

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 2 April 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***

Public

Decision on "Prosecution's Application to Submit Additional Evidence"

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

The Office of the Prosecutor
 Ms Fatou Bensouda
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 Mr Peter Haynes
 Ms Kate Gibson

Legal Representatives of the Victims
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Unrepresented Victims

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States Representatives

Amicus Curiae

REGISTRY

Registrar
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Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber III (“Chamber” or “Trial Chamber”) of the International Criminal Court (“Court”) in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”) issues the following Decision on “Prosecution’s Application to Submit Additional Evidence” (“Decision”).

I. Background and submissions

1. On 29 November 2013, the Office of the Prosecutor (“prosecution”) filed its “Prosecution’s Application to Submit Additional Evidence” (“Prosecution Application”),¹ in which it requests that the Chamber grant an extension of time limit, pursuant to Regulation 35(2) of the Regulations of the Court (“Regulations”), in order to allow the prosecution to disclose and submit additional evidence, or, in the alternative, order the submission of the additional evidence for the determination of the truth.² The prosecution specifies that the additional evidence consists of one audio recording, one report, and one financial chart (collectively the “Relevant Material”) which, cumulatively, “affect the testimony of fourteen (14) Defence witnesses”.³

2. On 15 January 2014, the defence for Mr Bemba (“defence”) filed its “Response to the Prosecution’s Application to Submit Additional Evidence” (“Defence Response”),⁴ in which it requests that the Chamber reject the Prosecution Application.⁵

3. On 28 January 2014, after the Chamber granted it leave to reply pursuant to Regulation 24(5) of the Regulations,⁶ the prosecution filed its “Prosecution’s

¹ Prosecution’s Application to Submit Additional Evidence, 29 November 2013, ICC-01/05-01/08-2910.

² ICC-01/05-01/08-2910, paragraphs 9 and 10.

³ ICC-01/05-01/08-2910, paragraph 8.

⁴ Response to the Prosecution’s Application to Submit Additional Evidence, 15 January 2014, ICC-01/05-01/08-2937-Conf. A public redacted version was filed simultaneously: ICC-01/05-01/08-2937-Red.

⁵ ICC-01/05-01/08-2937-Red, paragraph 44.

⁶ Prosecution’s Request for leave to reply to Defence “Response to the Prosecution’s Application to Submit Additional Evidence”, 20 January 2014, ICC-01/05-01/08-2940 and Decision on ‘Prosecution’s Request for leave to reply to Defence Response to the Prosecution’s Application to Submit Additional Evidence’, 22 January 2014, ICC-01/05-01/08-2942.

Reply to the Defence ‘Response to the Prosecution’s Application to Submit Additional Evidence’ (“Prosecution Reply”).⁷

4. On 14 March 2013, the defence filed its “Defence Addendum to Response for admission of new Article 70 evidence” (“Defence Addendum”),⁸ in which it requests that the Chamber (i) allow the defence to submit an Addendum to its “Response to the Prosecution’s application to submit additional evidence”; (ii) allow the defence to make further submissions on the admissibility of the prosecution’s “Article 70 evidence” until 31 May 2014 “or such date as the Single Judge determines that the Prosecution’s disclosure obligations in that case are concluded, whichever is the later”; (iii) “exclude the Prosecution’s Article 70 evidence”; and (iv) “remain seized of the overarching issue concerning the Prosecution’s conduct in this matter, and the impact which [it] has had on the overall credibility of the Prosecution case, and Mr. Bemba’s right to a fair trial.”⁹

5. On 25 March 2014, the prosecution filed its “Prosecution’s Request for Leave to Reply to ‘Defence addendum to Response for admission of new Article 70 evidence’” (“Prosecution Request for Leave to Reply”),¹⁰ in which it seeks request for leave to reply to two specific issues arising from the Defence Addendum.¹¹

6. Principal submissions put forth by the parties in support of their requests are summarised below; additional specific arguments made by the parties will be addressed in the analysis section of the present Decision. For the reasons set out

⁷ Prosecution’s Reply to the Defence ‘Response to the Prosecution’s Application to Submit Additional Evidence’, 28 January 2014, ICC-01/05-01/08-2948-Conf. The Chamber notes that the Prosecution’s Reply is classified as confidential. However, in light of the principle of publicity of the proceedings enshrined in Articles 64(7) and 67(1) of the Statute and Regulation 20 of the Regulations, the present Decision is filed publicly, and the prosecution is directed to file a public redacted version of the filing or to indicate that it may be reclassified.

