libération du Congo, ALC, impliqués dans les violations des droits de l'homme dans l'Ituri "*.<sup>10</sup>

6. On 21 September 2012, the Chamber issued its "Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court".<sup>11</sup> The Chamber informed the parties and participants that – after having heard all the evidence and when making its decision under Article 74 of the Statute – the Chamber may modify the legal characterisation of the facts pursuant to Regulation 55 of the Regulations of the Court ("Regulations").<sup>12</sup> The possible change envisaged was to consider "in the same mode of responsibility the alternate form of knowledge contained in Article 28(a)(i) of the Statute, 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 in the Decision on the Confirmation of Charges."<sup>13</sup>
7. On 14 June 2013, the Chamber issued its "Second Decision on the admission into evidence of material used during the questioning of witnesses",<sup>14</sup> in which it noted that, among the Deferred Items, document

<sup>10</sup> ICC-01/05-01/08-2299-Red, paragraphs 13 and 164.

<sup>11</sup> Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court, 21 September 2012, ICC-01/05-01/08-2324.

<sup>12</sup> ICC-01/05-01/08-2324, paragraphs 4 and 5.

<sup>13</sup> ICC-01/05-01/08-2324, paragraph 5.

<sup>14</sup> Second Decision on the admission into evidence of material used during the questioning of witnesses, 14 June 2013, ICC-01/05-01/08-2688-Conf.

CAR-OTP-0017-0366 is an exact duplicate of document DRC-OTP-0098-0005. Taking into account that document DRC-OTP-0098-0005 is the only version of the document that has been discussed in court and submitted into evidence through three of the witnesses called by the prosecution,<sup>15</sup> the Chamber admitted document DRC-OTP-0098-0005 and considered moot the submission of document CAR-OTP-0017-0366.<sup>16</sup>

## II. Analysis and Conclusions

8. In accordance with Article 21(1) of the Statute, in making its determination, the Chamber has considered Articles 64(2), 64(9)(a), 67 and 69 of the Statute, and Rules 63 and 64 of the Rules.
9. The Chamber recalls its general approach to the admission of evidence. In particular, for an item to be admitted into evidence it must satisfy the three-part test under which it must (i) be relevant to the case; (ii) have probative value; and (iii) be sufficiently relevant and probative as to outweigh any prejudicial effect its admission may cause.<sup>17</sup> Further, the Chamber underlines once more that its determination on the admissibility into evidence of an item has no bearing on the final weight to be afforded to it, which will only be determined by the Chamber at the end of the case when assessing the evidence as a whole.<sup>18</sup>

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<sup>15</sup> In particular in relation to witnesses CAR-OTP-PPPP-0015, CAR-OTP-PPPP-0045 and CAR-OTP-PPPP-0213.

<sup>16</sup> ICC-01/05-01/08-2688-Conf, paragraph 13.

<sup>17</sup> First decision on the prosecution and defence requests for the admission of evidence, 15 December 2011, ICC-01/05-01/08-2012-Red, paragraphs 13 to 16; and Public Redacted Version of "Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute" of 6 September 2012, ICC-01/05-01/08-2299-Red, paragraphs 7 to 9.

<sup>18</sup> ICC-01/05-01/08-2012-Red, paragraph 18; and ICC-01/05-01/08-2299-Red, paragraph 11.

10. The Deferred Items will hereinafter be considered in accordance with the three-part test of relevance, probative value and potential prejudice.

*Document DRC-OTP-0100-0314*

11. As noted in the 6 September 2012 Decision, document **DRC-OTP-0100-0314** (Public), contains two UN Reports regarding events that occurred in the Democratic Republic of the Congo (“DRC”) in 2002-2003.<sup>19</sup> The deferred report is Annex I of Security Council document S/2003/674, including three appendixes, which contains the Report of the Special Investigation Team on the events in Mambasa from 31 December 2002 to 20 January 2003 (“Mambasa UN Report”), ERN pages DRC-OTP-0100-0315 to DRC-OTP-0100-0348. The prosecution alleges that the document is relevant to Article 28(a) of the Statute and has probative value because it “provides an overview of the allegations of the crimes said to have been committed by MLC troops in Mabassa [Mambasa] from October 2002 to December 2002.”<sup>20</sup> The defence generally objects to the admission of all documents identified by the prosecutor as “UN Reports” on the basis that they fail to meet the requirements for admission, since none of them identify the author(s) or sources of information in sufficient detail.<sup>21</sup> The prosecution replies that the documents provide other indicia sufficient for the Chamber to find them reliable.<sup>22</sup> The prosecution also states that it has demonstrated that the tendered documents are what they purport to be and that the defence has not adduced any evidence to the contrary.<sup>23</sup> In

<sup>19</sup> ICC-01/05-01/08-2299-Red, paragraph 19.

