

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 22 June 2016

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 version of

**“Partly Dissenting Opinion of Judge Ozaki on the Second Decision on the admission into evidence of material used during the questioning of witnesses”,
ICC-01/05-01/08-2688 of 14 June 2013**

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

REGISTRY

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 paragraphs 19, 25, 86 and 99 of the “Second Decision on the admission into evidence of material used during the questioning of witnesses”¹ (“Decision”) and will address the reasons underlying my disagreement with the Majority over those paragraphs.
2. The defence seeks the admission into evidence of the application for participation of dual status Witness 110², on the basis that it was used during questioning and is relevant to the Chamber’s credibility assessment of this witness.³ The prosecution does not object to the admission of this document. This Chamber has previously held that “[i]f an item’s admissibility is uncontested, this will weigh heavily in favour of admission, and the Chamber will exclude the item only if one or more elements of the three-part test above are clearly not met”.⁴
3. The Majority declined to admit the application at issue, on the basis that its probative value is outweighed by the potential prejudice admission could cause.⁵ I am of the view that it is relevant for the evaluation of the credibility of Witness 110, and possesses adequate probative value, not least because the witness authenticated the document in court and was questioned on its content during oral testimony.⁶ Furthermore, I do not believe its admission would cause any prejudice. For these reasons, I would admit this document into evidence. I also refer to my previous dissent regarding the admission of victims’ applications, which sets out my general approach to these materials.⁷

¹ 14 June 2013, ICC-01-05-01/08-2688-Conf.

² ICC-01/05-01/08-796-Conf-Anx151-Red2,

³ Defence submission in compliance with the *Order on the procedure relating to the submission of evidence*, 1 May 2012, ICC-01/05-01/08-2198, paras 9 – 11 and ICC-01/05-01/08-2198-Conf-AnxA, page 2.

⁴ Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011, 9 February 2012, ICC-01/05-01/08-2012-Red, para. 17.

⁵ ICC-01/05-01/08-2688-Conf, para. 19.

⁶ Transcript of hearing on 13 June 2011, ICC-01/05-01/08-T-127-Red-ENG WT, page 48, line 15 to page 50, line 25.

⁷ Public Redacted Version of the Partly Dissenting Opinion of Judge Kuniko Ozaki on the First decision on the prosecution and defence requests for the admission of evidence of 15 December 2011, 14 February 2012, ICC-01/05-01/08-2015-Red, paras 7 – 23.

4. The defence also seeks admission of excerpts from a book [REDACTED].⁸ The defence questioned the witness extensively concerning a number of statements in this book, and his testimony on this subject is adequately reflected in the record. Therefore, I agree with the view of the Majority that admission of the excerpts is unnecessary as it will not aid in the Chamber's assessment of [REDACTED] testimony.⁹ For this reason, I concur with the Majority's decision not to admit CAR-D04-0002-1988 into evidence. However, I do not join the reasoning of the Majority insofar as it would exclude the document on the basis that it constitutes excerpts rather than the whole book.¹⁰ I refer in this regard to my dissent on the issue of submission of evidential materials in their entirety.¹¹
5. The Majority declined to admit into evidence a copy of portions of Witness 213's passport,¹² on the basis of its "principled approach to the admission of documents, which calls for them to be admitted in full rather than as excerpts".¹³ As set out above, I have previously dissented on this issue.¹⁴ With regard to the passport, which was used during the questioning of Witness 213 by the defence, I am of the view that the excerpts are relevant to his testimony and should be admitted into evidence, particularly given that the prosecution does not oppose their admission.
6. Finally, I turn to the statements of two witnesses called by the Legal Representative of Victims (Witness V20-0001 and Witness V20-0002).¹⁵ I concur with the Majority's admission of these documents into evidence insofar as their admission is uncontested. I do not join the Majority in its finding that the

⁸ CAR-D04-0002-1988.

⁹ [REDACTED].

¹⁰ ICC-01/05-01/08-2688-Conf, para. 25.

¹¹ Partly Dissenting Opinion of Judge Kuniko Ozaki on the Order on the procedure relating to the submission of evidence, 31 May 2011, ICC-01/05-01/08-1471, paras 7 – 10.

¹² CAR-OTP-0056-0384.

¹³ ICC-01/05-01/08-2688-Conf, para. 86.

¹⁴ ICC-01/05-01/08-1471, paras 7 – 10.

¹⁵ CAR-V20-0001-0001, CAR-V20-0001-0018 and CAR-V20-0001-0128.

statements are admitted “for the limited purpose of complementing [the witnesses’] oral evidence”.¹⁶ In this regard, I refer to my previous dissent¹⁷ setting out my views on the admission of statements to “complement” oral testimony.¹⁸

7. For the reasons set out above, I would admit into evidence documents ICC-01/05-01/08-796-Conf-Anx151-Red2 and CAR-OTP0056-0384 and I concur with the admission into evidence of CAR-D04-0002-1988; CAR-V20-0001-0001; CAR-V20-0001-0018; and CAR-V20-0001-0128.

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



Judge Kuniko Ozaki

Dated this 22 June 2016

At The Hague, The Netherlands

¹⁶ ICC-01/05-01/08-2688-Conf, para. 99.

¹⁷ ICC-01/05-01/08-2015-Red.

¹⁸ ICC-01/05-01/08-2015-Red, paras 24-39.