

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **31 March 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 Redacted Document
with
Public Redacted Annex A**

**Public Redacted Version of "Request to Reject Admission into Evidence of Several
Fraudulent Documents Disclosed by the Defence on 12 July 2012 and Submitted
on 16 August 2012", ICC-01/05-01/08-2301-Conf, 6 September 2012**

Source: The 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”) requests Trial Chamber III (“Chamber”) to exclude from admission 11 apparently fraudulent documents disclosed by the Defence on 13 July 2012. These documents include several governmental instructions and messages allegedly emanating from former or existing Central African Republic (“CAR”) authorities. The Defence requested to tender them into evidence on 16 August 2012 during the testimony of Defence Witness CAR-D04-PPPP-0053 (Witness D-53).¹

2. The Prosecution submits that based on its findings the documents at issue are plainly forgeries and as such have no probative value. These documents fail to meet the threshold required by Article 69(4) of the Rome Statute and their admission into evidence would be highly prejudicial to a fair trial and to the fair evaluation of the testimony of witnesses.

II. Request for confidentiality

3. The Prosecution requests that this filing and its annex be submitted as “Confidential” because they contain information about the identity of both Prosecution as well as Defence witnesses and, in addition, refer to confidential material or correspondence between parties.

III. Background

4. On 13 July 2012 the Defence disclosed to the Prosecution a list of documents to be relied upon during the presentation of the Defence case, containing the 11

¹ ICC-01/05-01/08-T-231-CONF-ENG ET, 16 August 2012, p. 59.

documents at issue:² CAR-D04-0003-0128, CAR-D04-0003-0130, CAR-D04-0003-0131, CAR-D04-0003-0132, CAR-D04-0003-0133, CAR-D04-0003-0135, CAR-D04-0003-0136, CAR-D04-0003-0137, CAR-D04-0003-0138, CAR-D04-0003-0139 and CAR-D04-0003-0140.

5. Based on the information on the chain-of-custody submitted by the Defence, all of these documents were given to Maitre Kilolo Musamba by Defence Witness [REDACTED], Mr. Narcisse Arido, on 21 February 2012.

6. On 6 August 2012, the Defence submitted to the Chamber, parties and participants a list of documents, including the above-listed documents, which it intended to use and tender into evidence during the examination of Witness D-53.³

7. During the trial hearing of 16 August 2012, the Defence sought to tender the 11 documents into evidence through their military expert, Witness D-53.⁴ The Prosecution objected to the Defence request on the basis that the expert witness was in no position to authenticate any of the documents in question.⁵ In addition, the legal representative of victims, in using the same documents, challenged Witness D-53's testimony regarding several aspects of their content, including the date of General Gambi's appointment as *Brigadier Général*, establishing that those documents allegedly authored by General Gambi bore varying letterheads and not his signature.⁶

² ICC-01/05-01/08-2243-Conf-AnxB, Defence Disclosure of its List of Witnesses and the Factual and Legal Elements of its Case, 13 July 2012.

³ Email from the Defence to the parties sent on 6 August 2012 at 16:01 hours.

⁴ ICC-01/05-01/08-T-231-CONF-ENG ET, p. 59, lines 16 to 25.

⁵ *Ibid*, p. 60, lines 7 to 18.

⁶ ICC-01/05-01/08-T-234-CONF-ENG ET, p. 29, line 9 to p. 36, line 12.

8. Subsequent to the hearing of 16 August 2012, the Prosecution requested to inspect several Defence documents, including the 11 documents in question.⁷ The Defence indicated to the Prosecution that it is not in possession of the original documents and therefore the Prosecution was only permitted to inspect the copies of the documents that were submitted to e-court.⁸

IV. Prosecution's findings

9. Having reviewed the documents in their entirety, the Prosecution noted the apparent differences that they bore in relation to their content, signatures, layout, headings, stamps, abbreviations, list of recipients etc. Accordingly, the Prosecution took steps to investigate the authenticity of these documents. [REDACTED]

10. [REDACTED] provided his statement on [REDACTED] 2012.⁹ It was disclosed to the Defence and participants on 6 September 2012.¹⁰ [REDACTED] provided his statement with regard to seven 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 and CAR-D04-0003-0140, [REDACTED]. Below is a summary of [REDACTED] statement with regard to each of the documents:

- a. With regard to document CAR-D04-0003-0136, [REDACTED] states that it is a forgery; it does not bear [REDACTED]; it indicates that [REDACTED] was a [REDACTED] in 2002 when [REDACTED] was only given that rank on [REDACTED]; and it falsely lists [REDACTED] title as that of *Chef d'Etat-Major* at the time [REDACTED].¹¹ He further states that the reference number of the document is not the one used by the *Etat-Major*; that the

⁷ Email from the Prosecution to the Defence sent on 16 August 2012 at 17:15 hours (Annex A).

