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

Date: 16/04/2012

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
Urgent**

Defence Request for an Extension of Time

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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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Ms Petra Kneuer

Counsel for the Defence

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Legal Representatives of the Victims

Ms. Marie-Edith Douzima-Lawson

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

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Deputy Registrar

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Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

**Other
Section**

A. BACKGROUND

1. On 26 March 2012, Trial Chamber III ("the Chamber") rendered its *Order on the procedure for the submission as evidence of material used during questioning of witnesses*¹ ("Order"). This Order identified the confusion which exists regarding the admission of documents in the present case.² The Chamber gave the example of item "CAR-DEF-0002-0001, which has been used for the questioning of at least 5 witnesses (Witnesses 32, 33, 45, 213 and 36), appears in the parties' lists of some of those witnesses as "to be tendered", but no party moved the document to be submitted as evidence in court."³

2. The Order required that the parties:

"[...]make a filing by 16.00 on 16 April 2012 identifying all materials which they wish to submit as evidence ranging in date from the testimony of Witness 110 to the testimony of Witness 36. The filings should include all relevant information in accordance with the Statute and the Rules. This should also be in accordance with the three part test of relevance, probative value and potential prejudice which is necessary for the Chamber's determination of the admissibility of each piece of evidence."⁴

B. SUBMISSIONS

3. The Defence wishes to respectfully raise the following three points. Firstly, since the filing of this order, members of the Defence team have been involved in preparations for the Defence case which has involved substantial periods away from consistent internet access required to review the case file and the documents to which the Order pertains. The Defence regrets that this has compromised the Defence's ability to comply with the Chamber's order within the timeframe set.

4. Secondly, compliance with the Order requires detailed submissions being made in relation to a list of items consisting of approximately 150 documents and

¹ICC-01/05-01/08-2177

²ICC-01/05-01/08-2177, para. 3.

³ICC-01/05-01/08-2177, fn. 9.

⁴ ICC-01/05-01/08-2177, para 5

other materials. It also requires extensive transcript review to determine how each of these items had been used with - and identified by- different witnesses; an exercise which is directly relevant to submissions on probative value. In short, it is an enormous task, and not one for which the Defence had anticipated needing to direct resources towards during this critical period of Defence investigations.

5. Thirdly, and perhaps most significantly, the Defence notes that questions of relevance and probative value of particular documents will shift during the case depending on how they are used with subsequent witnesses. To give an example, a document which may not currently possess sufficient probative value to warrant admission, could well become admissible if its author is called to authenticate it. To this end, the Defence respectfully submits that this extensive exercise is one which would more usefully be done at the completion of the hearing of the evidence. Meanwhile, the Defence submits that no prejudice would be suffered to any party by postponing this exercise.

6. The Defence regrets that these submissions are being made on the same day that compliance with the order is required, but seeks the indulgence of the Chamber on the basis of the current workload and re-organisation of the Defence team. This is also the reason why the Defence classifies its request as urgent.

C. RELIEF REQUESTED

7. Given the reasons cited above, the Defence respectfully requests that the Chamber:

GRANT the Defence request for the postponement of compliance with the Chamber's Order until the completion of the hearing of evidence; or
in the alternative

GRANT the Defence an extension of time of two additional weeks in which to comply with the Order, given the circumstances identified above.



Aimé KiloloMusamba
Lead Counsel



Peter Haynes
Co- Lead Counsel

Done on the 16th of April 2012
At Kinshasa, D.R.Congo