

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date: 28 May 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**

**URGENT  
Public**

**Decision on "Defence Motion for Admission of Materials pursuant to Article  
64(9) of the Rome Statute"**

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

**The Office of the Prosecutor**

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Mr Jean-Jacques Badibanga

**Counsel for the Defence**

Mr Peter Haynes  
Ms Kate Gibson  
Ms Melinda Taylor

**Legal Representatives of the Victims**

Ms Marie-Édith Douzima-Lawson

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**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

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**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

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**Counsel 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*, issues the following Decision on “Defence Motion for Admission of Materials pursuant to Article 64(9) of the Rome Statute” (“Decision”).

## I. Background and Submissions

1. On 16 July 2013, the Chamber issued its “Decision on the timeline for the completion of the defence’s presentation of evidence and issues related to the closing of the case” (“Decision 2731”),<sup>1</sup> in which it, *inter alia*, established a schedule and gave directions for the filing of closing briefs and the presentation of final oral submissions by the parties and participants. In this context, the Chamber decided that the deadlines for the filing of closing briefs were to be counted as from “the date on which the Presiding Judge declares the presentation of evidence in the case to be closed pursuant to Rule 141 of the Rules” of Procedure and Evidence (“Rules”).<sup>2</sup> At a public status conference held on 28 November 2013, the Presiding Judge clarified that “a decision declaring the presentation of evidence in the case to be closed pursuant to Rule 141 of the Rules [would] be taken once the Chamber has decided on the admissibility into evidence of all materials submitted by the parties or participants or by the Chamber”.<sup>3</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>4</sup> in which it established the deadline of 8 November 2013 for the submission of, *inter alia*, “any applications for the admission of any remaining material into evidence

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<sup>1</sup> Decision on the timeline for the completion of the defence’s presentation of evidence and issues related to the closing of the case, 16 July 2013, ICC-01/05-01/08-2731.

<sup>2</sup> ICC-01/05-01/08-2731, paragraph 27.

<sup>3</sup> Transcript of hearing of 28 November 2013, ICC-01/05-01/08-T-359-ENG ET WT, page 10, lines 21 to 25.

<sup>4</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, paragraph 18(i).

pursuant to Article 64(9)(a) of the Statute”.<sup>5</sup> Anticipating that the deadline for the conclusion of the testimony of witnesses called by the defence for Mr Jean-Pierre Bemba Gombo (“defence”) might be extended to facilitate the testimony of witnesses called by the defence after 8 November 2013, the Chamber further stressed that “a deadline for the parties to submit documents used during the questioning of only those witnesses will be set”.<sup>6</sup>

3. In addition, the Chamber held that “should the defence identify any specific and concrete prejudice requiring the submission of further evidence essential to the Chamber's determination of the truth, it may submit a substantiated motion after the deadline of 8 November 2013 and before the Chamber declares the submission of evidence to be closed pursuant to Rule 141(1) of the Rules”.<sup>7</sup>
4. Finally, addressing the defence's request to be given the opportunity to present evidence following the testimony of the witness called by the Chamber or after the Chamber had admitted all evidence in the case, the Chamber ruled that “the defence has no statutory right to call evidence after the presentation of the Chamber's evidence or to expect the Chamber to decide on the admissibility of all evidence before the end of the defence's presentation of evidence”.<sup>8</sup> However, the Chamber allowed for a further exception, enabling the defence to submit a substantiated motion in case it identifies “any specific and concrete prejudice requiring the submission of further evidence essential to the Chamber's determination of the truth, after hearing the evidence called by the Chamber and before the Chamber declares the submission of evidence to be closed pursuant to Rule 141(1) of the Rules”.<sup>9</sup>

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<sup>5</sup> ICC-01/05-01/08-2855, paragraph 10.

<sup>6</sup> ICC-01/05-01/08-2855, paragraph 11.

<sup>7</sup> ICC-01/05-01/08-2855, paragraph 13.