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

<sup>21</sup> ICC-01/05-01/08-2168, paragraphs 19-23.

<sup>22</sup> ICC-01/05-01/08-2184, paragraphs 17-18.

<sup>23</sup> ICC-01/05-01/08-2184, paragraph 19.



addition, in particular in relation to the Mambasa UN Report, the defence objects to its admission on the basis that it is not relevant to the crimes charged in the Revised Second Amended Document Containing the Charges (“DCC”), and its author and sources are not revealed with sufficient detail.<sup>24</sup>

12. The Chamber notes that the Mambasa UN Report – although referring to events which occurred in a different territory – describes another intervention by the MLC troops during the timeframe covered by the charges. In particular, it refers to the role of the accused in this intervention, allegations of abuses committed by the MLC troops, and the response to those allegations by the MLC leadership and the accused. As such, the Chamber is satisfied that the Mambasa UN Report relates to matters that are properly to be considered by the Chamber, *inter alia*, the item may be relevant to a determination of the accused’s ability to impose disciplinary measures and his power to prevent and repress the commission of crimes.<sup>25</sup> In addition, the document may be of relevance to the Chamber’s determination of the accused’s relevant *mens rea* in accordance with Article 28(a) of the Statute.<sup>26</sup>

13. In terms of probative value, the Majority of the Chamber, Judge Kuniko Ozaki dissenting, is satisfied that the Mambasa UN Report offers sufficient indicia of authenticity and reliability to warrant its admission into evidence. The Majority notes that the UN Report is publicly available

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<sup>24</sup> ICC-01/05-01/08-2168-Conf-AnxA, page 1.

<sup>25</sup> Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ICC-01/05-01/08-424, paragraphs 411-419.

<sup>26</sup> ICC-01/05-01/08-424, paragraphs 430-431 and 434.

from official UN sources. In addition, the Majority is satisfied, based on a review of the document, that it provides sufficient details of its sources of information and methodology.<sup>27</sup> In terms of potential prejudice, the Majority is satisfied that the UN Report is sufficiently relevant and probative to outweigh any potential prejudice that its admission may cause. Although the Majority of the Chamber, Judge Kuniko Ozaki dissenting, has expressed preference for the admission of documents in their entirety rather than excerpts,<sup>28</sup> in the case at hand, the Majority notes that Annex I of the Security Council document S/2003/674, with its three appendixes, is in itself an entire document which can be assessed in its proper context without the risk of entering into selective references. The Majority therefore admits as evidence part of document DRC-OTP-0100-0314, that is to say only the Mambasa UN Report or ERN pages DRC-OTP-0100-0315 to DRC-OTP-0100-0348.

*Document CAR-OTP-0029-0499*

14. Document **CAR-OTP-0029-0499** (Public) is a paper authored by Paul Melly, an independent researcher from the United Kingdom, entitled “Central African Republic – Uncertain Prospects” (“Mr Melly’s Paper”), published by the United Nations High Commissioner for Refugees (“UNHCR”) Emergency and Security Service WriteNet Paper No. 14/2001. The prosecution alleges that the document is a UNHCR Emergency and Security Report on the CAR, which is relevant to Article 28(a) of the Statute and has probative value because it is said to provide an overview of the allegations of crimes committed by MLC troops in Bangui in May

<sup>27</sup> DRC-OTP-0100-0314, at 0320.

<sup>28</sup> ICC-01/05-01/08-1470, paragraph 11 and ICC-01/05-01/08-2012-Red, paragraph 90.