⁸ Defence Addendum to Response for admission of new Article 70 Evidence, 14 March 2014, ICC-01/05-01/08-3016; with public Annex A, confidential Annex B, confidential redacted Annex B and confidential *ex parte* (prosecution and defence only) Annex C.

⁹ ICC-01/05-01/08-3016, paragraph 37.

¹⁰ Prosecution’s Request for Leave to Reply to “Defence Addendum to Response for admission of new Article 70 evidence”, 25 March 2014, ICC-01/05-01/08-3024.

¹¹ ICC-01/05-01/08-3024, paragraphs 4 and 5.

in paragraph 32 in the analysis section, the submissions made in the Defence Addendum will not be considered in the context of the present Decision.

The Prosecution Application

7. The prosecution refers to the Chamber's decision of 30 October 2013 ("Decision 2855"),¹² in which the Chamber established the deadline for the submission of "any applications for the admission of any remaining material into evidence pursuant to Article 64(9)(a) of the Statute" of 8 November 2013.¹³

8. In support of the requested extension, the prosecution sets forth a number of factors which it alleges "cumulatively constitute good cause justifying an extension of time to disclose and submit additional evidence".¹⁴ These include that (i) "the additional evidence could not have been submitted previously due to the fact that the Prosecution only became aware of the information during the Defence case and was conducting on-going investigations to ascertain its veracity"¹⁵ and because prior disclosure "would have resulted in jeopardising on-going investigations"; (ii) the "additional evidence, which also relates to the ICC-01/05-01/13 Case is material to the [*Bemba*] case only in so far as it affects the evidence of specific Defence witnesses to be considered by the Chamber in its final Judgment";¹⁶ (iii) "the unique nature of the additional evidence, audio material and financial transactions, make it more compelling than evidence previously heard by the Chamber in relation to specific Defence witnesses"; (iv) the additional evidence "will bring to light previously unknown information that has a significant bearing on the case"; and (v) "the prosecution could not have reasonably anticipated this evidence."¹⁷

¹² 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, paragraph 18(i).

¹³ ICC-01/05-01/08-2948, paragraph 4 and footnote 12.

¹⁴ ICC-01/05-01/08-2910, paragraph 3.

¹⁵ ICC-01/05-01/08-2910, paragraph 2.

¹⁶ ICC-01/05-01/08-2910, paragraph 2.

¹⁷ ICC-01/05-01/08-2910, paragraph 3.

9. The prosecution further submits that “the submission of this limited additional evidence [...] does not result in undue prejudice to the Accused” and that “any prejudice to the Accused can be remedied by providing additional and limited time to respond to the additional evidence”.¹⁸

10. In the alternative, the prosecution invites the Chamber to request the submission of the Relevant Material for the determination of the truth, in accordance with Articles 64(6)(d) and 69(3) of the Rome Statute (“Statute”).¹⁹

The Defence Response

11. Stressing that the requested extension was sought after the expiry of the initial deadline of 8 November 2013, the defence submits that the prosecution failed to satisfy the criteria for a retrospective extension of time.²⁰

12. The defence further asserts that although framed as a request for an extension of time, the additional evidence in fact constitutes rebuttal evidence.²¹ In the view of the defence, the Relevant Material does not comply with the requirements for the admission of rebuttal evidence²² and even if it could properly be characterised as rebuttal evidence, the late stage of the proceedings “mitigates against its admission”.²³

13. Finally, the defence anticipates that the submission of the proposed evidence would entail additional procedural steps, including a request for a stay of the proceedings in the *Bemba* case until completion of the proceedings in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu and Narcisse Arido* (“case ICC-01/05-01/13”),

¹⁸ ICC-01/05-01/08-2910, paragraph 5.

¹⁹ ICC-01/05-01/08-2910, paragraph 6.

²⁰ ICC-01/05-01/08-2937-Red, paragraphs 10 and 11.

²¹ ICC-01/05-01/08-2937-Red, paragraph 24.

²² ICC-01/05-01/08-2937-Red, paragraph 28.

