

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 23 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
With confidential Annex**

**Order seeking observations on the submission as evidence of items used
during the questioning of witnesses but not submitted as evidence by the
parties or participants**

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 seeking observations on the submission as evidence of items used during the questioning of witnesses but not submitted as evidence by the parties or participants (“Order”).

I. Background and Submissions

1. On 15 December 2011,¹ 14 June 2013² and 3 September 2013,³ the Chamber issued decisions on the admission into evidence of items used during the questioning of witnesses and submitted by either the parties or the legal representative for victims, Ms Douzima-Lawson.
2. On 27 March 2013, the Chamber ordered the parties to identify, by 22 April 2013, all materials used in the questioning of witness which they wished to submit ranging in date from the testimony of Witness D04-53 through to that of Witness D04-45.⁴ The prosecution and the defence submitted requests for admission;⁵ the Chamber is still to decide on the parties’ submissions.

¹ 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 ICC-01/05-01/08-2012-Red, filed on 9 February 2012.

² Second Decision on the admission into evidence of material used during the questioning of witnesses, 14 June 2013, ICC-01/05-01/08-2688-Conf.

³ 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 2012, ICC-01/05-01/08-2793.

⁴ Third Order on the submission into evidence of material used during the questioning of witnesses, 27 March 2013, ICC-01/05-01/08-2565, paragraph 6.

⁵ Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, 22 April 2013, ICC-01/05-01/08-2596-Conf and Confidential Annex A, ICC-01/05-01/08-2596-Conf-AnxA; Defence Response to the Prosecution’s Second Application for Admission of Evidence from the Bar Table, 6 May 2013, ICC-01/05-01/08-2617-Conf; Prosecution’s Reply to “Defence response to the Prosecution’s Second Application for Admission of Evidence from the Bar Table”, 20 May 2013,

3. 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”,⁶ in which it, *inter alia*, decided that the presentation of oral evidence by the defence would be concluded by 25 October 2013 at the latest.
4. On 30 August 2013, the Chamber rendered its “Fourth Order on the submission into evidence of material used during the questioning of witnesses”,⁷ in which it, *inter alia*, ordered the parties to file, by 13 September 2013, submissions identifying all materials which they wished to submit as 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.
5. On 6 September 2013, the defence filed its “Defence Submissions as to the current timetable for the completion of its case”,⁸ in which it, *inter alia*, informed the Chamber that a “Defence Bar Table Motion” would be filed before 25 October 2013.

ICC-01/05-01/08-2635-Conf; Defence submission in compliance with the *Third Order on the submission into evidence of material used during the examination of witnesses*, 22 April 2013, ICC-01/05-01/08-2590 and Confidential Annex A, ICC-01/05-01/08-2590-Conf-AnxA; Response to « Defence submission in compliance with the Third Order on the submission into Evidence of materials used during the examination of witnesses », 6 May 2013, ICC-01/05-01/08-2616 with Confidential Annex A ICC-01/05-01/08-2616-Conf-Anx; and Defence Reply to the Prosecution Response to the Defence Motion to Admit Materials pursuant to the Chamber’s Third Order (ICC-01/05-01/08-2565), 20 May 2013, ICC-01/05-01/08-2636-Conf.

⁶ 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.

⁷ Fourth Order on the submission into evidence of material used during the questioning of witnesses, 30 August 2013, ICC-01/05-01/08-2792.

⁸ Defence Submissions as to the current timetable for the completion of its case, 6 September 2013, ICC-01/05-01/08-2796.

6. On 1 October 2013, the Chamber issued its “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 2824”),⁹ in which it, *inter alia*, ordered the parties and participants to file any remaining applications for the admission of evidence within seven days of the completion of the testimony of the last witness to be called by the defence, and in any event no later than 31 October 2013.¹⁰

II. Analysis and conclusions

7. 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 and 64 and of the Rules of Procedure and Evidence (“Rules”), and Regulations 28(2) and 34 of the Regulations of the Court.
8. As the parties have not always consistently filed applications for the submission as evidence of documents used during the questioning of witnesses, the Chamber has carefully reviewed these documents and has compared them with the documents that were effectively submitted to the Chamber for admission into evidence. As a result of its review, the Chamber notes that although certain items used during the questioning of witnesses may appear, in principle, relevant to issues under examination, the parties and participants did not submit these items as evidence for the Chamber’s assessment of their admissibility.

⁹ 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, 1 October 2013, ICC-01/05-01/08-2824.

¹⁰ ICC-01/05-01/08-2824, paragraph 13.