2001.<sup>29</sup> The defence generally objects to the admission of the document for the same reasons referred to at paragraph 11 above. In particular, in relation to Mr Melly's Paper, it objects on the ground that the document is irrelevant to the charges as set out in the DCC.<sup>30</sup>

15. The Chamber notes that Mr Melly's Paper analyses, *inter alia*, the historical and cultural background of the CAR, the government of President Patassé, the crisis of 2001 in the CAR, and the extent to which the MLC and other forces were involved in the conflict. Although there is a brief description of the relationship between the former CAR's President Patassé and Mr Bemba,<sup>31</sup> the Chamber is of the view that Mr Melly's Paper, which refers to events which occurred outside the temporal scope of the charges, does not appear to contain any information with the potential to influence the Chamber's determination on the case and is therefore considered by the Chamber to be irrelevant to the charges against the accused. Consequently, the Chamber rejects the admission of document CAR-OTP-0029-0499.

*Documents CAR-OTP-0011-0422 and CAR-OTP-0004-0577*

16. Document **CAR-OTP-0011-0422** (Public) is the FIDH Report number 324 from February 2002, entitled "*Droits de l'Homme en République Centrafricaine 'Discours et réalité: un fossé béant'*" ("FIDH Report"). The prosecution alleges that the document is a report about human rights violations in the CAR during and after the coup d'état attempt of 28 May

<sup>29</sup> ICC-01/05-01/08-2147-Conf-AnxA, page 2.

<sup>30</sup> ICC-01/05-01/08-2168-Conf-AnxA, page 1.

<sup>31</sup> CAR-OTP-0029-0499, at 0532-0533.

2001, by various groups including the MLC. The prosecution further alleges that the FIDH Report would be relevant to Article 28(a) of the Statute and the MLC's prior conduct in the CAR and probative of, *inter alia*, the accused's awareness of the MLC's capacity to commit crimes.<sup>32</sup> The prosecution further submits that the FIDH Report is the result of a mission conducted in Bangui from 5 to 22 July 2001, which is relevant because it discusses the MLC's prior involvement in the CAR in 2001, as well as the crimes they committed against CAR civilians at the time.<sup>33</sup>

17. Document **CAR-OTP-0004-0577** (Public) is the AI Report Index AFR 19/001/2002 entitled "Central African Republic: Refugees flee amid ethnic discrimination as perpetrators go unpunished" ("AI Report"). The prosecution alleges that the AI Report is relevant to Article 28(a) of the Statute and the accused's awareness of the MLC's capacity to commit crimes. The prosecution further submits that the document discusses crimes of rape and other forms of sexual violence perpetrated by the MLC in Bangui during May 2001.<sup>34</sup>

18. In general terms, the defence objects the admission of Reports from Non-Governmental Organisations ("NGO Reports") on the basis that they would undermine the fact-finding role of the Chamber,<sup>35</sup> as they would represent "un-tested and often-times anonymous allegations of crimes which neither the Chamber nor the Defence have had the opportunity to

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<sup>32</sup> ICC-01/05-01/08-2147-Conf-AnxA, page 3.

<sup>33</sup> *Ibid.*

<sup>34</sup> ICC-01/05-01/08-2147-Conf-AnxA, page 3.

<sup>35</sup> ICC-01/05-01/08-2168, paragraphs 24-31.

examine".<sup>36</sup> The defence further objects to the admission of NGO Reports on the basis that the prosecution has failed to identify author(s) of and sources of information for the reports.<sup>37</sup> The prosecution replies that NGOs Reports in general provide sufficient indicia of authenticity.<sup>38</sup> Regarding the FIDH Report and the AI Report in particular, the defence objects to their admission on the basis that they are not relevant to the charges, that their authors' identity is not revealed, and that they do not provide sufficient information on the methodology used to compile and analyse the information received.<sup>39</sup>

19. The Chamber notes that the FIDH Report is the result of an investigative mission carried out by the FIDH in Bangui between 5 and 22 July 2001.<sup>40</sup> Although referring to events occurred outside the temporal scope of the charges – the 28 May 2001 coup d'état in the CAR – the FIDH Report describes a previous intervention of the MLC troops in the CAR territory and allegations of abuses committed by the MLC troops against CAR civilians arising therefrom. In particular, the FIDH Report describes three instances of rape allegedly committed by the MLC troops.<sup>41</sup> The Chamber notes that the AI Report was prepared on the basis of information gathered during and after a visit to the CAR early in 2002 by AI representatives.<sup>42</sup> Although referring to events which occurred outside the temporal scope of the charges, the AI Report describes a previous intervention of the MLC troops in the CAR territory, which was said to

<sup>36</sup> ICC-01/05-01/08-2168, paragraph 24.

