

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date: 29 January 2014

**TRIAL CHAMBER III**

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

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

**Confidential**

**Decision on Maître Douzima's "Requête de la Représentante légale de  
victimes en vue de soumettre des documents en tant qu'éléments de preuve  
selon l'article 64(9) du Statut de Rome"**

No. ICC-01/05-01/08

1/19

29 January 2014

**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

Ms Kate Gibson

**Legal Representative 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**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”) hereby issues the Decision on Maître Douzima’s “Requête de la Représentante légale de victimes en vue de soumettre des documents en tant qu’éléments de preuve selon l’article 64(9) du Statut de Rome” (“Decision”).

## I. Background and Submissions

1. On 1 October 2013, the Chamber issued its “Order on the submission of final applications for the admission of material into evidence and seeking observations on the admission into evidence of witnesses’ written statements” (“Order 2824”),<sup>1</sup> in which, *inter alia*, it ordered the parties and participants to file any remaining applications for the admission of evidence within seven days of the completion of the testimony of the last witness to be called by the defence, and in any event by no later than 31 October 2013.<sup>2</sup>
2. On 30 October 2013, the Chamber issued its “Decision on the Motion for clarification and reconsideration of the timetable for the parties’ final submissions of evidence” (“Decision 2855”),<sup>3</sup> in which, *inter alia*, it extended the deadline set out in Order 2824 for the parties to submit any remaining applications for the admission of material into evidence until

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<sup>1</sup> Order on the submission of final applications for the admission of material into evidence and seeking observations on the admission into evidence of witnesses’ written statements, 1 October 2013, ICC-01/05-01/08-2824.

<sup>2</sup> ICC-01/05-01/08-2824, paragraph 13(i).

<sup>3</sup> Decision on the Motion for clarification and reconsideration of the timetable for the parties’ final submissions of evidence, 30 October 2013, ICC-01/05-01/08-2855.

8 November 2013.<sup>4</sup> In addition, the Chamber reiterated that, as decided in Order 2824, any responses to such applications were to be filed within seven days of their notification and replies were subject to leave of the Chamber pursuant to Regulation 24(5) of the Regulations of the Court (“Regulations”).<sup>5</sup>

3. On 8 November 2013, Maître Marie-Edith Douzima-Lawson (“Maître Douzima”) filed the “Requête de la Représentante légale de victimes en vue de soumettre des documents en tant qu’éléments de preuve selon l’article 64(9) du Statut de Rome” (“Maître Douzima’s Request”),<sup>6</sup> in which she requests the admission into evidence of 10 items pursuant to Articles 68(3) and 69(4) of the Rome Statute (“Statute”) and Rule 91 of the Rules of Procedure and Evidence (“Rules”).<sup>7</sup> Maître Douzima groups the submitted items into the three following categories: (i) decrees; (ii) newspapers; and (iii) written statements of Witnesses V20-01 and V20-02.<sup>8</sup>
4. Maître Douzima submits that the personal interests of the victims she represents are affected by the proposed documents.<sup>9</sup> Maître Douzima further avers that the documents are reliable, relevant, probative, and have no prejudicial effect on the proceedings.<sup>10</sup> In particular, Maître Douzima submits that the documents corroborate the evidence already

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<sup>4</sup> ICC-01/05-01/08-2855, paragraph 9.

<sup>5</sup> ICC-01/05-01/08-2855, paragraph 10, in relation to ICC-01/05-01/08-2824, paragraph 9.

<sup>6</sup> Requête de la Représentante légale de victimes en vue de soumettre des documents en tant qu’éléments de preuve selon l’article 64(9) du Statut de Rome, 8 November 2013, ICC-01/05-01/08-2866, with confidential annex ICC-01/05-01/08-2866-Conf-Anx.

<sup>7</sup> ICC-01/05-01/08-2866, paragraph 3 and ICC-01/05-01/08-2866-Conf-Anx.

<sup>8</sup> ICC-01/05-01/08-2866, paragraph 3.

<sup>9</sup> ICC-01/05-01/08-2866, paragraph 6.