<sup>8</sup> ICC-01/05-01/08-2855, paragraph 16.

<sup>9</sup> ICC-01/05-01/08-2855, paragraph 17.

5. Between 6 November 2013 and 7 April 2014, the Chamber issued seven additional decisions on the admission of materials into evidence.<sup>10</sup>
6. On 7 April 2014, the Chamber issued its “Decision on closure of evidence and other procedural matters”,<sup>11</sup> in which it, *inter alia*, (i) declared the submission of evidence closed; and (ii) ordered the Office of the Prosecutor (“prosecution”) and Me Douzima to submit their final closing briefs by 2 June 2014, in line with the schedule established in Decision 2731.<sup>12</sup>
7. On 16 April 2014, the defence filed its “Defence Motion for Admission of materials pursuant to Article 64(9) of the Rome Statute” (“Motion” or “Defence Motion”), together with a confidential Annex A (“Annex A”),<sup>13</sup> in which it requests that the Chamber either (i) admit 11 press releases and media articles appended in Annex A (“Documents”) as evidence in the present proceedings at the request of the defence pursuant to Article 64(9) of the Rome Statute (“Statute”) (“Request”); or, in the alternative, (ii) admit the Documents pursuant to Article 69(3) of the Statute (“Alternate Request”).

<sup>10</sup> Third Decision on the prosecution and defence requests for the admission of evidence, 6 November 2013, ICC-01/05-01/08-2864-Conf; 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”, 29 January 2014, ICC-01/05-01/08-2950-Conf; Decision on the “Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute”(ICC-01/05-01/08-2854), 14 February 2014, ICC-01/05-01/08-2974-Conf; Decision on the “Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute”(ICC-01/05-01/08-2868), 17 February 2014, ICC-01/05-01/08-2981-Conf; Decision on “Defence Motion for the Admission of Documents related to Witness 169 and Witness 178”, 13 March 2014, ICC-01/05-01/08-3015-Conf; Decision on the admission into evidence of items deferred in the Chamber’s previous decisions, items related to the testimony of Witness CHM-01 and written statements of witnesses who provided testimony before the Chamber, 17 March 2014, ICC-01/05-01/08-3019-Conf; and Decision on the submission as evidence of items used during the questioning of witnesses but not submitted as evidence by the parties and participants, 7 April 2014, ICC-01/05-01/08-3034-Conf.

<sup>11</sup> Decision on closure of evidence and other procedural matters, 7 April 2014, ICC-01/05-01/08-3035.

<sup>12</sup> Decision on the timeline for the completion of the defence’s presentation of evidence and issues related to the closing of the case, 16 July 2013, ICC-01/05-01/08-2731.

<sup>13</sup> Defence Motion for Admission of Materials pursuant to Article 64(9) of the Rome Statute, 16 April 2014, ICC-01/05-01/08-3045-Conf and confidential Annex A. The Chamber notes that the Defence Motion and the Prosecution Response are classified as confidential, in line with the confidentiality level of Decision 3034 which is referred to in the parties’ documents. However, in light of the principle of publicity of the proceedings enshrined in Article 64(7) and 67(1) of the Statute and Regulation 20 of the Regulations, the present Decision is filed publicly and the parties will be directed to confirm that their submissions can be reclassified as public or file public redacted versions thereof. To the extent that the present Decision makes reference to decisions or submissions currently classified as confidential, the Chamber is of the view that the reference to these decisions or submissions does not undermine the confidential nature of the documents as such.

