

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 1 October 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

**Order on the submission of final applications for the admission of material
into evidence and seeking observations on the admission into evidence of
witnesses' written statements**

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**

Ms Paolina Massidda

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

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, hereby issues the following Order on the submission of final applications for the admission of material into evidence and seeking observations on the admission into evidence of witnesses’ written statements (“Order”).

I. Background

1. On 16 July 2013, the Chamber issued its “Decision on the timeline for the completion of the defence’s presentation of evidence and issues related to the closing of the case”,¹ in which it, *inter alia*, decided that the presentation of evidence by the defence would conclude by 25 October 2013, at the latest.
2. On 30 August 2013, the Chamber rendered its “Fourth Order on the submission into evidence of material used during the questioning of witnesses”,² in which it, *inter alia*, ordered the parties to file, by 13 September 2013, submissions identifying all materials which they wish to submit into evidence ranging in date from the testimony of Witness D04-21 to the testimony of Witness D04-30. Neither party filed any submissions within the relevant time limit.
3. On 6 September 2013, the defence filed its “Defence Submissions as to the current timetable for the completion of its case”,³ in which it, *inter alia*,

¹ Decision on the timeline for the completion of defence’s presentation of evidence and issues related to the closing of the case, 16 July 2013, ICC-01/05-01/08-2731.

² Fourth Order on the submission into evidence of material used during the questioning of witnesses, 30 August 2013, ICC-01/05-01/08-2792.

³ Defence Submissions as to the current timetable for the completion of its case, 6 September 2013, ICC-01/05-01/08-2796.

informed the Chamber that a “Defence Bar Table Motion” would be filed before 25 October 2013.⁴

4. On 12 September 2013, further to the Chamber’s instruction,⁵ the defence filed its “Submissions on the anticipated witness schedule and the testimony of Witness D04-54”,⁶ in which it, *inter alia*, submitted that Witness D04-54 is available to commence his testimony on 30 September 2013⁷ and that “Witnesses D04-14, D04-41 and D04-44 remain provisionally listed to testify between 7 and 14 October [2013]”.⁸
5. On 17 September 2013, in its “Decision on the defence’s ‘Submissions on the anticipated witness schedule and the testimony of Witness D04-54’ (ICC-01/05-01/08-2806-Conf)”, the Chamber, *inter alia*, approved the amended witness schedule proposed by the defence and ordered the defence to circulate, by 26 September 2013, an updated schedule in relation to all witnesses to be heard before 25 October 2013.

II. Analysis and conclusions

6. For the purpose of the present Order, the Chamber has considered Articles 64(2), (3)(a) and (9)(a) and 69(3) and (4) of the Rome Statute (“Statute”), Rules 63, 64, and 68 of the Rules of Procedure and Evidence (“Rules”), and Regulations 24, 28(2), and 34 of the Regulations of the Court (“Regulations”).

⁴ ICC-01/05-01/08-2796, paragraph 6.

⁵ Email from the Chamber to the defence of 9 September 2013 at 14.54.

⁶ Submissions on the anticipated witness schedule and the testimony of Witness D04-54, 12 September 2013, ICC-01/05-01/08-2806-Conf.

⁷ ICC-01/05-01/08-2806-Conf, paragraph 8. Due to the unavailability of Witness D04-54 on the scheduled date, the commencement of the witness’s testimony was postponed until further notice.

⁸ ICC-01/05-01/08-2806-Conf, paragraph 10.

Schedule for the submission of final applications for the admission of material into evidence

7. In order to take a timely decision on any remaining applications for the admission of material into evidence, the Chamber orders the parties to file, within seven days following the completion of the testimony of the last witness to be called by the defence, and in any event no later than 31 October 2013, (i) any applications for the admission into evidence of material used during the testimony of Witness D04-15 and any further witnesses called by the defence up to 25 October 2013; and (ii) any applications for the admission of any remaining material into evidence pursuant to Article 64(9)(a) of the Statute.
8. The same deadline applies to the submission of applications by the legal representatives of victims in accordance with the procedure set out in the Chamber's "Order on the procedure relating to the submission of evidence".⁹
9. Any responses to such applications shall be filed within seven days of their notification. Any replies are subject to leave being granted by the Chamber further to a request in accordance with Regulation 24(5) of the Regulations.

⁹ Order on the procedure relating to the submission of evidence, 31 May 2011, ICC-01/05-01/08-1470, paragraphs 13 and 14.

