

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 October 2014

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 Redacted Version of

**Decision on the modalities of the presentation of additional evidence pursuant
to Articles 64(6)(b) and (d) and 69(3) of the Rome Statute**

Decision 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

Ms Kate Gibson

Ms Melinda Taylor

Legal Representatives of the Victims

Ms Marie Edith Douzima-Lawson

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

Mr Nigel Verrill

Detention Section

Other

Victims Participation and Reparations Section

Trial Chamber III ("Chamber") of the International Criminal Court ("Court" or "ICC"), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (the "*Bemba case*"), issues the following Decision on the modalities of the presentation of additional evidence pursuant to Articles 64(6)(b) and (d) and 69(3) of the Rome Statute ("Decision").

I. Background and Submissions

1. On 2 October 2014, the Chamber issued its "Notice of limited reopening of the presentation of evidence and rescheduling of closing statements" ("Decision 3155")¹ in which it provided public notice of its confidential Decision 3154,² issued on the same date. In Decision 3154, the Chamber decided, *inter alia*, to reopen the presentation of evidence in the *Bemba* case for the limited purpose of hearing Witness P-169 on issues related to allegations contained in a confidential document, including issues of witness credibility.³ The Chamber further held that Witness P-169 would be heard at the seat of the Court as of 14 October 2014.⁴

II. Analysis

2. For the purpose of the present Decision, the Chamber has considered, in accordance with Article 21(1) of the Statute, Articles 64(2) and (8)(b), 67(1) and 68, 69, 93(2) of the Rome Statute ("Statute"), Rules 63 to 66, 74, 91, 93, 101, 134, 140 and 191 of the Rules of Procedure and Evidence ("Rules"), and Regulations 43, 54 and 73 of the Regulations of the Court ("Regulations").

¹ Notice of limited reopening of the presentation of evidence and rescheduling of closing statements, 2 October 2014, ICC-01/05-01/08-3155.

² Referring to "Decision on 'Prosecution's Information to Trial Chamber III on issues involving witness CAR-OTP-PPPP-0169' (ICC-01/05-01/08-3138-Conf-Red) and 'Defence Urgent Submissions on the [REDACTED]' (ICC-01/05-01/08-3139-Conf)", 2 October 2014, ICC-01/05-01/08-3154-Conf.

³ See ICC-01/05-01/08-3155, paragraph 9(i).

⁴ See ICC-01/05-01/08-3155, paragraph 9(ii).

3. The order of questioning during the testimony of Witness P-169 shall be as follows: firstly, the Chamber will question the witness; following this, the Office of the Prosecutor ("prosecution") will be given the opportunity to question him; then, provided a written application has been made and leave to ask questions granted, the legal representative of victims may question the witness; and finally, the defence for Mr Jean-Pierre Bemba ("defence") will be given the opportunity to question the witness last in accordance with Rule 140(2)(d) of the Rules. In line with the Chamber's usual practice, the Chamber may intervene at any time during the parties or the legal representative's questioning in order to pose additional questions or require clarification from the witness.

4. As regards the scope of questioning, in line with the Chamber's Decision 3154,⁵ the Chamber will question the witness on his various allegations and issues related to witness credibility. The parties and the legal representative's questioning shall likewise focus on such issues. The Chamber may, at any time, rule on the relevance of questions put to the witness, either on its own motion or at the request of a party or the legal representative.⁶

5. With regard to the mode of questioning, the Chamber orders the parties and the legal representative to put neutral, non-leading questions to the witness, unless otherwise authorised by the Chamber.

6. Regarding the use of documents during questioning, the documents to be used by the Chamber during its questioning of Witness P-169 are listed in the confidential annex to the present Decision. Should the parties or the legal representative wish to rely on other documents during their

⁵ ICC-01/05-01/08-3154-Conf, paragraph 31.

⁶ Decision on Directions for the Conduct of the Proceedings, 19 November 2010, ICC-01/05-01/08-1023, paragraph 12.

questioning, they shall provide the Chamber, the parties, and the legal representative with a list of the additional documents they intend to use no later than 10 October 2014. This information is to be communicated by email.

7. The Chamber will rule in court on the admissibility of items used during the questioning of the witness. In order to facilitate the Chamber's ruling, the parties and the legal representative should indicate by email, no later than 10 October 2014, whether they intend to submit into evidence any of the materials included in either their list or the Chamber's list. Such notification should include all information relevant to the three-part test of relevance, probative value, and potential prejudice.
8. Any objections to the admission of the materials the parties or the legal representative intend to submit into evidence shall be communicated by email by 13 October 2014 at the latest. The objection shall then be formally raised in court at the time the material is submitted into evidence. The opposing party will be given the opportunity to respond to the objection orally.
9. Taking into account the limited scope of questioning, the Chamber informs the parties and the legal representative that it estimates that it will require approximately four hours to put its own questions to Witness P-169. Once the Chamber has finished its questioning, it will grant the parties four hours each to question the witness.
10. The legal representative should submit a substantiated request, in accordance with the procedure set out in the Chamber's Decision on Directions for the Conduct of the Proceedings,⁷ no later than 10 October 2014, in case she wishes to put questions to the witness. In case such a

⁷ ICC-01/05-01/08-1023, paragraphs 17 to 20.

request is submitted and granted, the Chamber notes that the legal representative will be allowed a maximum of two hours to question the witness.

11. [REDACTED].

12. As to the length of the additional submissions authorised in Decision 3154,⁸ in accordance with Regulation 37(1) of the Regulations, the Chamber decides that they may not exceed 20 pages each. The parties and the legal representative shall strictly comply with the format requirements for documents as set out in Regulation 36 of the Regulations.

Conclusions

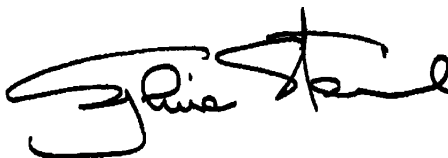
13. For the above reasons, the Chamber hereby:

- (i) DECIDES that the order, mode, and scope of questioning of Witness P-169 shall follow the guidelines set out in paragraphs 3 to 5 above;
- (ii) ORDERS the parties and the legal representative to provide a list of the additional documents they intend to use during questioning Witness P-169, by email, no later than 10 October 2014;
- (iii) ORDERS the parties and the legal representative to indicate whether they intend to submit into evidence any materials, and provide all information relevant to the three part test of relevance, probative value, and potential prejudice, by email no later than 10 October 2014;

⁸ ICC-01/05-01/08-3154-Conf, paragraph 50(xvi).

- (iv) ORDERS the parties and the legal representative to communicate any objections to the admissibility of material into evidence, by email no later than 13 October 2014;
- (v) GRANTS the parties four hours each to question Witness P-169;
- (vi) ORDERS the legal representative of victims, in case she wishes to question Witness P-169, to submit a substantiated request in accordance with the procedure set out in the Chamber's Decision on Directions for the Conduct of the Proceedings, no later than 10 October 2014;
- (vii) [REDACTED];
- (viii) [REDACTED]; and
- (ix) ORDERS that the additional submissions authorised by Decision 3154, may not exceed 20 pages each.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 8 October 2014

At The Hague, the Netherlands