9. Among these documents discussed in court, the Chamber observes, for example, that certain photographs shown to and sketches drawn by witnesses in court were not submitted as evidence by the parties or participants, although they may be relevant to the Chamber's assessment of the witnesses' testimony.¹¹ In the same vein, some transcripts of radio broadcasts have not been submitted by either party while the corresponding radio broadcasts themselves have already been admitted into evidence.¹² Such transcripts and their translations, where applicable, would complement the radio broadcasts themselves and allow the Chamber to better contextualise the testimony concerned.
10. The Chamber, pursuant to Article 69(3) of the Statute, has "the authority to request the submission of all evidence it considers necessary for the determination of the truth" and, therefore, informs the parties and participants that it is considering admitting into evidence the 69 documents

¹¹ See, for example, CAR-D04-0002-1377 in transcript of hearing of 8 June 2011, ICC-01/05-01/08-T-124-CONF-ENG CT2, page 11, line 17 to page 12, line 17; CAR-OTP-0028-0446 in transcript of hearing of 1 March 2013, ICC-01/05-01/08-T-288-CONF-ENG ET, page 36, line 17 to page 37, line 4; CAR-OTP-0046-0199 in transcript of hearing of 10 April 2013, ICC-01/05-01/08-T-304-CONF-ENG ET, page 58, line 20 to page 59, line 23; CAR-OTP-0046-0218 in transcript of hearing of 8 May 2012, ICC-01/05-01/08-T-225-ENG ET WT, page 18, line 15 to page 20, line 23 and ICC-01/05-01/08-T-304-CONF-ENG ET, page 61, lines 5 to 18; CAR-OTP-0046-0229 in ICC-01/05-01/08-T-304-CONF-ENG ET, page 62, line 15 to page 63, line 24; CAR-OTP-0046-0196 in ICC-01/05-01/08-T-225-ENG ET WT, page 32, lines 3 to 23 and transcript of hearing of 12 April 2013 of ICC-01/05-01/08-T-306-CONF-ENG ET, page 78, line 8 to page 82, line 3; CAR-D04-0004-0041 in transcript of hearing of 13 May 2013, ICC-01/05-01/08-T-316-CONF-ENG ET, page 42, line 11 to page 45, line 3; CAR-D04-0004-0040 in ICC-01/05-01/08-T-316-CONF-ENG ET, page 45, line 6 to page 46, line 9; CAR-OTP-0035-0133 in transcript of hearing of 14 June 2013, ICC-01/05-01/08-T-323-CONF-ENG ET, page 30, line 11 to page 31, line 10.

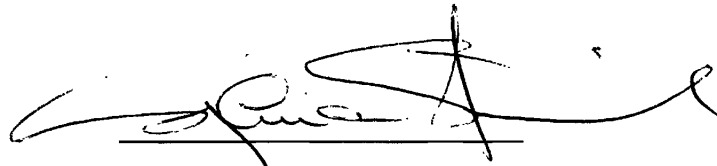
¹² See, for example, the French (CAR-OTP-0036-0039) and the English (CAR-OTP-0031-0093) transcripts of an excerpt of RFI broadcast (CAR-OTP-0031-0093) used in transcript of hearing of 7 November 2012, ICC-01/05-01/08-T-268-CONF-ENG ET, page 29, line 7 to page 36, line 5; the French transcript (CAR-OTP-0057-0353) of an excerpt of RFI broadcast (CAR-OTP-0031-0122) used in transcript of hearing of 10 May 2013, ICC-01/05-01/08-T-315-Red-ENG WT, page 46, line 8 to page 52, line 3; the French transcript (CAR-OTP-0036-0041) of an excerpt of RFI broadcast (CAR-OTP-0031-0099) used in ICC-01/05-01/08-T-315-Red-ENG WT, page 52, line 5 to page 54, line 9; the French transcript (CAR-OTP-0057-0243) of an excerpt of RFI broadcast (CAR-OTP-0031-0116) used in ICC-01/05-01/08-T-315-Red-ENG WT, page 41, line 21 to page 45, line 18.

listed in confidential Annex. The possible admission into evidence of each document will be subject to the Chamber's assessment in accordance with the three-prong test.¹³ Should the parties and participants not oppose the admission of any of the listed documents, they may make observations on their relevance, probative value and the prejudicial effect of their admission into evidence, if any. However, should they oppose the admission of the listed documents, the Chamber will make a determination in due course.

11. In view of the above, the Chamber hereby **ORDERS** the parties and participants to file, by 15 November 2013, their observations on the possible admission into evidence, pursuant to Article 69(3) of the Statute, of the documents referred to in confidential Annex to the present Order, including specific considerations as to the admissibility of each item, if any.

¹³ 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* Public redacted version of the first decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011, 9 February 2012, 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.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 23 October 2013

At The Hague, the Netherlands