Request for observations on the admission into evidence of written statements of witnesses who appeared before the Court

10. The Chamber notes that the written statements of 30 witnesses called by the prosecution¹⁰ as well as one witness called by the defence,¹¹ although used by the parties and the legal representatives of victims during their questioning, were not submitted into evidence.¹² Among these witnesses, 27 witnesses explicitly stated that they did not object to the submission of their statements as evidence.¹³ The remaining four witnesses were not asked for their consent.¹⁴

11. The Chamber recalls paragraph 12 of its “Order on the procedure relating to the submission of evidence”,¹⁵ where it stated that:

The Majority of the Chamber, Judge Ozaki dissenting, considers that in the event that a party does not submit into evidence the statement(s) of a witness called to testify, the Chamber may request the submission of the statement(s) that it considers necessary for the determination of the truth, in accordance with the Statute and the Rules. The parties will be given an opportunity to raise any objection to the potential admission of these statement(s) into evidence.

12. The Majority of the Chamber, Judge Ozaki dissenting, is considering, pursuant to Article 69(3) of the Statute,¹⁶ requesting the submission as

¹⁰ The prosecution collected and disclosed signed written statements in relation to all witnesses it called at trial.

¹¹ The defence did not disclose any signed documents in relation to the witnesses it called at trial. However, Witness D04-18 was questioned on the basis of a statement given to the prosecution in June 2009.

¹² The relevant documents referred to in this paragraph are listed in the Annex appended to the present Order.

¹³ Prosecution Witnesses 38, 22, 87, 79, 29, 119, 75, 31, 63, 110, 112, 108, 169, 173, 151, 178, 33, 32, 65, 47, 213, 69, 45, 44, 36, 15 and defence Witness D04-18.

¹⁴ Witnesses 68, 80, 81 and 82.

¹⁵ ICC-01/05-01/08-1470, paragraph 12. The same procedure applies to the legal representatives as per paragraph 13 of this order.

¹⁶ In line with the Majority of the Chamber’s view that in order for it to properly discharge its statutory truth-finding mandate, rather than merely assessing the testimony of a witness against those excerpts of the prior interviews or statements that the parties decide to refer to in court in the limited time available to them

evidence of the statements listed in the Annex to this Order, subject to an assessment in accordance with its three-prong test.¹⁷ This will be subject to the witnesses' consent, if not already given. To this end, the Majority orders the parties and the legal representatives of victims to submit their observations, if any, on this matter.

13. In view of the above, the Chamber hereby **ORDERS**

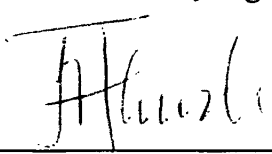
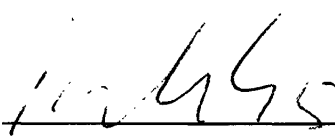
- (i) the parties to file, within seven days of the completion of the testimony of the last defence witness, and in any event no later than 31 October 2013, (i) any applications for the admission into evidence of documents, identifying all materials which they wish to submit into evidence used during the testimony of Witness D04-15 and any further witnesses called by the defence up to 25 October 2013; and (ii) any applications for the admission of any remaining materials into evidence pursuant to Article 64(9)(a) of the Statute;
- (ii) the legal representatives to file, within seven days of the completion of the testimony of the last defence witness, and in any event no later than 31 October 2013, any application for the admission of any remaining material into evidence;

to conduct questioning, it should be able to compare a witness's testimony against the entirety of the prior recorded statements or interviews. *See* First decision on the prosecution and defence requests for the admission of evidence, ICC-01/05-01/08-2012-Red, 15 December 2011, paragraph 143 and Decision on the admission into evidence of items deferred in the Chamber's "First decision on the prosecution and defence requests for the admission of evidence" (ICC-01/05-01/08-2012), 3 September 2013, paragraphs 15 and 23.

¹⁷ Namely that evidence must (i) be relevant; (ii) have probative value; and (iii) be sufficiently relevant and probative as to outweigh any prejudicial effect its admission may cause; *See* ICC-01/05-01/08-2012-Red, paragraphs 13 to 16; Public Redacted Version of "Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute" of 6 September 2012, 8 October 2012, ICC-01/05-01/08-2299-Red, paragraphs 7 to 9.

- (iii) the parties to file any responses to the applications referred to in paragraph 13 (i) and (ii), within seven days of their notification; and
- (iv) the parties and legal representatives of victims to file any observations on the matter of the admission into evidence of the written statements of witnesses referred to in paragraph 10 by 11 October 2013.

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


Judge Sylvia Steiner
Judge Joyce Aluoch
Judge Kuniko Ozaki

Dated this 1 October 2013

At The Hague, the Netherlands