8. At the outset, the defence claims that by declaring the closure of the case on the same day as it issued its last decision on the admission of evidence, the Chamber “effectively undermined the exception it had [...] granted [in Decision 2855]”.<sup>14</sup> According to the defence, it was only with the issuance of the last decision on the admission of evidence that the defence was “able to reflect, for the first time, on the entirety of the evidence admitted in the present proceedings”.<sup>15</sup> In this context, the defence submits, it has “identified a specific and concrete prejudice, namely that the Trial Chamber’s approach to the admission of evidence has created a one-sided record of the contemporaneous press reports and media articles created at the time of the events in question”.<sup>16</sup>
9. In support of its Request, the defence submits that “the Chamber’s approach to the admission of media articles and press records is much broader than that advocated by the defence” and that this “discrepancy [...] has [led] to the evidence reflecting a one-sided picture of events in question”.<sup>17</sup> Accordingly, the defence submits that “it is in the interests of justice that the case file reflects an accurate and balanced overview of the media reports published concerning the events in the Central African Republic between October 2002 and March 2003”.<sup>18</sup>
10. With regard to its Alternate Request, the defence submits that the Documents “fall within the Chamber’s discretion for admission pursuant to Article 69(3)” on the basis that they “serve to present an alternative historical version of many of the questions central to the present proceedings, are relevant to core matters for determination of the Chamber, and their admission would serve to counter the prejudice caused by the prosecution’s wholesale failure to

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<sup>14</sup> ICC-01/05-01/08-3045-Conf, paragraph 7.

<sup>15</sup> ICC-01/05-01/08-3045-Conf, paragraph 7.

<sup>16</sup> ICC-01/05-01/08-3045-Conf, paragraph 7.

<sup>17</sup> ICC-01/05-01/08-3045-Conf, paragraph 16.

<sup>18</sup> ICC-01/05-01/08-3045-Conf, paragraph 16.

either search for or disclose exculpatory media or press articles in the present case”.<sup>19</sup>

11. The defence provides information on the content of the Documents and submits that they are admissible under the three-prong test of relevance, probative value, and prejudice.<sup>20</sup>
12. On 29 April 2014, the prosecution filed its “Prosecution Response in Opposition to ‘Defence Motion for Admission of Materials pursuant to Article 64(9) of the Rome Statute’” (“Prosecution Response”), in which it requests that the Chamber deny the Defence Motion.<sup>21</sup>
13. The prosecution refutes the defence’s complaint that the prosecution violated its statutory duty to disclose Article 67(2) material. The prosecution stresses that the Documents are not “new” evidence, noting that (i) two of the media articles were disclosed to the defence in October 2008, one of which has already been admitted into evidence, and (ii) nine of the media articles are substantially similar to other media articles disclosed in October 2008.<sup>22</sup>
14. In support of its request that the Chamber reject the Defence Motion, the prosecution submits that (i) the defence provides no justification for the late submission of the Documents pursuant to Regulation 35(2) of the Regulations of the Court (“Regulations”);<sup>23</sup> (ii) the defence was aware of the Chamber’s approach to the admission of media articles considerably in advance of its last decision on the admission of evidence;<sup>24</sup> (iii) the Documents are “at best of marginal relevance” which is “substantially outweighed [...] by the prejudice

<sup>19</sup> ICC-01/05-01/08-3045-Conf, paragraph 19.

<sup>20</sup> ICC-01/05-01/08-3045-Conf, paragraphs 20 to 57.

<sup>21</sup> Prosecution Response in Opposition to Defence Motion for Admission of Materials pursuant to Article 64(9) of the Rome Statute, 29 April 2014, ICC-01/05-01/08-3056-Conf.

<sup>22</sup> ICC-01/05-01/08-3056-Conf, paragraph 3.

<sup>23</sup> ICC-01/05-01/08-3056-Conf, paragraphs 9 to 11.

<sup>24</sup> ICC-01/05-01/08-3056-Conf, paragraph 12.

that admission could have on the length and efficiency of the proceedings”;<sup>25</sup> (iv) the Documents are of “marginal evidential value as they do not contain crucial information that bear[s] on material issues of dispute in the case”<sup>26</sup>; (v) there is no legal requirement that the Chamber “balance” the submission of evidence so that for every piece of incriminating evidence it must accept a piece of exonerating evidence;<sup>27</sup> (iv) much of the information contained in the articles is already in evidence;<sup>28</sup> and (v) “a reasonable reading of the articles does not suggest that they contain actual Article 67(2) material.”<sup>29</sup>

## II. Analysis and conclusions

15. 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), 67 and 69(3) and (4) of the Statute, and Regulations 20, 23bis(3), 29 and 35 of the Regulations.

