

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/05-01/08  
Date: 29 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***

**Public Document**

**Prosecution's Application to Submit Additional Evidence**

**Source:** Office of the Prosecutor

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

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**Registrar**

Mr. Herman von Hebel

**Counsel Support Section****Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations  
Section****Other**

## I. Introduction

1. The Office of the Prosecutor (“Prosecution”) hereby submits an urgent request for an extension of time pursuant to Regulation 35(2) of the Regulations of the Court (“Regulations”) to disclose and submit additional evidence following closure of the Defence case (“Application”).<sup>1</sup> The Trial Chamber III (“Chamber”) has yet to declare the presentation of evidence in the present case closed.<sup>2</sup> There is good cause to show that the Prosecution could not have provided this additional evidence during the Defence case. The significance of the additional evidence as well as its impact on the fairness and integrity of the proceedings provide sufficient justification for the Chamber to exercise its discretion to allow the Prosecution to submit it. Alternatively, in order to determine the truth, the Chamber may order the submission of this evidence.

## II. Submissions

### *Good Cause Exists for the Application*

2. Pursuant to Regulation 35(2) of the Regulations, “[t]he Chamber may extend or reduce a time limit if good cause is shown ...” The additional evidence could not have been submitted previously due to the fact that the Prosecution only became aware of the information during the Defence case and was conducting on-going investigations to ascertain its veracity. The Prosecution has almost completed its investigations and therefore only recently confirmed the information. The Chamber is aware of the recent case against five suspects, including the Accused, Defence

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<sup>1</sup> ICC-01/05-01/08-2861, Decision on the time limit for the conclusion of the defence's presentation of oral evidence at trial, 1 November 2013.

<sup>2</sup> ICC-01/05-01/08-T-359-CON-ENG RT, 28 November 2013, page 10, line 23 to page 11, line 2: “The Chamber would also like to inform parties and participants that a decision declaring the presentation of evidence in the case to be closed pursuant to Rule 141 of the Rules will only be taken once the Chamber has decided on the admissibility into evidence of all materials submitted by the parties or participants or by the Chamber.”

Lead Counsel and Case Manager, for crimes of corruptly influencing witnesses and presenting false documents in the present case (“ICC-01/05-01/13 Case”).<sup>3</sup> Indeed the possibility of the ICC-01/05-01/13 Case having an impact on the present case was reasonably foreseeable.<sup>4</sup> The additional evidence, which also relates to the ICC-01/05-01/13 Case, is material to the present case only in so far as it affects the evidence of specific Defence witnesses to be considered by the Chamber in its final Judgment.

3. The prior disclosure to the Defence and presentation of this evidence during trial without proper investigations would have been imprudent and lacked proper due diligence, particularly in light of the significance of the allegations against members of the Defence team and Defence witnesses. Additionally, this would have resulted in jeopardising on-going investigations. The unique nature of the additional evidence, audio material and financial transactions, make it more compelling than evidence previously heard by the Chamber in relation to specific Defence witnesses. This will bring to light previously unknown information that has a significant bearing on the case.<sup>5</sup> For instance, the evidence will demonstrate conclusively that the testimony of specific Defence witnesses is that of Counsel rather than the witness. The Prosecution could not have reasonably anticipated this evidence. Furthermore, the evidence will show payments by Defence counsel and associates of the Accused to Defence witnesses. These factors cumulatively constitute good cause justifying an extension of time to disclose and submit the additional evidence.

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<sup>3</sup> ICC-01/05-01/08-T-359 ENG ET, 28 November 2013.

<sup>4</sup> ICC-01/05-01/08-2606-Conf-Exp, Decision on the prosecution's request relating to Article 70 investigation, 26 April 2013, para. 20. During the status conference of 28 November 2013, the Prosecution informed the Chamber that in line with the Chamber's request, the decision could be issued in redacted form: see, ICC-01/05-01/08-T-359-CONF ENG RT, p. 12, lines 10-23.

<sup>5</sup> ICC-01/04-01/07-1515-Corr, Decision on the disclosure of evidentiary material relating to the Prosecutor's site visit to Bogoro on 28, 29 and 31 March 2009 (ICC-01/04-01/07-1305, 1345, 1360, 1401, 1412 and 1456), 9 October 2009, p.22-23, para. 37, Trial Chamber II has held “[i]n the case of newly discovered incriminating evidence, the Prosecution must show that the new evidence is either more compelling than evidence already disclosed to the Defence, or that it brings to light previously unknown facts which have a significant bearing upon the case” and that the importance is measured by the effect that the evidence will have on the establishment of the truth.