²³ ICC-01/05-01/08-2937-Red, paragraph 29.

and the possibility of a withdrawal of the current members of the defence team.²⁴ According to the defence, this would “preclude any expeditious conclusion of Mr Bemba’s case”.²⁵

The Prosecution Reply

14. In reply, the prosecution asserts that there is a “proper legal basis” for the admission of the Relevant Material.²⁶ In support of its request under Regulation 35(2) of the Regulations, it explains that the failure to meet the time limit is due to reasons outside its control.²⁷ Reiterating its alternative request, the prosecution clarifies that while it seeks to submit the evidence in a “bar table motion” and is not requesting a rebuttal phase of the case, it has “legal grounds to request alternatively that the Chamber consider the evidence as rebuttal evidence”.²⁸ For that purpose, the prosecution submits that the criteria for the submission of the Relevant Material as rebuttal evidence are met.²⁹

15. Moreover, the prosecution disputes the defence’s assertions as to any prejudice to the integrity or efficiency of the trial that would be caused by the admission of the Relevant Material. In this respect, the prosecution stresses that the proffered evidence was “collected under the supervision of multiple judicial authorities, which created safeguards to protect the integrity and legality of the collection of evidence”,³⁰ that the proffered evidence has the potential to shorten the Chamber’s deliberations, and that the accused would not be prejudiced because he has neither “a right to proffer false evidence in criminal proceedings before the Court” nor “a derivative legitimate expectation that the credibility of

²⁴ ICC-01/05-01/08-2937-Red, paragraphs 38 to 40.

²⁵ ICC-01/05-01/08-2937-Red, page 16.

²⁶ ICC-01/05-01/08-2948-Conf, page 4.

²⁷ ICC-01/05-01/08-2948-Conf, paragraphs 9 to 10.

²⁸ ICC-01/05-01/08-2948-Conf, paragraph 11.

²⁹ ICC-01/05-01/08-2948-Conf, paragraphs 11 to 12.

³⁰ ICC-01/05-01/08-2948-Conf, paragraph 15.

such evidence will not be challenged”.³¹

II. Analysis and conclusions

16. For the purpose of the present Decision and in accordance with Article 21(1) of the Statute the Chamber has considered Articles 64(2), 6(d) and 7, 67 and 69(3) of the Statute, Rule 140 of the Rules of Procedure and Evidence (“Rules”) and Regulations 20, 23*bis*(3), 29, 35(2) and 54 of the Regulations.

17. Regulation 35(2) of the Regulations provides that “[t]he Chamber may “extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard” and stipulates that “[a]fter the lapse of a time limit, an extension may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the *application* within the time limit for *reasons outside his or her control*” (emphasis added). Since the Prosecution Application was filed after expiry of the relevant time limit,³² the prosecution must show that it was unable to file the application earlier for reasons outside its control.

18. To demonstrate that there is a “reason outside his or her control”, the Appeals Chamber has held that the participant needs to show the existence of “exceptional circumstances”.³³

19. In the present case, the prosecution asserts that it could not have submitted or disclosed the Relevant Material within the applicable time limit, because it was either released to the prosecution after 8 November 2013 or

³¹ ICC-01/05-01/08-2948-Conf, paragraph 17.

³² The deadline for the submission of remaining applications for the submission of material into evidence was 8 November 2013 and the Prosecution Application was filed on 29 November 2013.

³³ *The Prosecutor v. Thomas Lubanga Dyilo*, Reasons for the “Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007” issued on 16 February 2007, 21 February 2007, ICC-01/04-01/06-834, paragraphs 9 to 10. *See also The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the “Prosecution’s Urgent Application to Be Permitted to Present as Incriminating Evidence Transcripts and translations of Videos and Video DRC-OTP-1042-0006 pursuant to Regulation 35 and Request for Redactions (ICC-01/04-01/07-1260)”, 27 July 2009, ICC-01/04-01/07-1336.

because disclosure would have compromised the prosecution's investigations.³⁴

20. While the prosecution explains why the Relevant Material could not be submitted prior to the expiry of the deadline, it failed to demonstrate exceptional circumstances outside its control to justify why the *application* for an extension of time could not be filed within the time limit. In this regard, the Chamber notes the prosecution's acknowledgement that part of the Relevant Material was in its possession before the expiry of the deadline.³⁵ In addition, while the remaining material was not available within the deadline, the Chamber considers, in view of the fact that the investigations appear to have been ongoing for a considerable period of time,³⁶ that the prosecution must have been aware of the possibility of obtaining the material in the future. It is, for example, noted that the prosecution acknowledges that it was "reasonably foreseeable" that the Article 70 investigations would have an impact on this case.³⁷ In these circumstances, the prosecution could have informed the Chamber of the possibility of obtaining relevant material as a result of its investigations and ask for an extension of time prior to the expiry of the 8 November 2013 deadline set by the Chamber.³⁸ Accordingly, the Chamber is not convinced by the prosecution's explanations as to why it was unable to file the application for reasons outside its control.

