

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/05-01/08
Date: 8 November 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***

**Confidential Document
With
Confidential Annex A**

**Prosecution's Application for Admission of
Materials into Evidence Pursuant to Article 64(9) of the Rome Statute**

Source: Office of the Prosecutor

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

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I. Introduction

1. The Office of the Prosecutor ("Prosecution") seeks the admission of seven documents from the bar table pursuant to Articles 64(9) and 69(2), (3) and (4) of the Rome Statute ("Statute") and Rule 63(2) and (5) of the Rules of Procedure and Evidence ("Rules").¹ The materials sought to be tendered were used during the testimony of CAR-D04-PPPP-0054 ("D04-54"). The Prosecution will make another application in due course, if necessary, for any subsequent witnesses called to testify.

2. The procedure of tendering materials from the bar table has been accepted by Chambers of the International Criminal Court,² including Trial Chamber III ("Chamber").³ In its first decision on the admission of evidence on 15 December 2011⁴ ("First Admission Decision"), the Chamber held that the use of a bar table motion is a permissible way to seek the admission of documentary evidence.⁵

3. Independently of the form of submission, in applying the principle of free assessment of evidence submitted to determine its relevance or admissibility pursuant to Rule 63(2) of the Rules, the Chamber has repeatedly referred to the three-part test whereby it would examine, on a preliminary basis, whether the submitted materials: (i) are relevant to the trial; (ii) have probative value; and (iii) are

¹ ICC-01/05-01/08-2855, Decision on the motion for clarification and reconsideration of the timetable for the parties' final submissions of evidence, 30 October 2013, para. 18 wherein the Chamber ruled that it "EXTENDS the deadline set out in Order 2824 to 8 November 2013 for both parties to submit: (i) any applications for the admission into evidence of material used during the testimony of Witnesses D04-15 and D04-54; and (ii) any applications for the admission of any remaining material into evidence pursuant to Article 64(9) (a) of the Statute." The Prosecution submitted an application for documents used during the testimony of D04-15 and other additional documents on 30 October 2013 in ICC-01/05-01/08-2854+Conf-AnxA.

² ICC-01/04-01/06-1981, Decision on the admission of material from the bar table, 24 June 2009; and ICC-01/04-01/07-2635, Decision on the Prosecutor's Bar Table Motions, 17 December 2010.

³ ICC-01/05-01/08-2012-Red, Public redacted version of First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011, 9 February 2012; and ICC-01/05-01/08-2299-Red, 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.

⁴ ICC-01/05-01/08-2012-Red.

⁵ *Ibid*, para. 55.

sufficiently relevant and probative to outweigh any prejudicial effect that could be caused from their admission ("Three-stage test").⁶

4. The Prosecution submits the proposed items for the truth of their content and in some cases without calling the authors of these materials or the individuals who provided the information contained therein to testify at trial. The proposed items are relevant, probative to issues at trial, and bear sufficient indicia of reliability to outweigh any prejudicial effect, in order for the Chamber to assess freely the weight to be attached to these items against the entire record of the trial. The items are pertinent to the "...determination of the truth" and they corroborate evidence already received by the Chamber in the course of the trial.

5. The admission of these items thus satisfies the requirements under Articles 64(2) and 67(1) of the Statute by furthering the goal of expeditiousness without infringing on the Chamber's obligation to ensure that the trial is fair. By virtue of its lists of documents for the examination of Defence witnesses, the Prosecution has put Jean-Pierre Bemba Gombo ("Accused") on sufficient notice of its intention to request the admission of the proposed items. Not only did the Prosecution indicate its intention to tender in these various lists of documents; it subsequently made use of these items during the hearings where the Defence was afforded the opportunity to re-examine witnesses after the Prosecution's examination on these items. Consequently, the admission of the proposed items will not unfairly prejudice the Accused.

II. Annex A

6. Annex A appended to this application lists in respect of each item proposed for admission: (i) Evidence Registration Number ("ERN"); (ii) Title; (iii) Date, where

⁶ See, for example, ICC-01/05-01/08-2012-Red, para. 13; and ICC-01/05-01/08-2299-Red, paras. 7 and 8.

available; (iv) Source/ author; (v) Description of item; (vi) Relevance; (vii) Probative value; and (viii) Date of disclosure.

III. Overview of bar table materials

7. This consists of seven documents used during the testimony of D04-54: one book written by the Accused, one military file, and five contemporaneous press articles from *Le Confident*, *Le Citoyen* and a press release from a member of the Central African Republic National Assembly. The Chamber previously rejected admission of one *Le Citoyen* article, CAR-OTP-0013-0082, since the Chamber found that the document was missing pages.⁷ The Prosecution submits that no material page is missing and the relevant article is complete. The article itself skips from page 6 to page 9 as evidenced by the hyphen between the word "*réflé-chir*". Read in context, the end of the sentence on page 9 is a continuation of the beginning of the sentence on page 6. Annex A contains detailed information under Article 69(4) for each of the seven documents for the Chamber's consideration.

IV. Request for confidentiality

8. The Prosecution requests that this cover filing be received as "Confidential" because although there is no identifying information, the documents identified were used during closed session hearings for the examination of D04-54.⁸ Annex A to this application be received by the Chamber as "Confidential" due to the confidential nature of the information contained therein.

⁷ See, ICC-01/05-01/08-2299-Conf, Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, 6 September 2012, para. 116.

⁸ The Prosecution does not object to a reclassification of this cover filing as "public" should the Chamber wish to do so.

V. Relief sought

9. For the reasons set out above, the Prosecution requests that all items listed in Annex A be admitted into evidence.



Fatou Bensouda, Prosecutor

Dated this 8th Day of November 2013

At The Hague, The Netherlands