4. The Prosecution recognises that the timing of this Application comes almost at the end of the present case. However, the additional evidence is exceptional and has significant impact on specific Defence evidence. Article 64(2) of the Rome Statute dictates that the Chamber ensure that the trial is both fair and expeditious. The Appeals Chamber has ruled that expeditiousness is "... an independent and important value in the Statute to ensure the proper administration of justice, and is therefore more than just a component of the fair trial rights of the accused."<sup>6</sup> Additionally, it has held that "[...] while expeditiousness is an important component of a fair trial, it cannot justify a deviation from statutory requirements. [...]"<sup>7</sup> Therefore the Chamber must apply a principle of proportionality.<sup>8</sup>

5. The Prosecution submits that the significance of the evidence and the fact that it completely refutes the credibility of Defence evidence led in this trial justifies the submission of this limited additional evidence. This does not result in undue prejudice to the Accused. Moreover, any prejudice to the Accused can be remedied by providing additional and limited time to respond to the additional evidence. The interests of justice and the determination of the truth favour the submission of this additional evidence and the Defence should be afforded an opportunity to respond. The Prosecution can submit this additional information in a bar table motion.

*The Chamber may order the submission of additional evidence necessary for the determination of the truth*

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<sup>6</sup> ICC-01/04-01/07-2259 OA10, Judgment on Unlawful Detention and Stay of Proceedings Appeal, , 12 July 2010, para. 47.

<sup>7</sup> ICC-01/05-01/08-1386 OA 5 OA 6, Judgment on the appeals against the decision on the admission into evidence of materials contained in the prosecution's list of evidence, 3 May 2011, para. 55.

<sup>8</sup> ICC-01/04-01/07-2259 OA10, Judgment on Unlawful Detention and Stay of Proceedings Appeal, 12 July 2010, para. 67: "The Appeals Chamber therefore finds that the Trial Chamber respected the principle of proportionality in the present case, ensuring fairness to Mr Katanga and the expeditiousness of the proceedings when concluding that Mr Katanga had not furnished it with any convincing reasons why the Defence Motion [alleging pre-surrender unlawful arrest and detention and seeking a stay of Proceedings] was filed seven months after the Order of 13 November 2008 and declining to consider its merits."

6. Alternatively, in accordance with Articles 64(6)(d) and 69(3), the Chamber can exercise its discretion to “[o]rder the production of evidence in addition to that ... presented during the trial by the parties” and “... request the submission of all evidence that it considers necessary for the determination of the truth.” In a prior decision, this Chamber determined that it “... may intervene at any given time, *inter alia*, to order the production of such new evidence as it considers necessary for the determination of the truth, in accordance with Articles 64(6)(d) and 69(3) of the Statute.”<sup>9</sup>

7. The objective of any trial is to determine the truth; the additional evidence has significant bearing on this determination. This evidence is dispositive in determining the issue of whether the testimony of specific Defence witnesses is their own or that of Counsel - this strikes at the heart of the fairness of the trial and the determination of the truth.

8. The request to submit additional evidence is limited in scope. The Prosecution neither seeks to reopen its case nor to bolster its evidence. Nor does the Prosecution intend to submit the total product of its Article 70 investigation. The additional evidence is compelling and targeted at testimony of specific Defence witnesses. The Prosecution seeks to submit one audio recording, one report and one financial chart. Cumulatively, this additional evidence affects the testimony of fourteen (14) Defence witnesses. The nature and scope of the additional evidence as well as its discrete impact on a limited aspect of the Defence evidence supports the Prosecution’s Application.

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<sup>9</sup> ICC-01/05-01/08-1023, Decision on Directions for the Conduct of the Proceedings, 19 November 2010, para. 5.

### III. Relief sought

9. The Prosecution respectfully requests the Chamber to grant an order allowing it to disclose and submit additional evidence. Should the Chamber grant the Prosecution's Application, the additional evidence can be provided in five days or any time-frame stipulated.

10. Alternatively, the Prosecution respectfully requests the Chamber to order the submission of the additional evidence for the determination of the truth.

A handwritten signature in blue ink, appearing to read 'Fatou Bensouda', is written over a horizontal line.

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Fatou Bensouda, Prosecutor

Dated this 29<sup>th</sup> Day of November 2013

At The Hague, The Netherlands