21. Having found that the prosecution failed to demonstrate that the late submission of its application was due to reasons outside its control, the Chamber considers that it does not need to assess whether the prosecution has demonstrated good cause for requesting the submission of the Relevant Material after expiry of the time limit.

³⁴ ICC-01/05-01/08-2948-Conf, paragraph 13.

³⁵ ICC-01/05-01/08-2948-Conf, paragraph 10.

³⁶ See Prosecution's Request for Record of Payments made by the Registry to Witnesses called by the Defence of Mr. Jean-Pierre Bemba Gombo, 15 November 2012, ICC-01/05-01/08-2412-Conf.

³⁷ ICC-01/05-01/08-2910, paragraph 2.

³⁸ In this regard, Trial Chamber II ruled that "[w]hen a party knows that it will not be able to meet a set time limit, but still has every intention of obtaining the material in order to present it at a later stage, it must [...] file a formal application under regulation 35(2) before the deadline." Corrigendum – Decision on the disclosure of evidentiary material relating to the Prosecutor's site visit to Bogoro on 28, 29 and 31 March 2009 (ICC-01/04-01/07-1305, 1345, 1360, 1401, 1412 and 1456), 9 October 2009, ICC-01/04-01/07-1515-Corr, paragraph 33.

22. The Chamber further notes the defence's argument that the Prosecution Application is to be considered as a request for rebuttal evidence³⁹ and the prosecution's reply that it has "legal grounds to request alternatively that the Chamber consider the evidence as rebuttal evidence".⁴⁰ The Chamber is mindful that in the absence of any formal reference to a "rebuttal"⁴¹ phase in the Statute's framework⁴² or in the Chamber's previous decisions relevant to the matter,⁴³ the Chamber did not establish any specific deadline for the submission of applications to that effect. However, in Decision 2855, the Chamber set 8 November 2013 as the deadline for the submission of "any applications for the admission of any remaining material into evidence pursuant to Article 64(9)(a) of the Statute" (emphasis added). While noting that the presentation of evidence had not been completed at that time,⁴⁴ the Chamber considers that the prosecution would have been in a position to anticipate the possible need to request the submission of the Relevant Material before the expiry of the deadline. Accordingly, the Chamber considers the same deadline to have been applicable, regardless of whether the Prosecution Application is treated as one for an extension of time to submit a "bar table motion" or to submit an application to bring "rebuttal evidence".

23. Despite having determined that the prosecution failed to comply with the deadline for the submission of material into evidence and the requirements for an extension of time pursuant to Regulation 35(2) of the Regulations, the Chamber

³⁹ ICC-01/05-01/08-2937-Red, paragraph 24.

⁴⁰ ICC-01/05-01/08-2948-Conf, paragraph 11.

⁴¹ The Appeals Chamber of the ICTY endorsed the Trial Chamber's definition of rebuttal evidence as "evidence to refute a particular piece of evidence which has been adduced by the defence" and confirmed that "rebuttal evidence must relate to a significant issue arising directly out of defence evidence which could not reasonably have been anticipated." ICTY, *Prosecutor v. Delalić et al*, Case IT-96-21-A, Appeals Chamber, Judgement, 20 February 2001, paragraph 273.

⁴² In this regard the Court's legal framework, and especially Rule 140 of the Rules, differs from the legal framework applicable at other international courts and tribunals. See Rule 85(A)(iii) of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone.

⁴³ See in particular Decision on Directions for the Conduct of the Proceedings, 19 November 2010, ICC-01/05-01/08-1023; Decision on defence disclosure and related issues, 24 February 2012, ICC-01/05-01/08-2141.

⁴⁴ Witness D04-13 testified between 12 and 14 November 2013 and Witness CHM-01 testified between 18 and 22 November 2013.

will nonetheless address the appropriateness of considering the Relevant Material as rebuttal evidence⁴⁵ in the interests of justice pursuant to Regulation 29(1) of the Regulations,⁴⁶ as well as the prosecution's alternative request for the Chamber to order the submission of the additional evidence for the determination of the truth under Article 69(3) of the Statute.