*Request for admission of the Documents at the request of the defence pursuant to Article 64(9) of the Statute*

16. The Chamber recalls that in Decision 2855, it 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”.<sup>30</sup> The exceptions provided for in paragraphs 13 and 17 of that decision were both subject to the caveat that a substantiated request be submitted “*before* the Chamber declares the submission of evidence to be closed pursuant to Rule 141(1) of the Rules”.<sup>31</sup> Therefore, by submitting its Motion on 16 April 2014,

<sup>25</sup> ICC-01/05-01/08-3056-Conf, paragraph 13.

<sup>26</sup> ICC-01/05-01/08-3056-Conf, paragraph 14.

<sup>27</sup> ICC-01/05-01/08-3056-Conf, paragraph 15.

<sup>28</sup> ICC-01/05-01/08-3056-Conf, paragraph 15.

<sup>29</sup> ICC-01/05-01/08-3056-Conf, paragraph 16.

<sup>30</sup> ICC-01/05-01/08-2948, paragraph 4 and footnote 12 (emphasis added).

<sup>31</sup> ICC-01/05-01/08-2855, paragraph 17 (emphasis added).



i.e. more than five months after the deadline for the admission of remaining material into evidence and 9 days after declaration of the closure of the case pursuant to Rule 141(1) of the Rules, the defence missed the applicable deadlines.

17. Having failed to comply with the applicable deadlines, the defence was required to justify the late submission on the basis of Regulation 35(2) of the Regulations, which provides 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)”. 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”.<sup>32</sup>

18. Although the Defence Motion does not provide any explicit justification pursuant to Regulation 35(2) of the Regulations, the Chamber will nevertheless examine whether late submission was justified under this provision. In this regard, the Chamber notes the defence’s argument that “[h]aving closed the case on the same day as it rendered its final decision concerning 72 documents – 65 of which were admitted – the Chamber effectively undermined the exception it had previously granted” and that it was only with the issuance of the last decision on the admission of evidence on 7 April 2014,<sup>33</sup> that the defence was “able to reflect, for the first time, on the entirety of the evidence admitted in the present proceedings”, whereupon it

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<sup>32</sup> *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).

<sup>33</sup> ICC-01/05-01/08-3034-Conf.

identified a “specific and concrete prejudice, namely that the Trial Chamber’s approach to the admission of evidence has created a one-sided record of the contemporaneous press reports and media articles created at the time of the events in question”.<sup>34</sup>

19. In relation to the defence’s arguments, the Chamber recalls, first, that it set out its approach to the admission of media items as early as 6 September 2012, in its “Decision on the Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute” (“Decision 2299”),<sup>35</sup> and confirmed this approach in subsequent decisions on the admission of evidence.<sup>36</sup> In line with this approach, the Chamber admitted a number of media articles prior to the 8 November 2013 deadline.<sup>37</sup> After that deadline, the Chamber admitted additional articles which had been submitted by the prosecution and the legal representatives by the relevant deadline and/or disclosed to the defence sufficiently in advance.<sup>38</sup> Concerning the media articles admitted by the Chamber on its own motion,<sup>39</sup> the parties and

<sup>34</sup> ICC-01/05-01/08-3045-Conf, paragraph 7.

<sup>35</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, paragraphs 85 to 128. A public redacted version was issued on 8 October 2012, ICC-01/05-01/08-2299-Red.

<sup>36</sup> *See for example* 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, paragraph 25; ICC-01/05-01/08-2864-Conf, paragraphs 61 to 106.