⁸ Emails from the Defence to the Prosecution sent on 24 August 2012 at 18:55 hours and 28 August 2012 at 03:32 (Annex A).

⁹ CAR-OTP-0069-0010.

¹⁰ ICC-01/05-01/08-2298+Conf-AnxA, Prosecution's Communication of Rule 77 Evidence Disclosed to the Defence on 6 September 2012, 6 September 2012.

¹¹ CAR-OTP-0069-0010, at 0027.

layout of the text is not the one used by the *Etat-Major* (for example, instead of “XX” as marked in the text, the expression “STOP” would have been used), and the stamp utilized has been tampered with. With regard to the recipients, [REDACTED] says that the *Chef d’Etat-Major* addresses the Chiefs of Corps, Regiments or Battalions and not the Unit Commanders or Companies.¹²

- b. With regard to each of the remaining documents allegedly signed by [REDACTED], i.e. CAR-D04-0003-0130, CAR-D04-0003-0131, CAR-D04-0003-0132, CAR-D04-0003-0133, CAR-D04-0003-0137 and CAR-D04-0003-0140, [REDACTED] states that they too are forgeries for the same reasons as above.¹³ In addition, with regard to CAR-D04-0003-0137 he states that the *Chef d’Etat-Major* does not address himself to the *Mouvement de Libération du Congo* (“MLC”), which was a foreign entity, and the *Chef d’Etat-Major* could not undertake the responsibilities described in the document.¹⁴ With regard to CAR-D04-0003-0130, [REDACTED] specified that although at the purported time of the forged document [REDACTED] was the [REDACTED], contrary to what the forged document indicates [REDACTED] was not yet a [REDACTED] and as one can see the headers of the documents are also different from the previous documents.¹⁵ With regard to CAR-D04-0003-0131, he specified that one never sends written documents, like the document in issue, to the *Deuxième Bureau*.¹⁶ With regard to CAR-D04-0003-0133’s content, [REDACTED] further specified that the document “mentions vehicles made available to the MLC. But we already had vehicle problems. We had problems with means of mobility.

¹² CAR-OTP-0069-0010, at 0028-0029.

¹³ CAR-OTP-0069-0010, at 0032, 0034-0038.

¹⁴ CAR-OTP-0069-0010, at 0033.

¹⁵ CAR-OTP-0069-0010, at 0035.

¹⁶ CAR-OTP-0069-0010, at 0036.

We did not have a stock of reserve vehicles. That's fiction, all that. We didn't have any jeeps in the Army. It's pure fantasy. It's made up."¹⁷

- c. In addition to his statement, [REDACTED] provided the Prosecution with two documents, CAR-OTP-0069-0043 and CAR OTP-0069-0045. The first document is "*Décret Numéro 03 013 portant nomination aux postes de responsabilités des officiers supérieurs de l'armée nationale*", signed on 16 January 2003 by the President of CAR, Ange-Félix Patassé, appointing Colonel Antoine Gambi to the post of *Chef d'Etat-major des Armées*.¹⁸ The second document is "*Décret Nr 03 096 portant promotion d'officiers supérieurs de l'armée nationale*". It is signed on 31 May 2003 by the *Général de Division* François Bozizé and promotes Colonel Antoine Gambi to the grade of *Brigadier Général*.¹⁹ [REDACTED] attested that the documents provided were true copies of the originals. Both documents were disclosed to the Defence and participants on 6 September 2012.²⁰ Both decrees are further independent proof that the documents in question are forgeries.

11. The Prosecution further notes that [REDACTED] was previously interviewed by the Prosecution, and his first statement of [REDACTED] 2008 was disclosed to the Defence on 9 November 2009.²¹ That statement clearly indicates that [REDACTED]²². [REDACTED] This is in direct contradiction to the information contained in his previously-disclosed statement of [REDACTED] 2008. The Prosecution is not aware that the Defence took any steps to interview [REDACTED] or otherwise tried to resolve the obvious discrepancy between the documents and [REDACTED] statement.

¹⁷ CAR-OTP-0069-0010, at 0038.

¹⁸ CAR-OTP-0069-0043 at 0044.

¹⁹ CAR-OTP-0069-0045 at 0046.

²⁰ ICC-01/05-01/08-2298+Conf-AnxA.

²¹ CAR-OTP-0008-0219.

