

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 August 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 “Transmission of a Submission from the Defence for Mr. Fidèle Babala Wandu dated 15 August 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

Counsel for the Defence

Mr Peter Haynes

Ms Kate Gibson

Ms Melinda Taylor

Legal Representatives of the Victims

Ms Marie Edith Douzima-Lawson

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

**Other
Pre-Trial Chamber II**

Trial Chamber III (“Chamber” or “Trial Chamber”) of the International Criminal Court (“Court” or “ICC”) in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”) issues the following Decision on “Transmission of a submission from the Defence of Mr. Fidèle Babala Wandu dated 15 August 2014” (“Decision”).

I. Background and submissions

1. On 15 August 2014, the Registry filed its “Transmission of a submission from the Defence of Mr. Fidèle Babala Wandu dated 15 August 2014”,¹ in which it transmitted a submission entitled “Requête URGENTE de la Défense de M. Babala dans l’affaire ICC-01/05-01/13 tendant à obtenir de la Chambre de première instance III l’autorisation d’accès à la Décision ICC-01/05-01/08-3019 rendue le 17 mars 2014 dans l’affaire *le Procureur c. Jean-Pierre Bemba Gombo*” (“Request”),² from the defence for Mr. Fidèle Babala Wandu (“Mr Babala’s defence”) 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”).
2. Mr Babala’s defence requests that the Chamber grant it access to the Chamber’s “Decision on the admission into evidence of items deferred in the Chamber’s previous decision, items related to the testimony of Witness CHM-01 and written statements of witnesses who provided testimony before the

¹ Transmission of a submission from the Defence of Mr. Fidèle Babala Wandu dated 15 August 2014, 15 August 2014, ICC-01/05-01/08-3115-Conf and confidential Annex1. The Chamber notes that the Registry’s submission and its Annex are classified as confidential. However, in light of the principle of publicity of the proceedings the present Decision is classified as public. To the extent that the Decision makes reference to confidential filings or documents, the Chamber is of the view that these references do not undermine the confidentiality of the information.

² Requête URGENTE de la Défense de M. Babala dans l’affaire ICC-01/05-01/13 tendant à obtenir de la Chambre de première instance III l’autorisation d’accès à la Décision ICC-01/05-01/08-3019 rendue le 17 mars 2014 dans l’affaire *le Procureur c. Jean-Pierre Bemba Gombo*, 15 August 2014, ICC-01/05-01/08-3115-Conf-Anx1.

Chamber” (“Decision 3019”).³ In Decision 3019, the Chamber decided on the admissibility into evidence of, *inter alia*, a series of items submitted into evidence by the defence of Mr Jean-Pierre Bemba Gombo in the *Bemba* case and challenged as fraudulent by the Office of the Prosecutor (“prosecution”) (“contested documents”).

3. Mr Babala’s defence submits that a statement included in a filing by the defence of Mr Aimé Kilolo Musamba (“Mr Kilolo’s defence”) in case ICC-01/05-01/13 brought Decision 3019 to its attention.⁴ Mr Babala’s defence alleges that Mr Kilolo’s defence stated that the Chamber issued a decision on 17 March 2014 denying the prosecution’s request for the Chamber to reject the contested documents as forged.⁵ According to Mr Babala’s defence, Mr Kilolo’s defence further stated that the Chamber found the contested documents to have probative value and rejected the prosecution’s request which was premised on the falsification of the contested documents.⁶

II. Analysis and conclusions

4. In accordance with Article 21(1) of the Rome Statute (“Statute”), the Chamber has considered Article 64(6)(f) of the Statute.
5. Decision 3019 details the Chamber’s reasoning for admitting the contested documents into evidence.⁷ In particular, the Chamber stated:

49. In terms of probative value, the Chamber notes that, on their face, the documents, when submitted and discussed bore some indicia of authenticity

³ Decision on the admission into evidence of items deferred in the Chamber’s previous decision, 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. A Public Redacted version of Decision 3019 was filed on 26 August 2014, ICC-01/05-01/08-3019-Red.

⁴ ICC-01/05-01/08-3115-Conf-Anx1, paragraph 5.