<sup>10</sup> ICC-01/05-01/08-2866, paragraph 6.

received by the Chamber during the hearings, and will thus contribute to the manifestation of the truth in the case.<sup>11</sup> According to Maître Douzima, the admission of the documents fully complies with Articles 67(1)(a) and (b) of the Statute, since the accused had the opportunity and sufficient time to examine the documents, which were cited several times in the lists of documents of the legal representative of victims.<sup>12</sup> Consequently, Maître Douzima submits, the admission of the documents is consistent with the accused's right to a fair trial.<sup>13</sup> Lastly, Maître Douzima offers specific arguments in support of her assertion that each of the documents she submits is admissible according to the three-part admissibility test.<sup>14</sup>

5. Neither party filed a response to Maître Douzima's Request.

## II. Analysis

6. In accordance with Article 21(1) of the Statute, in making its determination, the Chamber has considered Articles 64(2), (8)(b), (9)(a), 67, 68 and 69 of the Statute, Rules 63 and 64 of the Rules and Regulation 23bis(3) of the Regulations.
7. 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, according to which it must: (i) be relevant to the case; (ii)

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<sup>11</sup> ICC-01/05-01/08-2866, paragraph 6.

<sup>12</sup> ICC-01/05-01/08-2866, paragraph 7.

<sup>13</sup> ICC-01/05-01/08-2866, paragraph 7.

<sup>14</sup> ICC-01/05-01/08-2866, paragraphs 11 to 26 and ICC-01/05-01/08-2866-Conf-Anx.

have probative value; and (iii) be sufficiently relevant and probative as to outweigh any prejudicial effect its admission may cause.<sup>15</sup> Further, the Chamber reiterates that its determination on the admissibility of an item as evidence will have 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>16</sup>

### *Preliminary issues*

8. At the outset, the Chamber notes that the admissibility of some items included in Maître Douzima's request has already been decided upon by the Chamber in previous decisions. The Chamber considers the question of the admissibility of these items moot, and will not address Maître Douzima's submissions thereon.
9. In particular, Maître Douzima requests the admission of document **CAR-V20-0001-0165**,<sup>17</sup> which was admitted into evidence in the Chamber's "Third Decision on the prosecution and defence requests for the admission of evidence" of 06 November 2013, ("Decision 2864").<sup>18</sup>
10. Additionally, Maître Douzima requests the admission into evidence of documents **CAR-V20-0001-0001**, **CAR-V20-0001-0018**, and **CAR-V20-**

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<sup>15</sup> Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011, 9 February 2012, ICC-01/05-01/08-2012-Red, paragraphs 13 to 16; 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, 8 October 2012, ICC-01/05-01/08-2299-Red, paragraphs 7 to 9.

<sup>16</sup> ICC-01/05-01/08-2012-Red, paragraph 18; ICC-01/05-01/08-2299-Red, paragraph 11.

<sup>17</sup> ICC-01/05-01/08-2866, paragraph 8.

<sup>18</sup> Item CAR-V20-0001-0165 (EVD-T-OTP-00825) was admitted in Third Decision on the prosecution and defence requests for the admission of evidence, 6 November 2013, ICC-01/05-01/08-2864-Conf, paragraphs 101 to 106 and 169.

0001-0128,<sup>19</sup> which were all admitted into evidence in the Chamber's "Second Decision on the admission into evidence of material used during the questioning of witnesses" of 14 June 2013.<sup>20</sup>

11. Moreover, the Chamber notes that, as observed in Maître Douzima's Request,<sup>21</sup> documents CAR-V20-0001-0130 and CAR-V20-0001-0132 are almost identical to the documents referenced as CAR-OTP-0069-0043 and CAR-OTP-0069-0045, respectively—the difference being that CAR-OTP-0069-0043 and CAR-OTP-0069-0045 also contain handwritten notes by Witness CHM-01. The Chamber notes Decision 2864, in which it postponed the decision on the admission into evidence of documents CAR-OTP-0069-0043 and CAR-OTP-0069-0045.<sup>22</sup> In the view of the Chamber, both versions of the documents should be decided upon jointly. Therefore, the Chamber postpones the decision on the admissibility of items CAR-V20-0001-0130 and CAR-V20-0001-0132, which will be addressed in a separate decision, together with that of items CAR-OTP-0069-0043 and CAR-OTP-0069-0045.