²² [REDACTED]

12. With respect to the four remaining proffered Defence exhibits, the Prosecution obtained a statement, CAR-OTP-0069-0083 from [REDACTED] 2012. It was disclosed to the Defence and participants on 6 September 2012.²³ [REDACTED] provided his statement with regard to documents CAR-D04-0003-0139, CAR-D04-0003-0138, CAR-D04-0003-0135 and CAR-D04-0003-0128, [REDACTED], during the period relevant to the charges. Below is a summary of [REDACTED] statement with regard to each of the documents:

- a. With regard to CAR-D04-0003-0139, [REDACTED] states that the document was not issued by [REDACTED] cabinet because it does not bear [REDACTED] signature and because of what it states. He believes that the document was done to cover MLC military elements that were already located there.²⁴
- b. With regard to CAR-D04-0003-0138, [REDACTED] states that the document is forged and that this is evident from the content of the document. For example, he says that [REDACTED] could not have given instructions to General Yangongo who was superior to [REDACTED].²⁵ [REDACTED] further specified that, [REDACTED] had never received any such presidential instructions as those listed in the document.²⁶
- c. With regard to documents CAR-D04-0003-135 and CAR-D04-0003-0128, which are two copies of the same document, [REDACTED] and that the content of the document is inconsistent with [REDACTED] actions at the time.²⁷

²³ ICC-01/05-01/08-2298+Conf-AnxA.

²⁴ CAR-OTP-0069-0083 at 0097.

²⁵ *Ibid*, at 0099.

²⁶ *Ibid*, at 0099.

²⁷ *Ibid*, at 0101.

V. Prosecution's submissions

13. The Chamber has adopted the three-part test formulated by Trial Chambers I²⁸ and II²⁹ to determine the admissibility of tendered evidence. The Chamber will assess whether the submitted materials (i) are relevant to the trial, (ii) have probative value, and (iii) are sufficiently relevant and probative to outweigh any prejudicial effect that could be caused by their admission.³⁰

14. In its decision on the admission of evidence on 15 December 2011 ("First Admission Decision"), the Chamber established that in order for it to determine if an item of potential evidence has probative value, it must assess the reliability, trustworthiness, accuracy or voluntariness that inhere in the item as well as the circumstances in which the evidence arose.³¹ Furthermore, the extent to which the item of potential evidence has been authenticated also may be taken into consideration.³²

15. The Chamber further held that it would exclude potential evidence if one or more elements of the three-part test is clearly not met.³³ Trial Chamber I further cautioned that in evaluating the probative value of an item against its prejudicial effect, "it must be careful to ensure that it is not unfair to admit the disputed

²⁸ ICC-01/04-01/06-1399-Corr, Corrigendum to Decision on the admissibility of four documents, 20 January 2011, paras. 27-32.

²⁹ ICC-01/04-01/07-2289-Corr-Red, Corrigendum to the Decision on the Prosecution Motion for admission of prior recorded testimony of Witness P-02 and accompanying video excerpts, 27 August 2010, para. 13.

³⁰ ICC-01/05-01/08-2012-Red, Public Redacted version of the First decision on the prosecution and defence requests for the admission of evidence, 15 December 2011, para. 13; *see also* 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. 8.

³¹ ICC-01/05-01/08-2012-Red, para. 15; ICC-01/04-01/06-1399-Corr, paragraphs 28-29; ICC-01/04-01/06-2595-Red-Corr, Corrigendum to Redacted Decision on the defence request for the admission of 422 documents, 8 March 2011, para. 39.

³² ICC-01/04-01/07-2635, Decision on the Prosecutor's Bar Table Motions, 17 December 2010, para. 22.

³³ ICC-01/05-01/08-2012-Red, para. 17.

material, [...] because evidence of slight or minimal probative value has the capacity to prejudice the Chamber's assessment of the issues in the case".³⁴

16. Given the information set forth above, the Prosecution submits that the documents at issue are plainly inauthentic. As such, they have no probative value, their admission would be prejudicial, and they should be excluded.

VI. Relief sought

17. The Prosecution requests that the Chamber exclude from admission documents CAR-D04-0003-0128, CAR-D04-0003-0130, CAR-D04-0003-0131, CAR-D04-0003-0132, CAR-D04-0003-0133, CAR-D04-0003-0135, CAR-D04-0003-0136, CAR-D04-0003-0137, CAR-D04-0003-0138, CAR-D04-0003-0139 and CAR-D04-0003-0140, disclosed by the Defence on 12 July 2012 and asked to be tendered into evidence on 16 August 2012.



Fatou Bensouda, Prosecutor

Dated this 31st Day of March 2014

At The Hague, The Netherlands

³⁴ ICC-01/04-01/06-1399-Corr, para. 31.