⁵ ICC-01/05-01/08-3115-Conf-Anx1, paragraph 5.

⁶ ICC-01/05-01/08-3115-Conf-Anx1, paragraph 5.

⁷ ICC-01/05-01/08-3019-Red, paragraphs 41 to 50.

– such as letter heads, dates, stamps and signatures – and appeared to have been produced in the ordinary course of operations within the CAR’s Presidency and Defence Ministry. At the same time, the Chamber notes the prosecution’s allegations with regard to the authenticity of the Contested Items. Specifically, when presented with the Contested Items, Witness CHM-01 stated that each of the documents was “a fabrication” or “a forgery”. [REDACTED] documents CAR-D04-0003-0130, CAR-D04-0003-0131, CAR-D04-0003-0132, CAR-D04-0003-0133, CAR-D04-0003-0136, CAR-D04-0003-0137, or CAR-D04-0003-0140. However, the Chamber notes that Witness D04-53 testified to the effect that he considered all documents presented to him by the defence to be accurate and did not assess their validity. The Chamber also notes that the defence challenges Witness CHM-01’s contentions in relation to the Contested Documents.⁸

50. In view of their use during proceedings and the reliance placed on them by Witnesses D04-53 and D04-59, the Chamber is of the view that the Contested Documents have relevance and probative value with respect to the Chamber’s analysis of the testimonies of Witnesses D04-53, D04-59, and CHM-01, and its overall determination of the truth with respect to the chain of command and control of the MLC troops in the CAR during the relevant time period. In its final assessment of the evidence, the Chamber will consider all submissions and testimonial evidence related to the authenticity of the Contested Documents, as summarised above. Given that this approach will allow the Chamber to fully consider all arguments and relevant evidence, the Chamber is of the view that the potential for the admission of the Contested Documents to have a prejudicial effect on the fairness of the trial is minimal and outweighed by their relevance and probative value. Documents CAR-D04-0003-0128/CAR-D04-0003-0135, CAR-D04-0003-0129, CAR-D04-0003-0130, CAR-D04-0003-0131, CAR-D04-0003-0132, CAR-D04-0003-0133, CAR-D04-0003-0134, CAR-D04-0003-0136, CAR-D04-0003-0137, CAR-D04-0003-0138, CAR-D04-0003-0139, CAR-D04-0003-0140, and CAR-D04-0003-0141 are therefore admitted. With respect to document CAR-D04-0003-0128/CAR-D04-0003-0135, the Chamber considers that in order to retain a complete record of the document’s use in proceedings, both versions should be admitted but under a single EVD-T number.⁹

6. Accordingly, the Chamber has admitted the contested items into evidence only to the extent that they have “relevance and probative value *with respect to the Chamber’s analysis of the testimonies of Witnesses D04-53, D04-59, and CHM-01, and its overall determination of the truth with respect to the chain of command and control of the MLC troops in the CAR during the relevant time*

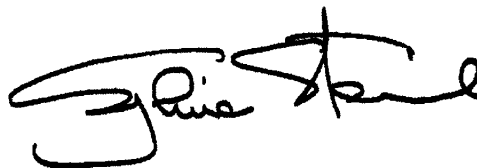
⁸ ICC-01/05-01/08-3019-Red, paragraph 49 [footnotes omitted].

⁹ ICC-01/05-01/08-3019-Red, paragraph 50.

period”.¹⁰ Further, the Chamber stressed that “[i]n its final assessment of the evidence, the Chamber will consider all submissions and testimonial evidence related to the authenticity of the Contested Documents.”¹¹ Consequently, the Chamber did not rule on the authenticity of the contested documents, and elected to consider all arguments and relevant testimonial evidence when making its judgment under Article 74 of the Statute.

7. As a public redacted version of Decision 3019 has been issued,¹² and in light of the above, the Chamber hereby **REJECTS** the Request as moot.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 26 August 2014

At The Hague, the Netherlands

¹⁰ ICC-01/05-01/08-3019-Red, paragraph 50 [emphasis added].

¹¹ ICC-01/05-01/08-3019-Red, paragraph 50.

¹² The Public Redacted version of Decision 3019 was filed on 26 August 2014, ICC-01/05-01/08-3019-Red.