<sup>37</sup> ICC-01/05-01/08-2168, paragraph 29.

<sup>38</sup> ICC-01/05-01/08-2184, paragraph 20.

<sup>39</sup> ICC-01/05-01/08-2168-Conf-Anx, pages 2-3.

<sup>40</sup> CAR-OTP-0011-0422, at 0424.

<sup>41</sup> CAR-OTP-0011-0422, at 0442.

<sup>42</sup> CAR-OTP-0004-0577, at 0579.

have involved crimes of sexual violence, rape and pillaging committed by the MLC troops against the CAR civilians, particularly the rape of girls and women of Bangui, and refers to an acknowledgment of those allegations by the MLC leadership.<sup>43</sup>

20. The Chamber is of the view that both the FIDH Report and the AI Report may be of relevance to the Chamber's determination of the accused's relevant *mens rea* in accordance with Article 28(a) of the Statute.<sup>44</sup>

21. In terms of probative value, the Majority of the Chamber, Judge Kuniko Ozaki partially dissenting, reiterates its view that NGOs Reports can be considered *prima facie* reliable, provided that they offer sufficient guarantees of impartiality.<sup>45</sup> Based on its review of the content of the FIDH Report and the AI Report, the Majority is satisfied that they offer satisfactory information on their sources of information and methodology,<sup>46</sup> providing sufficient indicia of reliability to warrant their admission into evidence.

22. The Majority reiterates its view that the admission of the NGOs Reports does not undermine the fact-finding role of the Chamber,<sup>47</sup> since the admissibility determination does not – in any way – predetermine the Chamber's final assessment of the evidence or the weight to be afforded to

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<sup>43</sup> CAR-OTP-0004-0577, at 0584, 0591-0592.

<sup>44</sup> ICC-01/05-01/08-424, paragraphs 430-431 and 434.

<sup>45</sup> ICC-01/05-01/08-2299-Red, paragraph 35.

<sup>46</sup> CAR-OTP-0011-0422, at 0424 and 0456; CAR-OTP-0004-0577, *inter alia*, at 0579, 0592, 0596, 0598-0599, 0601 and 0608-0610.

<sup>47</sup> ICC-01/05-01/08-2299-Red, paragraphs 36 and 41.

it.<sup>48</sup> Moreover, the Majority reiterates its view that NGOs Reports may be admitted for the limited purpose that the information contained therein may serve to corroborate other pieces of evidence.<sup>49</sup> In light of the envisioned limited usage of the information contained in the documents, the Majority of the Chamber is of the view that there is no reason to believe that their admission will have a prejudicial effect to a fair trial. In view of the foregoing, the Majority admits into evidence documents CAR-OTP-0011-0422 and CAR-OTP-0004-0577.

*Document CAR-OTP-0008-0409*

23. Document **CAR-OTP-0008-0409** (Public), apparently the results of a news search through NewsBank InfoWeb containing the extract of a news article entitled “DR Congo: Congolese Liberation Front unit commander said arrested”, published by the BBC on 10 July 2001, citing as its source the RFI (“BBC news article”). The prosecutor alleges that the document is relevant to Article 28(a) of the Statute and relevant and probative of, inter alia, the accused’s awareness of the MLC’s capacity to commit crimes.<sup>50</sup> The defence objects to the admission of this document on the basis that media reports are generally not a source of reliable evidence and they lack probative value.<sup>51</sup> The prosecution replies that the defence arguments go to the credibility and weight of the media reports as opposed to their admissibility.<sup>52</sup>

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<sup>48</sup> ICC-01/05-01/08-2012-Red, paragraph 18.

<sup>49</sup> *Ibid.*

<sup>50</sup> ICC-01/05-01/08-2147-Conf-AnxA, page 9.

<sup>51</sup> ICC-01/05-01/08-2168, paragraph 35.