24. Regarding the option of considering the Relevant Material as rebuttal evidence, the Chamber notes that both Trial Chamber I and II have determined that the absence of a formal reference to a rebuttal phase in the Rome Statute framework does not preclude a Trial Chamber from considering evidence in that manner.⁴⁷ Rather, it was considered that when seized with a request for the submission of rebuttal evidence, a Trial Chamber enjoys wide discretion⁴⁸ and Trial Chamber I and II outlined the requirements to be met in this context.⁴⁹

25. This Chamber adopts Trial Chamber I and II's findings that a Trial Chamber enjoys wide discretion when it is seized of a request to consider

⁴⁵ In this regard, the Chamber notes the defence's argument that the Prosecution Application is to be considered as a request for rebuttal evidence (ICC-01/05-01/08-2937-Red, paragraph 24) and the prosecution's reply that it has "legal grounds to request alternatively that the Chamber consider the evidence as rebuttal evidence" (ICC-01/05-01/08-2948-Conf, paragraph 11).

⁴⁶ Regulation 29(1) of the Regulations provides: In the event of non-compliance by a participant with the provisions of any regulation, or with an order of a Chamber made thereunder, the Chamber may issue any order that is deemed necessary in the interests of justice.

⁴⁷ *The Prosecutor v. Thomas Lubanga Dyilo*, Redacted Decision on the Prosecution's Application to Admit Rebuttal Evidence from Witness DRC-OTP-WWWW-0005, 28 April 2011, ICC-01/04-01/06-2727-Red, paragraph 38; Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Transcript of hearing on 24 November 2010, ICC-01/04-01/07-T-222-Red2-ENG WT, page 72, line 22 to page 78, line 2.

⁴⁸ ICC-01/04-01/06-2727-Red, paragraphs 42 and 43, quoting ICTR, *The Prosecutor v. Ntagerura et al*, Case No. ICTR-99-46-T, Trial Chamber, Decision on the Prosecutor's Motion for Leave to Call Evidence in Rebuttal Pursuant to Rules 54, 73, and 85(A) (iii) of the Rules of Procedure and Evidence, 21 May 2003, paragraph 31; ICTR, *Prosecutor v Augustin Ndindiliyimana, Augustin Bizimungu, François-Xavier Nzuwinemeye and Innocent Sagahutu*, Case No. ICTR'00-56-T, Trial Chamber, Decision on the Prosecution Motion to call Rebuttal Evidence, 20 February 2009, paragraph 3.

⁴⁹ Trial Chamber I designed a three-part legal test. Pursuant to this test, the prosecution bears the burden to demonstrate that three conditions are fulfilled. First, it must demonstrate that an issue of significance has arisen *ex improviso*, Second, the evidence on rebuttal has to satisfy the admissibility criteria. Third, it must be ensured that the submission of rebuttal evidence "will not undermine the accused's rights, in particular under Article 67 of the Statute", ICC-01/04-01/06-2727-Red, paragraphs 42 to 43. Trial Chamber II, further to an enquiry by the prosecution on the moment when rebuttal evidence could be produced, held that by virtue of Articles 64(6)(d) and 69(3) of the Statute, it could accept disclosure or the addition of additional evidence when such evidence contributes to the manifestation of the truth "[o]n the dual condition that, one, such an exhibit is clearly more convincing than the evidence already disclosed to the Defence, or that it is going to be of crucial importance to the trial and relates to an event which had hitherto not been made known, and that, two, its late disclosure or addition does not undermine the right of the Defence to have the requisite time and means to prepare." Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Transcript of hearing on 24 November 2010, ICC-01/04-01/07-T-222-Red2-ENG WT, page 77, lines 11 to 25.

rebuttal evidence.

