

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 6 May 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
With
Confidential Annex A**

**Prosecution's Response to « Defence submission in compliance with the Third
Order on the submission into Evidence of materials used during the examination
of witnesses »**

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 27 March 2013, Trial Chamber III (“Chamber”) issued its “Third order on the submission into evidence of material used during the questioning of witnesses” for the parties to identify “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”.¹ It further decided that any objections to the admission of an item shall be raised by 6 May 2013.²

2. On 22 April 2013, the Defence of Mr. Jean-Pierre Bemba Gombo (“Defence”) filed its list of materials to be admitted into evidence (“Defence Application”).³ The Defence requested the admission of 29 documents,⁴ which it submits are relevant to “the charges and allegations as set out in the *Revised Second Amended Document Containing the Charges*, or are directly relevant to the credibility of the Prosecution’s case (or particular Prosecution witnesses)”.⁵

3. The Appeals Chamber has 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 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

¹ ICC-01/05-01/08-2565, Third Order on the submission into evidence of material used during the questioning of witnesses, 27 March 2013, para. 6.

² *Ibid.*, para. 7.

³ ICC-01/05-01/08-2590+Conf-AnxA, Defence submission in compliance with the Third Order on the submission into evidence of materials used during the examination of witnesses, 22 April 2013.

⁴ *Ibid.*

⁵ *Ibid.*, para. 11.

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, para. 59.

⁷ *Ibid.*, para. 59.

of the decision and the trial record.⁸

4. The Prosecution opposes the admission into evidence for 24 of the 29 items requested by the Defence. Not only does the Defence provide incorrect references that do not properly identify some documents, thereby necessitating speculation on the part of the Prosecution, it further seeks to admit certain documents that have already been admitted by the Chamber. Moreover, the Prosecution submits that the justifications provided by the Defence for certain documents fail to meet the threshold required by Article 69(4) of the Statute. The admission into evidence of these 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 each item for which it opposes admission in the Defence Application.

Request for confidentiality

6. The Prosecution requests that Annex A to this response be received as "Confidential" due to the same classification afforded to the Defence Application.

⁸ ICC-01/04-01/06-773 OA5, 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 items proffered, either for procedural inadequacy or because of their prejudicial effect.



Fatou Bensouda, Prosecutor

Dated this 6th Day of May 2013

At The Hague, The Netherlands