<sup>37</sup> *See* ICC-01/05-01/08-2299, paragraphs 85 to 128, admitting 27 press and media articles and recordings; ICC-01/05-01/08-2721, paragraphs 23 to 25, admitting one media article; and ICC-01/05-01/08-2864-Conf, paragraphs 61 to 106, admitting seven press and media articles.

<sup>38</sup> By decisions ICC-01/05-01/08-2950-Conf, paragraphs 25 to 30, ICC-01/05-01/08-2974-Conf, paragraphs 45 to 52 and ICC-01/05-01/08-2981-Conf, paragraphs 16 to 39 and 57 to 64, six additional media articles were admitted, all submitted by the prosecution or Me Douzima prior to or on 8 November 2013. In addition, in decision ICC-01/05-01/08-3019-Conf, paragraphs 58 to 75, the Chamber admitted four further items, related to the testimony of Witness CHM-01, which had been submitted by the prosecution on 29 November 2013 and disclosed to the defence on 1 or 3 October 2008.

<sup>39</sup> By decision ICC-01/05-01/08-3034-Conf, paragraphs 101 to 136, 17 additional media items were admitted, these are: CAR-D04-0004-0030 and CAR-D04-0004-0032, disclosed by the defence on 20 April 2013; CAR-OTP-0071-0043, CAR-OTP-0071-0049, CAR-OTP-0071-0051, CAR-OTP-0005-0125 and CAR-OTP-0005-0127, disclosed by the prosecution on 15 March 2013; CAR-OTP-0071-0063, disclosed by the prosecution on 28 March 2013; CAR-DEF-0001-0205, disclosed by the defence on 25 November 2008; CAR-OTP-0069-0146, disclosed by the prosecution on 12 September 2012; CAR-OTP-0069-0271 and CAR-OTP-0069-0272, disclosed by the prosecution on 23 October 2012; CAR-OTP-0069-0303, disclosed by the prosecution on 15 November 2012; CAR-OTP-0030-0269, disclosed by the prosecution on 5 November 2008; CAR-D04-0002-1380, disclosed by the defence on 6 June 2011; CAR-OTP-0013-0098, disclosed by the prosecution on 3 October 2008; CAR-D04-0002-2027, disclosed by the defence on 23 September 2011.

participants were put on notice prior to the deadline and they were given an opportunity to make observations.<sup>40</sup> Accordingly, the Chamber is of the view that the defence had ample opportunity to respond to the potential admission of media articles submitted by the prosecution, the legal representatives and the Chamber, by submitting additional media articles. Moreover, the Chamber recalls that "the Court's legal framework does not grant the accused the right to be the last to present evidence",<sup>41</sup> or to submit evidence after the Chamber's final decision on the admission of evidence.<sup>42</sup>

20. In view of the above, the Chamber concludes that the defence failed to demonstrate that it was unable to file the application within the time limit for reasons outside its control. Having concluded that the conditions under Regulation 35(2) are not satisfied, the Chamber does not need to assess whether the defence has demonstrated "good cause" for requesting the submission of the Documents after the expiry of the time limit.

21. Despite having determined that the defence failed to comply with the deadline for the submission of the Documents into evidence and the requirements for an extension of time pursuant to Regulation 35(2) of the Regulations, the Chamber will nonetheless address the defence's Alternate Request that the Chamber order the submission of the Documents for the determination of the truth under Article 69(3) of the Statute, in the interests of justice pursuant to Regulation 29(1) of the Regulations.<sup>43</sup>

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<sup>40</sup> Order seeking observations on the submission as evidence of items used during the questioning of witnesses but not submitted as evidence by the parties or participants, 23 October 2013, ICC-01/05-01/08-2841, paragraph 10.

<sup>41</sup> ICC-01/05-01/08-2855, paragraph 15.

<sup>42</sup> In this regard, the Appeals Chamber previously held that the Chamber has discretion in deciding when admitting evidence at trial and may rule on the admissibility of evidence when the item is submitted or "defer its consideration [...] until the end of the proceedings, making it part of its assessment of the evidence when it is evaluating the guilt or innocence of the accused person." Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled "Decision on the admission into evidence of materials contained in the prosecution's list of evidence", 3 May 2011, ICC-01/05-01/08-1386.