### *Analysis*

12. The Chamber has identified two remaining categories of materials submitted by Maître Douzima: presidential decrees and media reports.

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<sup>19</sup> ICC-01/05-01/08-2866, paragraph 8.

<sup>20</sup> Items CAR-V20-0001-0001 (EVD-T-V20-00001), CAR-V20-0001-0018 (EVD-T-V20-00002) and CAR-V20-0001-0128 (EVD-T-V20-00003) were admitted in 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, paragraphs 96 to 100.

<sup>21</sup> ICC-01/05-01/08-2866, paragraph 17.

<sup>22</sup> ICC-01/05-01/08-2864-Conf, paragraph 18.

These categories will be considered in turn, in accordance with the three-part test of relevance, probative value, and potential prejudice.

### *Presidential Decrees*

13. Maître Douzima requests the admission of two presidential decrees, **CAR-V20-0001-0134 (Public)** and **CAR-V20-0001-0189 (Confidential)**, allegedly emanating from the office of President of the Central African Republic ("CAR").

14. The first decree, document **CAR-V20-0001-0134**, is submitted through Witness D04-57,<sup>23</sup> entitled "*Decret No. 00-163 Portant nomination aux Postes de Responsabilité dans les Forces Armées Centrafricaines Unité de Sécurité Chargée de la Protection du Président de la République (« USCPPR »)*", dated 8 July 2000, and apparently signed by Ange Félix Patassé ("President Patassé"). Maître Douzima submits that this document is a decree on the appointments to senior positions within the security unit in charge of the protection of the President of the CAR.<sup>24</sup>

15. Maître Douzima submits that this document is relevant to: (i) illustrate the responsibilities of Ferdinand Bombayaké ("Mr Bombayaké") as Commander of the security unit in charge of protecting the CAR Head of State, and (ii) show that Mr Bombayaké could not have served in the position attributed to him by the defence in the context of the oral proceedings before the Chamber.<sup>25</sup> Regarding probative value, Maître

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<sup>23</sup> Transcript of hearing on 19 October 2012, ICC-01/05-01/08-T-258-Conf-ENG-CT, page 34, line 8 to page 37, line 13.

<sup>24</sup> ICC-01/05-01/08-2866-Conf-Anx, pages 3 to 4.

<sup>25</sup> ICC-01/05-01/08-2866-Conf-Anx, pages 3 to 4. In particular, Maître Douzima refers to Transcript of hearing on 30 October 2013, ICC-01/05-01/08-T-347-CONF-ENG-ET, page 41, lines 8 to 22.



Douzima submits that the document is an official document—dated, signed, and stamped—and therefore presents *prima facie* indicia of reliability.<sup>26</sup> Maître Douzima also notes that the document is publicly available at the General Secretariat of the Government of the CAR.<sup>27</sup> As to the personal interest of the victims she represents, Maître Douzima submits that the decree will: (i) allow the Chamber to determine whether the *Mouvement de Libération du Congo* (“MLC”) troops deployed in the CAR were under the command or orders of CAR military authorities, and (ii) shed light on the perpetrators responsible for crimes committed in the CAR, which is of interest to the victims of those crimes.<sup>28</sup>

16. The Chamber observes that document CAR-V20-0001-0134 appears to be a decree of the President of the CAR, signed by President Patassé on 8 July 2000, appointing, *inter alia*, Lieutenant-Colonel Ferdinand Bombayake as Commander of the Security Unit charged with protecting the Head of State. The Chamber notes that this document was shown to and discussed with Witness D04-57.<sup>29</sup> The witness explained that the acronym “USCPPR” denotes the official title of the Presidential Security Unit or the *Unité de Sécurité Présidentielle* (“USP”).<sup>30</sup> Witness D04-57 also testified that Mr Bombayaké was Director General of the USP during the period in question and as such was the overall commander of the

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<sup>26</sup> ICC-01/05-01/08-2866-Conf-Anx, pages 3 to 4.