26. In the specific circumstances of the case, the Chamber notes that the Relevant Material forms a portion of material obtained in the context of the prosecution's investigations on alleged Article 70 offences which has resulted in the charges brought in case ICC-01/05-01/13. In line with the Court's overall proceedings established by the Statute, this material is to be considered - or relates to matters to be considered - by the Pre-Trial Chamber⁵⁰ for its determination pursuant to Article 61(7) of the Statute, namely whether there is "sufficient evidence to establish substantial grounds to believe" that the persons charged committed the crimes alleged in case ICC-01/05-01/13, and to confirm, decline to confirm, or request the prosecution to consider providing further evidence or amending the charges. In light of this, the Chamber does not consider it in the interest of justice for matters which may be central to the charges before the Pre-Trial Chamber to be litigated in parallel before the Trial Chamber,⁵¹ and also notes, in that regard, the potential for lengthy delays arising from such circumstances.

27. The Chamber considers that it would not facilitate the fair and expeditious conduct of the proceedings to authorise the submission of the Relevant Material for an admissibility determination in the context of a rebuttal phase of the proceedings.

28. The Chamber now turns to the question of whether it should order the submission of the Relevant Material within the broader framework of its general power under Article 69(3) of the Statute to order the submission of evidence it considers necessary for the determination of the truth.

⁵⁰ As case ICC-01/05-01/13 arises out of the situation in the Central African Republic, it is assigned to Pre-Trial Chamber II (*see* Decision assigning the situation in the Central African Republic to Pre-Trial Chamber III, 19 January 2005, ICC-01/05-1 and Decision on the constitution of Pre-Trial Chambers and on the assignment of the Central African Republic situation, 19 March 2009, ICC-01/05-22).

⁵¹ The Chamber further notes that there is a theoretical possibility of the two proceedings being joined under Rule 165(4) of the Rules, if the charges are confirmed.

29. The power of the Chamber under Article 69(3) of the Statute is a discretionary power to be exercised where the Chamber considers that certain additional evidence may be necessary for the determination of the truth. In considering whether or not to exercise this power in any particular case, it is appropriate for the Chamber to have regard to a broad range of factors, including the evidence already before it, the potential impact on the fairness and expeditiousness of the trial and rights of the accused, and the centrality and relevance of the additional evidence to the core matters for determination by the Chamber.

30. In conducting that analysis in this case, the Chamber is not persuaded that the Relevant Material is necessary for the determination of the truth of the charges before it or that it is in the interest of justice for it to seek the submission of the Relevant Material at this stage of proceedings before the Pre-Trial Chamber. As submitted by the prosecution, the Relevant Material relates to the specific issue of the credibility of certain defence witnesses, each of whom the prosecution had the opportunity to question at the time they testified.

31. As noted above, the Relevant Material relates to matters under consideration by a Pre-Trial Chamber and the Chamber does not find it appropriate for such matters to be litigated in parallel before this Trial Chamber. Moreover, submission of the Relevant Materials may require the Trial Chamber to make findings relating to central matters of which the Pre-Trial Chamber is seized. Therefore, it would be premature for this Chamber to consider the Relevant Material as necessary for the determination of the truth, in this 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) of the Statute.

32. In view of the above, the Chamber finds that authorising the submission of the Relevant Material for the determination of the truth under Article 69(3) of the

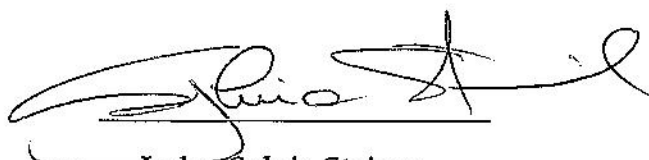
Statute is not appropriate at the current stage of the proceedings in case ICC-01/05-01/13. Having determined that the Relevant Material shall not be submitted in the context of a rebuttal phase of the proceedings or for the determination of the truth under Article 69(3) of the Statute at this stage of the proceedings before Pre Trial Chamber, the Chamber does not consider it necessary to address the submissions put forward in the Defence Addendum. The Chamber therefore considers the Prosecution Request for Leave to Reply moot.

33. The Chamber notes that it retains its discretion under Article 69(3) of the Statute to, at any stage, request submission of additional relevant evidence, including that 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.

34. In these circumstances, the Chamber hereby

- (i) REJECTS the Prosecution Application in its entirety;
- (ii) DECIDES that it will not consider the submissions made in the Defence Addendum or the documents appended to the Defence Addendum;
- (iii) REJECTS the Prosecution Request for Leave to Reply as moot;
- (iv) DIRECTS the prosecution to file a public redacted version of the Prosecution Reply or to inform the Chamber that the document can be reclassified as public without redactions.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 2 April 2014

At The Hague, the Netherlands