

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **21 October 2010**

**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 Submission on the Numbering and Identification of Evidence in the  
Case Record of Trial Proceedings**

**Source:** The 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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## **REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Other Section**

## I. Introduction

1. Trial Chamber III (“Chamber”) is considering issues requiring determination prior to the commencement of trial. Among the pending issues is the manner in which evidence is to be numbered and identified at trial. The disclosure system in force in this case (“*Bemba* disclosure system”) provided for the automatic assignment of Evidence (“EVD”) numbers to all disclosed materials in the case record. This system makes it difficult for the parties and participants to safely distinguish materials introduced as exhibits at trial on the basis of EVD number assignment alone, from those which are not offered or, if offered, are not admitted into evidence. The Prosecution proposes that the Chamber adopt the procedures developed by Trial Chambers I and II on the numbering and identification of evidence at trial. The procedures developed by those Chambers ensure that EVD numbers are only assigned to documents tendered as exhibits during trial and not when they are disclosed. Collectively, the measures sought will promote trial efficiency and ensure the proper management of the case record at trial.

2. As an alternative, the Prosecution requests that it be included as an item on the agenda of the upcoming status conference for discussion.

## II. Background

3. On 31 July 2008, Pre-Trial Chamber III (“PTC III”) issued its “Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties” (“PTC III’s Disclosure Decision”)<sup>1</sup> setting out, *inter alia*, that all documents

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<sup>1</sup> ICC-01/05-01/08-55, Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties, 31 July 2008.

and materials disclosed between the parties are to be automatically assigned EVD numbers.<sup>2</sup>

4. On 6 August 2008, the Prosecution sought leave to appeal PTC III's Disclosure Decision.<sup>3</sup> On 25 August 2008, PTC III denied the Prosecution's request for leave to appeal.<sup>4</sup>

5. At a status conference on 7 October 2009, this Chamber acknowledged a potential problem posed by the automatic assignment of EVD numbers to all disclosed materials in the case record. It thereafter raised the question of the significance of EVD numbers assigned to items of incriminatory evidence filed in the case,<sup>5</sup> and sought clarity on how the parties and participants are to identify the documents positively relied upon by the Prosecution from those documents which, although part of the case record, are no longer relied upon.<sup>6</sup> At a hearing on 8 December 2009, the Registry also alluded to the problem by indicating that evidence admitted in the Pre-Trial Chamber may have to be renumbered.<sup>7</sup>

6. At the 7 October 2009 status conference, the Chamber also requested submissions on the wider question of the eCourt Protocol; it thereafter directed the Prosecution to file into the record of the case the evidence that it intends to offer and rely upon at trial by referencing their EVD numbers.<sup>8</sup> On 4 November 2009, pursuant

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<sup>2</sup> See ICC-01/05-01/08-55, at para. 57. PTC III stated that "upon receipt, the Registry will register each piece of evidence to be disclosed and communicated to the Chamber and will assign to it a specific number, an "EVD number", in accordance with regulation 28 of the Regulations of the Registry. It will be assumed that every piece of evidence submitted by any party is authentic, accurate and complete. The parties will submit evidence in its original form and a corresponding electronic copy or, in case of tangible objects, an electronic photograph."

<sup>3</sup> ICC-01/05-01/08-63, Prosecution's Application for leave to Appeal Pre-Trial Chamber III's 31 July 2008 "Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties", 6 August 2008.

<sup>4</sup> ICC-01/05-01/08-75, Decision on the Prosecutor's application for leave to appeal Pre-Trial Chamber III's decision on disclosure, 25 August 2008.

<sup>5</sup> ICC-01/05-01/08-T-14-ENG, 7 October 2009, p. 16, lines 22 to 25.

<sup>6</sup> ICC-01/05-01/08-T-14-ENG, p. 17, lines 2 to 5.

<sup>7</sup> ICC-01/05-01/08-T-18-CONF-ENG, 8 December 2009, p. 39, lines 22 to 25.

<sup>8</sup> ICC-01/05-01/08-T-14-ENG, p. 17, lines 2 to 5.

to the Chamber's order, the Prosecution filed its submissions on eCourt Protocol,<sup>9</sup> as well as the evidence that it intends to rely upon at trial.<sup>10</sup> At the 8 December 2009 hearing, the Chamber further directed the Registry to engage in court-wide consultations with a view to developing a comprehensive technical protocol for the provision of evidence, material and witness information in electronic form<sup>11</sup> acceptable to the Court.<sup>12</sup>

### III. Submissions

7. The system of automatically assigning EVD numbers to all disclosed materials in the case record deviates significantly from the systems employed in the *Lubanga*<sup>13</sup> and *Katanga and Ngudjolo* cases.<sup>14</sup> In those cases, EVD numbers are given to documents only when they are tendered as exhibits during trial, not when they were disclosed as the *Bemba* disclosure system mandates.

8. The problems resulting from the assignment of EVD numbers at pre-trial stage were evident in the appellate proceedings related to the admissibility challenge raised by the Defence. After the Appeals Chamber issued an order on the classification of certain documents,<sup>15</sup> the Prosecution encountered logistical problems arising from the current disclosure system. These problems may have a wider and lasting impact in the trial proceedings. Accordingly, the Prosecution suggests that it may be necessary to revisit and amend the current procedure on the numbering and identification of evidence at trial.

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<sup>9</sup> ICC-01/05-01/08-588, Prosecution's Submission on eCourt Protocol, 4 November 2009.

<sup>10</sup> ICC-01/05-01/08-592, Prosecution's submission on evidence that it intends to positively rely upon at trial, 4 November 2009.

<sup>11</sup> ICC-01/05-01/08-T-18-CONF-ENG, 8 December 2009, p. 40, line 7 to p. 42, line 14.

<sup>12</sup> ICC-01/05-01/08-T-18-CONF-ENG, 8 December 2009, p. 39, lines 22 to 25.

<sup>13</sup> See ICC-01/04-01/06-2432, Order on numbering of evidence, 12 May 2010.

<sup>14</sup> See ICC-01/04-01/07-T-81-CONF-ENG, p. 1, line 23 to p. 2, line 11. See also; ICC-01/04-01/07-1003-Anx1, Submission by the Registrar of a revised version of the E-Court Protocol of Trial Chamber I, 27 March 2009, at para. 20.

<sup>15</sup> ICC-01/05-01/08-931 OA3, Order on the classification of documents, 8 October 2010.

9. The logistical problems encountered include: (i) the automatic assignment of EVD numbers to all *disclosed* materials makes it difficult to distinguish materials that were admitted from those which were not; and (ii) the case record as it currently stands, which includes all materials that have been assigned EVD numbers, does not enable the Court to identify materials actually admitted as exhibits at trial. The Prosecution also noted that every version of the same document (usually, where redactions have been lifted over time) is given a new EVD number, which means that the parties, participants and Chamber sometimes refer to EVD numbers that do not correspond with the latest and valid version of the document.

#### IV. Conclusion

10. Problems relating to eCourt issues have arisen in all Chambers. As a result, an eCourt User group has been established by the Registrar and chaired by Court Management. All Organs of the Court and parties to proceedings are represented in this working group. At the first meeting of this group held on 8 October 2010, it was decided that the immediate focus of this group will be “in-Court” eCourt issues.

11. The Prosecution respectfully requests the Chamber to direct the eCourt User group to consider the Casemap and EVD numbering issues and make recommendations to the Chamber.



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Luis Moreno-Ocampo, Prosecutor

Dated this 21<sup>st</sup> day of October 2010

At The Hague, The Netherlands