

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **27 June 2013**

**TRIAL CHAMBER III**

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

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

**Public**

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

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

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr Jean-Jacques Badibanga

**Counsel for the Defence**

Mr Aimé Kilolo-Musamba  
Mr Peter Haynes

**Legal Representatives of the Victims**

Ms Marie-Edith Douzima Lawson  
Mr Assingambi Zarambaud

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the  
Defence**

Mr Xavier-Jean Keïta

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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**Judge Kuniko Ozaki**

**Dated this 27 June 2013**

**At The Hague, The Netherlands**

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