

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 27 March 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

**Third Order on the submission into evidence of material used during the
questioning of witnesses**

Order 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 Aimé Kilolo-Musamba

Mr Peter Haynes

Legal Representatives of the Victims

Ms Marie-Edith Douzima Lawson

Mr Assingambi Zarambaud

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber III ("Trial Chamber" or "Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Bemba case") hereby delivers the following Third Order on the submission into evidence of material used during the questioning of witnesses ("Order").

1. On 31 May 2011, the Chamber issued its "Order on the procedure relating to the submission of evidence",¹ in which the parties were requested to submit a list of documents which they wished to submit as evidence, ranging in date from the commencement of the trial to the testimony of Witness 209.² In addition, the parties were instructed that, from the testimony of Witness 110 onwards, they should announce in their respective lists of materials to be used during questioning of a witness whether they intended to submit any items into evidence.³ Any objections to the admission of an item as evidence were to be announced by way of email before the hearing at which the document was to be submitted by the opposing party. Nevertheless, the parties were instructed to submit all relevant items into evidence in court and, if applicable, the opposing party was to formally raise any objections in court.⁴

2. On 15 December 2011, the Chamber issued its "First decision on the prosecution and defence requests for the admission of evidence",⁵ in which it, *inter alia*, stressed that only documents which the parties materially moved to be submitted into evidence were to be decided upon and not documents

¹ Order on the procedure relating to the submission of evidence, 31 May 2011, ICC-01/05-01/08-1470.

² ICC-01/05-01/08-1470, paragraph 3.

³ ICC-01/05-01/08-1470, paragraph 7(a).

⁴ ICC-01/05-01/08-1470, paragraph 7(b).

⁵ First decision on the prosecution and defence requests for the admission of evidence, 15 December 2011, ICC-01/05-01/08-2012-Conf and Public Redacted version filed on 9 February 2012, ICC-01/05-01/08-2012-Red.

included in the parties' lists of documents to be used during questioning that were not materially submitted into evidence.⁶

3. On 26 March 2012, the Chamber issued a further "Order on the procedure for the submission as evidence of material used during questioning of witnesses",⁷ in which, noting the parties' uncertainty as to whether or not certain materials were part of the evidence of the case and taking into account that a review of the parties' lists of documents had shown that many documents marked as "to be tendered" had never been materially submitted into evidence in court, it ordered the parties to identify all materials which they wished to submit as evidence ranging in date from the testimony of Witness 110 to the testimony of Witness 36, the last witness called by the prosecution.⁸
4. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber, in making this Order, has considered the following provisions: Articles 64(2) and (10) and 69 of the Statute; Rules 63 and 64 of the Rules of Procedure and Evidence; and Regulations 28(2) and 34(a) of the Regulations of the Court.
5. The Chamber notes that, although the parties have continued to indicate their intention to submit certain items into evidence in their respective lists of documents, since the commencement of the presentation of evidence by the defence both parties have failed to materially submit certain items into evidence in court.

⁶ ICC-01/05-01/08-2012-Red, paragraphs 157-162.

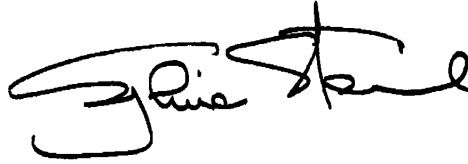
⁷ Order on the procedure for the submission as evidence of material used during questioning of witnesses, 26 March 2012, ICC-01/05-01/08-2177.

⁸ ICC-01/05-01/08-2177, paragraphs 3 to 5

6. In view of the foregoing, the Chamber hereby ORDERS the parties to identify by 22 April 2013, at the latest, all materials which they wish to submit as evidence ranging in date from the testimony of Witness D04-53 to the testimony of Witness D04-45. The requests should include all the information necessary for the Chamber to assess the documents according to the three-part admissibility test. Specifically, the party seeking an item's admission should demonstrate, in line with the test applied by the Chamber,⁹ that each item (i) is relevant to the case; (ii) has probative value; and (iii) is sufficiently relevant and probative as to outweigh any prejudicial effect that could be caused by its admission.
7. The Chamber further orders that any objections to the admission of an item into evidence shall be raised by 6 May 2013. Thereafter, any party that wishes to respond to such an objection shall do so by 20 May 2013.

⁹ Taking into account the guidelines provided by the Chamber, see ICC-01/05-01/08-2012-Red, paragraphs 13 to 17 and Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, 6 September 2012, ICC-01/05-01/08-2299-Conf and Public Redacted version filed on 8 November 2012, ICC-01/05-01/08-2299-Red, paragraphs 7 to 10.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 27 March 2013

At The Hague, the Netherlands