<sup>27</sup> ICC-01/05-01/08-2866-Conf-Anx, pages 3 to 4.

<sup>28</sup> Maître Douzima writes, “*Ce décret permettre à la Chambre de déterminer si effectivement, les troupes du MLC déployées en RCA étaient sous le commandement ou l’ordre des autorités militaires centrafricaines. Il permet de faire la lumière sur les auteurs responsables des crimes commis en Centrafrique et intéressent des lors les victimes de ces exactions.*” ICC-01/05-01/08-2866-Conf-Anx, pages 3 to 4.

<sup>29</sup> ICC-01/05-01/08-T-258-Conf-ENG-CT, page 34, line 8 to page 37, line 13.

<sup>30</sup> ICC-01/05-01/08-T-258-Conf-ENG-CT, page 35, lines 13 to 24.

security units—charged with executing orders from the Head of State and with “security in general”.<sup>31</sup>

17. The Chamber notes that while document CAR-V20-001-0134 lies outside the time frame of the charges, it may be relevant to issues properly to be considered by the Chamber, such as the composition of the CAR armed forces during the period under examination. In addition, the Chamber finds that the document may assist in the Chamber’s assessment of the testimony of Witness D04-57 and that of the evidence as a whole. In terms of probative value, the Chamber is satisfied that the document bears sufficient indicia of reliability—such as a letterhead, date, and official stamp—and appears to have been produced in the ordinary course of operations within the CAR’s office of the President of the Republic. The Chamber also notes that the parties did not respond to Maître Douzima’s request to admit document CAR-V20-0001-0134. In terms of potential prejudice, the Chamber sees no reason to believe that the document’s admission would have a prejudicial effect on a fair trial. Document CAR-V20-0001-0134 is therefore admitted.

18. The second decree, document CAR-V20-0001-0189, was included in the list of documents Maître Douzima proposed to use in the questioning of Witness D04-54.<sup>32</sup> The document is entitled “*Decret No. 03-008 Portant nomination ou Confirmation des Membres du Gouvernement*”, dated 16 January 2003, and apparently signed by President Patassé. Maître

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<sup>31</sup> ICC-01/05-01/08-T-258-Conf-ENG-CT, page 36, line 14 to page 37, line 13; Transcript of hearing on 17 October 2012, ICC-01/05-01/08-T-256-Conf-Eng-ET, page 30, lines 3 to 16.

<sup>32</sup> Email from the Office of Legal Representatives to the Chamber of October 24, 2013.

Douzima submits that this document is a decree appointing or confirming members of government.<sup>33</sup>

19. Maître Douzima submits that this document appoints General Maurice Regonessa ("General Regonessa") as Minister of National Defence and Lieutenant-Colonel Jérôme Bouba's ("Lieutenant-Colonel Bouba") as delegate Minister to the Minister of National Defence for army force restructuring.<sup>34</sup> Maître Douzima further submits that this decree is relevant in light of document CAR-D04-0003-0135, a government authorisation allegedly indicating that General Regonessa had governmental approval to serve as Minister of National Defence, Veterans, Victims of War, Disarmament, and Army Restructuring.<sup>35</sup> Maître Douzima notes that document CAR-D04-0003-0135 was signed by order of delegate Minister Sylvestre Yangongo ("Mr Yangongo") instead of Lieutenant-Colonel Bouba.<sup>36</sup> Regarding probative value, Maître Douzima submits that document CAR-V20-0001-0189 is an official document, dated, signed, and stamped and therefore presents *prima facie* indicia of reliability.<sup>37</sup> Maître Douzima also notes that the document is publically available at the General Secretariat of the Government of the CAR.<sup>38</sup> Lastly, Maître Douzima submits that the decree will (i) allow the Chamber to determine whether MLC troops deployed in the CAR were under the command or order of CAR military authorities; and (ii) shed light on the perpetrators responsible

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<sup>33</sup> ICC-01/05-01/08-2866-Conf-Anx, page 4.