<sup>52</sup> ICC-01/05-01/08-2184, paragraph 22.

24. The Chamber notes that Document CAR-OTP-0008-0409 is a copy of a media article apparently published on 10 July 2001 by the BBC referring to a report of 9 July 2001 by Jean-Jacques Loarne from RFI. The BBC news article describes the alleged announcement made by Mr Jean-Pierre Bemba that on 8 July 2001 the commander of the FLC unit sent to Bangui was arrested for “poor supervision of troops”, during the intervention of a battalion of nearly 700 Congolese Liberation Front forces in the CAR territory in the wake of the 28 May 2001 *coup* attempt. The reporter further refers to the testimony of a number of victims, allegedly transmitted by RFI, describing maltreatment and looting by “Bemba’s men” during that time. As such, the Chamber is satisfied that the BBC news article relates to matters that are properly to be considered by the Chamber as the item may, *inter alia*, be relevant to determine the accused’s ability to impose disciplinary measures and his power to prevent and repress the commission of crimes.<sup>53</sup> In addition, the item may be of relevance to the Chamber’s determination of the accused’s relevant *mens rea* in accordance with Article 28(a) of the Statute.<sup>54</sup>

25. In relation to probative value, although the document seems to have been found as a result of an internet search and was not directly downloaded from the BBC news agency from which it apparently originated, the Chamber is satisfied that it provides sufficient indicia that the document is what it purports to be, that is a press article published by the BBC on the date mentioned therein. As previously indicated, the Majority of the Chamber, Judge Kuniko Ozaki dissenting, is not persuaded by the

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<sup>53</sup> ICC-01/05-01/08-424, paragraphs 411-419.

<sup>54</sup> ICC-01/05-01/08-424, paragraphs 430-431 and 434.



defence's argument that press/media reports should be rejected where the prosecution is unable to identify the authors of such reports.<sup>55</sup> Moreover, the Majority reiterates its view that the admissibility of such reports should be approached with caution and notes that, if admitted, it is for limited purposes to be determined on a case-by-case basis.<sup>56</sup> Therefore, the Majority admits the BBC news article with the limited purpose that the information contained therein may serve to corroborate other pieces of evidence. In light of the envisioned limited usage of the information contained in the document, the Majority is of the view that there is no reason to believe that its admission will have a prejudicial effect on a fair trial. Document CAR-OTP-0008-0409 is therefore admitted.

## II. Conclusions

26. In view of the foregoing:

- a. the Majority of the Chamber, Judge Kuniko Ozaki dissenting, ADMITS into evidence: ERN pages DRC-OTP-0100-0315 to DRC-OTP-0100-0348 of item DRC-OTP-0100-0314; item CAR-OTP-0011-0422; item CAR-OTP-0004-0577; and item CAR-OTP-0008-0409.
- b. the Chamber REJECTS the admission into evidence of item CAR-OTP-0029-0499;
- c. the Chamber ORDERS that the EVD-T numbers previously assigned to the items admitted into evidence in the present decision shall remain unchanged;

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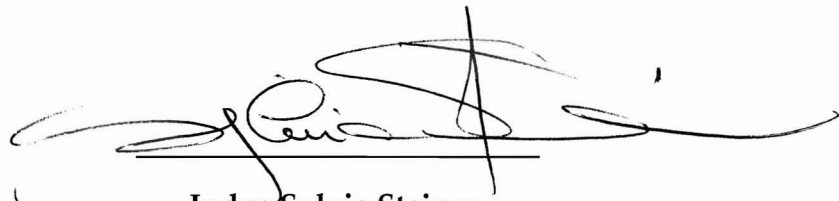
<sup>55</sup> ICC-01/05-01/08-2299-Red, paragraph 95.

<sup>56</sup> *Ibid.*


- d. the Chamber INSTRUCTS the Registry to assign new EVD-T numbers to those items which currently do not have EVD-T references.

