

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 13 December 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 seeking observations on the admission into evidence of written
statement of Witness CHM-01**

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 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

Counsel 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* ("*Bemba case*") hereby issues the following Order seeking observations on the admission into evidence of written statement of Witness CHM-01 ("Order").

1. On 6 November 2013, the Chamber issued its "Decision on the presentation of additional testimony pursuant to Articles 64(6)(b) and (d) and 69(3) of the Rome Statute",¹ in which it, *inter alia*, decided to call Witness CHM-01 to provide testimony in the *Bemba case*.² In Confidential Annex to the same decision, the Chamber listed the documents it intended to use during the questioning of the witness,³ including a statement previously provided by the witness to the Office of the Prosecutor ("prosecution"), document CAR-OTP-0008-0219_R01 ("Statement").⁴
2. Witness CHM-01 appeared before the Chamber and provided testimony from 18 to 22 November 2013.⁵ When asked by the Chamber, Witness CHM-01

¹ Decision on the presentation of additional testimony pursuant to Articles 64(6)(b) and (d) and 69(3) of the Rome Statute, 6 November 2013, ICC-01/05-01/08-2863-Conf, with Confidential Annex ICC-01/05-01/08-2863-Conf-Anx, a public redacted version of the decision was filed on the same date, ICC-01/05-01/08-2863-Red. The French official translations of the confidential decision, its confidential Annex and public redacted version, were filed on 12 November 2013, ICC-01/05-01/08-2863-Conf-tFRA, ICC-01/05-01/08-Conf-Anx-tFRA and ICC-01/05-01/08-2863-Red-tFRA.

² ICC-01/05-01/08-2863-Red, paragraph 5.

³ ICC-01/05-01/08-2863-Red, paragraph 10.

⁴ ICC-01/05-01/08-2863-Conf-Anx. The remaining documents included in the list have been previously submitted into evidence by the parties and a decision on their admissibility was postponed by the Third Decision on the prosecution and defence requests for the admission of evidence, 6 November 2013, ICC-01/05-01/08-2864-Conf, paragraphs 18 and 169.

⁵ Transcript of hearing of 18 November 2013, ICC-01/05-01/08-T-353-CONF-ENG ET; transcript of hearing of 19 November 2013, ICC-01/05-01/08-T-354-CONF-ENG ET; transcript of hearing of 20 November 2013, ICC-01/05-01/08-T-355-CONF-ENG ET; transcript of hearing of 21 November 2013, ICC-01/05-01/08-T-356-CONF-ENG ET; and transcript of hearing of 22 November 2013, ICC-01/05-01/08-T-357-CONF-ENG ET.

explicitly stated that he did not object to the admission of his Statement as evidence.⁶

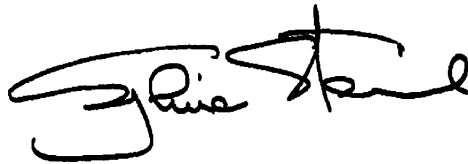
3. For the purpose of the present Order, the Chamber has considered Articles 64(2), (3)(a), (6)(d) and (9)(a) and 69(3) and (4) of the Rome Statute ("Statute"), Rules 63, 64, and 68 of the Rules of Procedure and Evidence ("Rules"), and Regulations 28(2) and 34 of the Regulations of the Court.
4. The Chamber notes that although the abovementioned Statement was used by the Chamber, the parties and the legal representatives of victims during their questioning, it was not submitted into evidence by either party or participant.
5. Pursuant to its powers under Article 69(3) of the Statute,⁷ the Chamber hereby informs the parties and participants that it is considering admitting the Statement into evidence, subject to its assessment in accordance with the three-prong test. Should the parties and participants not oppose its admission, they may make observations on its relevance, probative value and prejudicial effect, if any.
6. In view of the above, the Chamber hereby ORDERS the parties and participants to file their observations on the possible admission into evidence,

⁶ ICC-01/05-01/08-T-353-CONF-ENG ET, page 9, lines 24 to page 10, line 18.

⁷ 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 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

pursuant to Article 69(3) of the Statute, of the written statement of Witness CHM-01, document CAR-OTP-0008-0219_R01, by 10 January 2014.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 13 December 2013

At The Hague, the Netherlands