<sup>34</sup> ICC-01/05-01/08-2866-Conf-Anx, page 4.

<sup>35</sup> ICC-01/05-01/08-2866-Conf-Anx, pages 4 to 5

<sup>36</sup> ICC-01/05-01/08-2866-Conf-Anx, pages 4 to 5.

<sup>37</sup> ICC-01/05-01/08-2866-Conf-Anx, page 4.

<sup>38</sup> ICC-01/05-01/08-2866-Conf-Anx, page 4.

for crimes committed in the CAR, which is of interest to the victims of those crimes.<sup>39</sup>

20. The Chamber observes that document CAR-V20-0001-0189 appears to be a decree signed by President Patassé on 16 January 2003 appointing or confirming numerous members of the government. Specifically, the document confirms, *inter alia*, Brigadier General Maurice Regonessa for the position of Minister of National Defence and Lieutenant-Colonel Bouba as delegate Minister of the Minister of National Defence charged with restructuring of the armed forces. The Chamber also notes that the abovementioned document CAR-D04-0003-0135 appears to be a government authorisation, bearing the stamp of General Maurice Regonessa, signed by "G' x.s. Yangongo", and dated 17 January 2003. The Chamber also notes that document CAR-D04-00033-0135 is also referenced as ERN CAR-D04-0003-0128. Document CAR-D04-0003-0135/CAR-D04-0003-0128 bears the letterhead of the Ministry of National Defence, Veterans, War Victims, Disarmament and Restructuring of the Army and appears to authorise the distribution of military equipment, arms, and identical uniforms to the MLC, the attribution of tactical radio operational frequencies and the implementation of joint and integrated command between *Forces armées Centrafricaines* ("FACA")-USP and the MLC.<sup>40</sup> The Chamber notes that Witness CHM-01 was questioned about CAR-D04-0003-0135 and

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<sup>39</sup> ICC-01/05-01/08-2866-Conf-Anx, page 4.

<sup>40</sup> The document states, "*Le Ministre de la Défense Nationale, suite à la résolution de Commission interministérielle de crises autorise: La dotation aux effets militaires des Forces Alliées (MLC) armement organique et uniforme identique, attribution des fréquences radio opérationnels tactiques et la mise en place d'un commandement conjoint et intégré (FACA-USP et force alliée (MLC)).*"

testified that it was a falsified document.<sup>41</sup> The Chamber also notes that Witness D04-53 was questioned about CAR-D04-0003-0128 and testified that this document “confirms the integration of the MLC forces within the Central African forces and their allies”.<sup>42</sup>

21. Although document CAR-V20-0001-0189 was not shown in court to any witness, the Chamber is satisfied that the document may be relevant to issues properly to be considered by the Chamber, such as the composition of the CAR government during the period under examination. Additionally, this document may assist the Chamber in its assessment of the evidence as a whole and of the testimony of Witnesses D04-53 and CHM-01 in particular. In terms of probative value, the Chamber is satisfied that document CAR-V20-0001-0189 bears sufficient indicia of reliability—such as a letterhead, date, and official stamp—and appears to have been produced in the ordinary course of operations within the CAR’s office of the President of the Republic. The Chamber also notes that the parties did not respond to Maître Douzima’s request to admit document CAR-V20-0001-0189. In terms of potential prejudice, the Chamber sees no reason to believe that the document’s admission would have a prejudicial effect on a fair trial. Document CAR-V20-0001-0189 is therefore admitted.

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<sup>41</sup> Transcript of hearing on 19 November 2013, ICC-01/05-01/08-T-354-CONF-ENG CT, page 13, line 6 to page 14, line 23.

<sup>42</sup> Transcript of hearing on 15 August 2012, ICC-01/05-01/08-T-230-ENG ET, page 3, line 13 to page 5, line 17.