<sup>43</sup> 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.

*Defence request for admission of the Documents pursuant to Article 69(3) of the Statute or in the interests of justice*

22. In the Alternate Request, the defence submits that the Documents “could also be properly admitted pursuant to the Chamber’s discretionary powers under Article 69(3) for the determination of the truth”.<sup>44</sup> In this respect, the defence argues that the Documents fall within the Chamber’s discretion for admission pursuant to Article 69(3) of the Statute since they “serve to present an alternative historical version of many of the questions central to the present proceedings, are relevant to core matters for determination of the Chamber, and their admission would serve to counter the prejudice caused by the Prosecution’s wholesale failure to either search for or disclose exculpatory media or press articles in the present case”.<sup>45</sup>

23. The Chamber previously described its power under Article 69(3) of the Statute in the following terms:<sup>46</sup>

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.

24. In the context of the Defence Motion and in relation to the “evidence already before it”, the Chamber notes that the majority of the information contained in the Documents is also provided in other documents which were previously admitted into evidence by the Chamber.<sup>47</sup> The Chamber further notes that one

<sup>44</sup> ICC-01/05-01/08-3045-Conf, paragraph 18.

<sup>45</sup> ICC-01/05-01/08-3045-Conf, paragraph 19.

<sup>46</sup> ICC-01/05-01/08-3029, paragraph 29.

<sup>47</sup> See for example documents referring to (i) **the arrival of Congolese soldiers as part of the the CEMAC forces and the presence of Libyan and Gabonese troops in the Central African Republic**: CAR-OTP-0005-0194, disclosed on 1 October 2008, admitted into evidence pursuant to Decision 2299-Conf and assigned EVD-T-OTP-00418, CAR-OTP-0013-0151, disclosed on 1 October 2008, admitted into evidence pursuant to

document referred to by the defence has already been admitted into evidence, although under a different ERN.<sup>48</sup>

25. In addition, the Chamber notes that the Documents exclusively comprise media articles and press releases. In relation to this category of evidence, the Majority of the Chamber has previously clarified that such items “may be admitted for limited purposes to be determined on a case-by-case basis”,<sup>49</sup> including, for example, to assess a witness’s testimony,<sup>50</sup> to corroborate other pieces of evidence,<sup>51</sup> or to show that the relevant events were widely reported.<sup>52</sup>

26. Considering that an essential part of the information contained in the Documents is already part of the evidence admitted by the Chamber and that media articles are only admitted for limited purposes, in exercising its

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Decision 2299 and assigned EVD-T-OTP-00447, CAR-OTP-0013-0005, disclosed on 3 October 2008, admitted into evidence pursuant to Decision 2299 and assigned EVD-T-00443; **(ii) the commission of crimes by other forces:** CAR-OTP-0013-0161, disclosed on 1 October 2008, admitted into evidence by Decision 2299 and assigned EVD-T-OTP-00448, CAR-OTP-0013-0005, disclosed on 3 October 2008, admitted into evidence pursuant to Decision 2299 and assigned EVD-T-00443, CAR-DEF-0001-0205, admitted into evidence pursuant to Decision ICC-01/05-01/08 and assigned EVD-T-CHM-00004; **(iii) allegations of bias and challenges to credibility of FIDH reports:** CAR-OTP-0013-0161, disclosed on 1 October 2008, admitted into evidence by Decision 2299 and assigned EVD-T-OTP-00448, CAR-OTP-0013-0005, disclosed on 3 October 2008, admitted into evidence pursuant to Decision 2299 and assigned EVD-T-00443 **(iv) measures taken by Mr Bemba to punish soldiers who committed crimes:** CAR-OTP-0013-0161, disclosed on 1 October 2008, admitted into evidence by Decision 2299 and assigned EVD-T-OTP-00448; **(v) the national dialogue, the 2002-2003 conflict meeting in Paris and the modalities of and reasons behind the “retreat” of MLC troops:** CAR-OTP-0057-0243, disclosed on 10 May 2013, admitted into evidence pursuant to Decision 2299-Conf and assigned EVD-T-CHM-00042, CAR-OTP-0013-0005, disclosed on 3 October 2008, admitted into evidence pursuant to Decision 2299 and assigned EVD-T-00443.