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

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



**Judge Sylvia Steiner**



**Judge Joyce Aluoch**



**Judge Kuniko Ozaki**

Dated this **27 June 2013**

At The Hague, The Netherlands

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **27 June 2013**

**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**

**Partly Dissenting Opinion of Judge Ozaki on the Decision on the admission into evidence of items deferred in the Chamber's "Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute" (ICC-01/05-01/08-2299)**

**Decision 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 Aimé Kilolo-Musamba  
Mr Peter Haynes

**Legal Representatives of the Victims**

Ms Marie-Edith Douzima Lawson  
Mr Assingambi Zarambaud

**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**

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**Registrar**

Mr Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

1. This Partly Dissenting Opinion is in response to the Majority's admission into evidence of four items in the "Decision on the admission into evidence of items deferred in the Chamber's "Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute" (ICC-01/05-01/08-2299) ("Decision") and will address the reasons underlying my disagreement with the Majority over those items.
  
2. The prosecution has requested the admission into evidence of a United Nations ("UN") Report of the Special Investigation Team on the events in Mambasa from 31 December 2002 to 20 January 2003, dated 2 July 2003;<sup>1</sup> a report from the *Fédération Internationale des Ligues des Drois de l'Homme* ("FIDH") dated February 2002<sup>2</sup> and an Amnesty International ("AI") Report also dating from 2002.<sup>3</sup> The UN report concerns the intervention of MLC troops in Mambasa in the Democratic Republic of Congo in 2002 whereas the other two reports contain information concerning crimes allegedly committed by MLC troops during their intervention in the Central African Republic in 2001. The defence objects to their admission.<sup>4</sup>
  
3. The Majority found all three reports to be admissible.<sup>5</sup> However, in my view, the sources of information relied on in the reports are not revealed with sufficient detail, and as a result it is not possible to fully investigate their reliability. Due to the lack of guarantees concerning the reliability of

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<sup>1</sup> DRC-OTP-0100-0314.

<sup>2</sup> CAR-OTP-0011-0422.

<sup>3</sup> CAR-OTP-0004-0577.

<sup>4</sup> Defence Response to the Prosecution's Application for Admission of Evidence from the Bar Table, 19 March 2012, ICC-01/05-01/08-2168, paras 19 – 31.

<sup>5</sup> Decision, paras 13 and 22.

these reports' sources, in my judgment the probative value of the three reports is low. Although the Majority explains that it "will admit the documents for the limited purpose that the information contained therein may serve to corroborate other pieces of evidence",<sup>6</sup> given the low probative value of the reports and the potential for prejudice if they are admitted, I do not believe that the intention to use these reports to corroborate other (unidentified) evidence justifies their admission.

4. Given that both the FIDH and AI reports (but not the UN report) were published prior to the period of the charges, I do not object to the admission of those two reports for the Chamber's determination of whether crimes committed by MLC troops in 2001 were widely reported, which may be of relevance to the determination of whether the accused would have been aware of the capacity of the MLC to commit crimes.
5. Next, I disagree with the reasoning underlying the Majority's decision to admit into evidence a press article dated 10 July 2001.<sup>7</sup> As I have set out previously,<sup>8</sup> the admission into evidence of newspaper articles and other media reports when their authors are not called to testify at trial must be approached with great caution, and in the present circumstance I am of the view that the probative value of the press article at issue is insufficient to outweigh the potential prejudice if it is admitted for the truth of its

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<sup>6</sup> Decision, para. 22.

<sup>7</sup> CAR-OTP-0008-0409.

<sup>8</sup> Partly Dissenting Opinion of Judge Ozaki on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 69(4) of the Rome Statute, 6 September 2012, ICC-01/05-01/08-2300, paras 3 – 10.

contents. Again, and contrary to the view of the Majority,<sup>9</sup> I do not consider the possibility of corroboration sufficient to justify admission.

6. However, given that this article was published prior to the period of the charges, I do not object to its admission for the Chamber's determination of whether crimes committed by MLC troops in 2001 were widely reported, which may be of relevance to the determination of whether the accused would have been aware of the capacity of the MLC to commit crimes.
7. For the reasons set out above, I would admit documents CAR-OTP-0011-0422, CAR-OTP-0004-0577 and CAR-OTP-0008-0409 and reject the admission of DRC-OTP-0100-0314.

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



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**Judge Kuniko Ozaki**

**Dated this 27 June 2013**

**At The Hague, The Netherlands**

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<sup>9</sup> Decision, para. 25.