### *Media Reports*

22. The Chamber notes that the Majority of the Chamber, Judge Ozaki dissenting,<sup>43</sup> previously set out its position on the admission of media reports.<sup>44</sup> In this regard, the Majority stated that it would approach the admissibility of such materials with caution and held that such reports may be admitted for limited purposes to be determined on a case-by-case basis.<sup>45</sup> In line with the Majority's approach, the submitted media report will be cautiously assessed to determine its relevance, its probative value, and whether any prejudice to a fair trial may be caused by its admission.

23. Maître Douzima requests the admission into evidence of document **CAR-V20-0001-0153 (Public)**, a copy of the newspaper, "*Le Citoyen*", dated 6 March 2003 and used during her questioning of Witnesses D04-15<sup>46</sup> and D04-54.<sup>47</sup>

24. The Chamber notes CAR-V20-0001-0155, which contains the article entitled "*Ville de Mongoumba sous les Tirs des Hommes de Jean-Pierre Bemba*", is also referenced under the ERN CAR-OTP-0013-0114 and was admitted into evidence in Decision 2864 under that designation.<sup>48</sup> The Chamber notes that the cover page of document CAR-V20-0001-0153

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<sup>43</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, paragraph 4.

<sup>44</sup> ICC-01/05-01/08-2299-Red, paragraph 95.

<sup>45</sup> ICC-01/05-01/08-2299-Red, paragraph 95.

<sup>46</sup> Transcript of hearing on 13 September 2013, ICC-01/05-01/08-T-345-Conf-ENG ET, page 78, lines 1 to 7.

<sup>47</sup> Transcript of hearing on 1 November 2013, ICC-01/05-01/08-T-349-Conf-ENG ET, page 68, line 10 to page 69, line 3.

<sup>48</sup> Item CAR-OTP-0013-0114 (EVD-T-OTP-00820) was admitted in ICC-01/05-01/08-2864-Conf, paragraphs 70 to 76 and 169.

contains a headline, "*Mongoumba sous les Tirs des Nyamamulengués, hier*", and includes a cartoon depicting four men on a boat pointing arms towards a town captioned "*Ville de Mongoumba*". As the cover page does not enhance the Chamber's understanding of the already admitted article, the Chamber finds no added value in admitting document CAR-V20-0001-0153 in its entirety. Since the pertinent section has already been admitted into evidence, the Chamber considers that document CAR-V20-0001-0153 is not relevant to the Chamber's consideration and is therefore not admitted into evidence.

25. Maître Douzima seeks the admission into evidence of document **CAR-V20-0001-0177 (Public)**, a copy of the newspaper, "*Le Citoyen*", dated 10 March 2003, which was listed to be used during the questioning of Witnesses D04-45,<sup>49</sup> D04-18,<sup>50</sup> and D04-13.<sup>51</sup> This media report contains an article entitled "*Mongoumba ville fantôme*", appearing on page 5 of the document and bearing the ERN reference **CAR-V20-0001-0181**.

26. In terms of relevance, Maître Douzima submits that the article, at ERN CAR-V20-0001-0181, describes looting, rapes, and other crimes committed in Mongoumba within the relevant time frame.<sup>52</sup> Further, Maître Douzima submits that the article mentions Mr Bemba's troops and the rape of Witness V20-01.<sup>53</sup> Regarding probative value, Maître Douzima asserts that (i) *Le Citoyen* is an independent newspaper repeatedly cited during the proceedings and (2) the header, date, and

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<sup>49</sup> Email from the Office of Legal Representatives to the Chamber of 12 March 2013.

<sup>50</sup> Email from the Office of Legal Representatives to the Chamber of 3 May 2013.

<sup>51</sup> Email from the Office of Legal Representatives to the Chamber of 15 May 2013.

<sup>52</sup> ICC-01/05-01/08-2866-Conf-Anx, page 7.