<sup>48</sup> Document CAR-D04-0004-0379 was previously admitted as CAR-OTP-0013-0106 at 0108 in the “Decision on the ‘Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute’ (ICC-01/05-01/08-2854)”, 14 February 2014, ICC-01/05-01/08-2974-Conf-AnxA, paragraph 72(i).

<sup>49</sup> See for example ICC-01/05-01/08-2299-Red, paragraph 101. Judge Ozaki dissented on the Majority’s approach to the admission of press and media reports. She finds that such documents lack probative value and that there is a real potential for prejudice if they were to be admitted for the truth of their contents. However, Judge Ozaki further specifies that she does not object to the admission of media reports for the purpose of the Chamber’s determination of whether crimes committed by MLC troops in the CAR in 2002 and 2003 were widely reported, which may be of relevance to the accused’s knowledge of the alleged crimes: 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, paragraphs 4, 8 and 9.

<sup>50</sup> See for example ICC-01/05-01/08-2299-Red, paragraphs 94 and 111; Third Decision on the prosecution and defence requests for the admission of evidence, 6 November 2013, ICC-01/05-01/08-2864-Conf, paragraphs 68 and 76.

<sup>51</sup> See for example ICC-01/05-01/08-2299-Red, paragraphs 101, 104 and 107; ICC-01/05-01/08-2864-Conf, paragraph 76.

<sup>52</sup> ICC-01/05-01/08-2299-Red, paragraphs 104, 107; See also ICC-01/05-01/08-2864-Conf, paragraph 68.

discretion under Article 69(3) of the Statute, the Chamber finds that the Documents are not necessary for the determination of the truth.

27. Finally, the Chamber notes the defence's submission that the discrepancy between the Chamber's broad approach to the admission of media articles and the position advocated by the defence has [led] to the "evidence reflecting a one-sided picture of [the] events in question" and that "it is in the interests of justice that the case file reflects an accurate and balanced overview of the media reports published concerning the events in the Central African Republic between October 2002 and March 2003".<sup>53</sup>

28. As emphasized in paragraph 19 above, the Chamber outlined its approach to the admission of media items as early as 6 September 2012, and confirmed this approach in subsequent decisions on the admission of evidence. Accordingly, the defence could have anticipated the admission of particular media articles and could have submitted additional media articles to prevent or respond to any alleged imbalance.

29. The Chamber further recalls its finding in paragraph 24 above that an essential part of the information contained in the Documents is also provided in other documents which were previously admitted into evidence by the Chamber. Accordingly, the Chamber finds no merit in the defence's allegations as to a "one-sided picture of [the] events in question" and therefore concludes that an admission of the Documents in the interests of justice is not warranted.

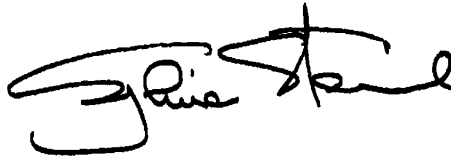
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<sup>53</sup> ICC-01/05-01/08-3045-Conf, paragraph 16.

30. In view of the above, the Chamber hereby

- (i) REJECTS the Defence Motion; and
- (ii) DIRECTS the parties to file by 6 June 2014 public redacted versions of the Defence Motion and the Prosecution Response or to inform the Chamber that the documents can be reclassified as public without redactions.

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



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**Judge Sylvia Steiner**



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Dated this 28 May 2014

At The Hague, the Netherlands