

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 20 January 2012

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**

Prosecution's Response to the Defence's "*Liste des documents que la Défense entend faire valoir comme éléments de preuve conformément à l'ordonnance de la Chambre du 31 mai 2011*"

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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1. On 31 May 2011, Trial Chamber III (“Chamber”) issued an order setting out the procedure to be followed by parties in their submission into evidence of materials on the Prosecution list of evidence and other material used in Court.¹ The Chamber also reminded the parties to ensure that their filings include “all relevant information in accordance with the Statute and the Rules”.² The Chamber explained that this procedure is intended to facilitate a fair and expeditious conduct of the proceedings. The parties were ordered to file their lists of all materials that they intend to submit as evidence by 14 June 2011³, and any objections regarding the relevance or admissibility of specific material by 21 June 2011.⁴

2. On 14 June 2011, the Defence of Jean-Pierre Bemba Gombo (“Defence”) filed its list of materials to be admitted into evidence. The Defence submits that most of the statements it intends to tender relate to interviews of [REDACTED] of the Central African Republic (“CAR”) who were involved in the [REDACTED] and [REDACTED] of the CAR [REDACTED] at the time charged. The Defence further submits material it describes as showing the presence of different armed groups that operated in the CAR during the October 2002-March 2003 period.⁵

3. The Appeals Chamber recently ruled that rulings on the admissibility of evidence must be made on an item-by-item basis.⁶ This analysis must be reflected in the reasons

¹ ICC-01/05-01/08-1470, Order on the procedure relating to the submission of evidence, 31 May 2011, at para. 3. This procedure is limited to the evidence used in the questioning of witnesses from the commencement of the trial until and including the testimony of Witness 209, as well as any other material used in court since the commencement of the trial until and including the testimony of Witness 209, which the parties wish to submit as evidence.

² *Ibid.*, at para. 3.

³ *Ibid.*, at para. 3.

⁴ *Ibid.*, at para. 4.

⁵ ICC-01/05-01/08-1515-Conf, *Liste des documents que la Défense entend faire valoir comme éléments de preuve conformément à l’ordonnance de la Chambre du 31 mai 2011*, 14 June 2011, at paras 1-3.

⁶ ICC-01/05-01/08-1386 OA5 OA6, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled “Decision on the admission into evidence of materials contained in the prosecution’s list of evidence”, 3 May 2011, at para. 59.

and it must be clear from the reasons of the decision that the Chamber carried out the required item-by-item analysis, and how it was carried out.⁷ To assist the Chamber fulfill its statutory obligations to provide a reasoned decision, the Defence must provide reasons, in accordance with Article 69(4) of the Rome Statute (“Statute”) for each item it seeks to admit into evidence. These reasons will form part of the decision and the trial record.⁸

4. The Prosecution opposes the admission into evidence of some of the material on the Defence list. While acknowledging that some of the items are also within the Prosecution’s initial submission of evidence that it would proffer at trial, the Prosecution submits that the Defence justifications, in some instances, fail to meet the threshold required by Article 69(4) of the Statute. The Prosecution accordingly may not object to the admission *per se*, but preserves its objections to the procedure or justification asserted by the Defence. The admission into evidence of other items would be prejudicial to a fair trial or the fair evaluation of the testimony of witnesses.

5. Annex A, attached, is a chart that sets out the Prosecution’s reasons for supporting or opposing the admission of each item proffered by the Defence.

Request for confidentiality

6. The Prosecution requests that this filing and Annex A be received as confidential as it responds to an application currently classified as confidential.

⁷ *Ibid.*, at para. 59.

⁸ ICC-01/04-01/06-773 OA5, at para. 20. The Appeals Chamber stated that “[T]he right to a reasoned decision is an element of the right to a fair trial and that only on the basis of a reasoned decision will proper appellate review be possible.”

Conclusion

7. Based on the specific submission in the attached Annex A, the Prosecution respectfully objects to certain of the proffered items, either for procedural inadequacy or because the items would be prejudicial.



Luis Moreno-Ocampo, Prosecutor

Dated this 20th Day of January 2012

At The Hague, The Netherlands