<sup>53</sup> ICC-01/05-01/08-2866-Conf-Anx, pages 7 to 8.

general appearance of the document constitute indicia of reliability.<sup>54</sup> Further, Maître Douzima submits that the abuses described in the article correspond to the charges against the accused and corroborate the sworn testimony of Witness V20-01.<sup>55</sup>

27. In terms of relevance, the Chamber notes that the article, "*Mongoumba ville fantôme*", referenced by Maître Douzima and located at ERN CAR-V20-0001-0181 of document CAR-V20-0001-0177, contains information regarding an attack on the town of Mongoumba allegedly committed by MLC troops. The article refers to house by house pillaging, three killings, the rape of four girls—including the alleged rape of an individual having the same first name as Witness V20-01—and provides details as to the victims, the specific items pillaged, and the circumstances of the killings. Additionally, the article mentions that the "*Nyamulengués*" were accompanied by one hundred canoes from "*Libengué*" in the DRC and that the population of Mongoumba stated that Congolese refugees in Mongoumba helped the "*Nyamulengués*" during the events.

28. The Chamber notes that while this document was on Maître Douzima's lists of documents for Witnesses D04-45,<sup>56</sup> D04-18,<sup>57</sup> and D04-13,<sup>58</sup> it was not put to these, or any other, witnesses. However, in light of the information it contains, the Chamber considers that document CAR-V20-0001-0181 offers information relevant to the charges in the present case, including information about the presence of MLC troops in

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<sup>54</sup> ICC-01/05-01/08-2866-Conf-Anx, pages 7 to 8.

<sup>55</sup> ICC-01/05-01/08-2866-Conf-Anx, pages 7 to 8.

<sup>56</sup> Email from the Office of Legal Representatives to the Chamber of 12 March 2013.

<sup>57</sup> Email from the Office of Legal Representatives to the Chamber of 3 May 2013.

<sup>58</sup> Email from the Office of Legal Representatives to the Chamber of 15 May 2013.



Mougoumba and rapes, looting, and other crimes allegedly committed by MLC troops.

29. Turning to probative value, the Majority, Judge Ozaki dissenting, recalls its general preference for the submission of full documents, rather than full excerpts, but notes that single articles which form part of a larger document can comprise documents in themselves which can be properly assessed in their context.<sup>59</sup> The Chamber observes that document CAR-V20-0001-0181 includes a footer specifying the name, date, issue number of the newspaper, and the appropriate page number. Given the above, the Chamber is of the view that document CAR-V20-0001-0181 offers sufficient indicia of authenticity for the Majority to determine that it is an authentic copy of the "*Le Citoyen*" published on 10 March 2003.

30. In terms of potential prejudice, the Majority of the Chamber is of the view that this type of material can be considered for a limited purpose only. In particular, the information contained therein may serve to corroborate other pieces of evidence and may be used to determine whether information regarding the alleged commission of crimes by MLC troops was widely broadcast by the media during the period of the charges. In addition, although the document was not put to Witness V20-01 during her testimony, the Majority is of the view that document CAR-V20-0001-0181 may contextualise and facilitate the Chamber's assessment of Witness V20-01's testimony. The Chamber also notes that the parties did not respond to Maître Douzima's request to admit

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<sup>59</sup> See ICC-01/05-01/08-2299-Red, paragraph 96.

document CAR-V20-0001-0177. Given the above limitations on its use, the Majority considers that document CAR-V20-0001-0177's relevance and probative value outweigh any potential prejudicial effect its admission might have. The Chamber, Judge Ozaki dissenting on reasoning, admits page ERN CAR-V20-0001-0181 of document CAR-V20-0001-0177.

### III. Conclusions

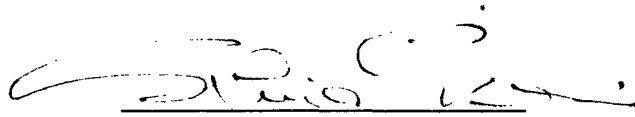
31. In view of the foregoing, the Chamber:

- a. ADMITS into evidence of items: CAR-V20-0001-0134, CAR-V20-0001-0189, and page ERN CAR-V20-0001-0181 of item CAR-V20-0001-0177;
- b. CONSIDERS MOOT the request to admit items: CAR-V20-0001-0165, CAR-V20-0001-0001, CAR-V20-0001-0018 and CAR-V20-0001-0128;
- c. POSTPONES the decision on the admission into evidence of items: CAR-V20-0001-0130 and CAR-V20-0001-0132;
- d. REJECTS the admission into evidence of item CAR-V20-0001-0153;
- e. INSTRUCTS the Registry to assign new EVD-T numbers to the admitted documents;
- f. ORDERS Maître Douzima to file by 7 February 2014 public redacted versions of her filing and the corresponding annex or to inform the Chamber that they may be reclassified as public without redactions; and
- g. ORDERS Maître Douzima to review the level of confidentiality of document **CAR-V20-0001-0189** and either request, within 10 days

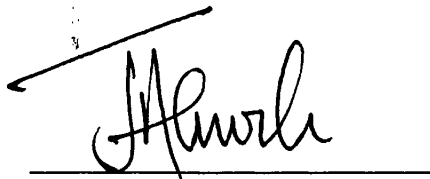
of the notification of the present Decision, the reclassification of the item as public—with or without redactions—should the reasons for maintaining its confidentiality no longer exist, or inform the Chamber of the reasons for maintaining its confidentiality.

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

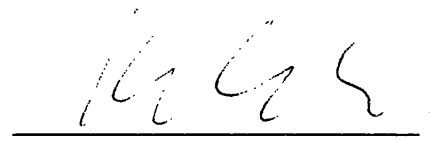
Done in both English and French, the English version being authoritative.



**Judge Sylvia Steiner**



**Judge Joyce Aluoch**



**Judge Kuniko Ozaki**

Dated this 29 January 2014

At The Hague, The Netherlands

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/05-01/08  
Date: 29 January 2014

**TRIAL CHAMBER III**

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

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

**Confidential**

**Partly Dissenting Opinion of Judge Ozaki on the Decision on Maître  
Douzima's "Requête de la Représentante légale de victimes en vue de  
soumettre des documents en tant qu'éléments de preuve selon l'article 64(9) du  
Statut de Rome"**

**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 Peter Haynes

Ms Kate Gibson

**Legal Representative 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**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

1. This partly dissenting opinion is in response to the Decision on Maître Douzima's "Requête de la Représentante légale de victimes en vue de soumettre des documents en tant qu'éléments de preuve selon l'article 64(9) du Statut de Rome" ("Decision"), and addresses my disagreement with the Majority regarding the reasoning supporting the admission of the article at ERN page CAR-V20-0001-0181 of document CAR-V20-0001-0177 ("Article").
  
2. I have previously expressed my opinion that the admission into evidence of newspaper articles and other media reports must be approached with great care when their authors are not called to testify at trial.<sup>1</sup> The fact that the content of such articles may serve to corroborate other pieces of evidence is a factor to be assessed in considering their reliability and probative value but is insufficient in itself to warrant admission.<sup>2</sup> In this instance, I note that it has been submitted that certain elements of the content of the Article is corroborative of the testimony of witnesses in this case.<sup>3</sup> However, as

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<sup>1</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; Partly Dissenting Opinion of Judge Ozaki on the Decision on the admission into evidence of items deferred in the Chamber's 'Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute' (ICC-01/05-01/08-2299), 27 June 2013, ICC-01/05-01/08-2721-Anx; Partly Dissenting Opinion of Judge Ozaki on the Third Decision on the prosecution and defence requests for the admission of evidence, 6 November 2013, ICC-01/05-01/08-2864-Conf-Anx.

<sup>2</sup> See 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, para. 7.

<sup>3</sup> See e.g. ICC-01/05-01/08-2866-Conf-Anx, pages 7-8.

noted in the Decision, the Article was not used during the examination of any of the witnesses.

3. In the circumstances, I am of the view that the probative value of the Article is insufficient to outweigh the potential prejudice if it is admitted for the truth of its contents. However, I do not object to the admission of the Article solely for the limited purpose of demonstrating that the events described therein were widely reported, which may, for example, be of relevance to the accused's knowledge of the alleged crimes.

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



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**Judge Kuniko Ozaki**

Dated this 29 January 2014

At The Hague, The Netherlands

No. ICC-01/05-01/08

4/4

29 January 2014