

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 31 May 2011

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 procedure relating to the submission of evidence

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Ms Petra Kneuer

Counsel for the Defence

Mr Nkwebe Liriss
Mr Aimé Kilolo-Musamba

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**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”) hereby delivers the following Order on the procedure relating to the submission of evidence (“Order”).

1. The present Order is issued following the “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’” issued on 3 May 2011.¹ To facilitate the expeditious, fair and effective conduct of the proceedings, the Trial Chamber has considered the manner in which: (i) material included in the Office of the Prosecutor’s (“prosecution”), defence (both hereinafter “parties”) and participants² lists of documents intended to be used during the questioning of each witness (“list of documents”)³ and other material used in court to date is to be admitted into evidence, and (ii) new material is to be submitted as evidence in future.
2. In accordance with Article 21(1) of the Rome Statute (“Statute”), the Chamber, in making its Order has considered the following provisions: Article 64 (2), (6)(b), (d) and (f), (9) and (10), Articles 67, 69 and 74(2) of the Statute; Rules 63, 64, 68, and 140 of the Rules of Procedure and Evidence (“Rules”); and Regulations 28(2) and 34(a) of the Regulations of the Court.

¹ 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, ICC-01/05-01/08-1386.

² *Corrigendum* to Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 12 July 2010, ICC-01/05-01/08-807-Corr, paragraphs 29 to 37.

³ Decision on Directions for the Conduct of the Proceedings, 19 November 2010, ICC-01/05-01/08-1023, paragraph 16.

Procedure for the submission of material included in the parties' lists of documents intended to be used during the questioning of witnesses and used in court to date, and other material used in court to date from the commencement of the trial until and including the testimony of Witness 209

3. The Chamber hereby orders the prosecution and the defence to make a filing by 16.00 on 14 June 2011 identifying the material included in their lists of documents and used in the questioning of witnesses from the commencement of the trial until and including the testimony of Witness 209, as well as any other material used in court since the commencement of the trial until and including the testimony of Witness 209, which they wish to submit as evidence. The filing shall include all relevant information in accordance with the Statute and the Rules.⁴
4. The Chamber further orders that any issue as regards the relevance or admissibility of specific material in accordance with Rule 64(1) of the Rules shall be raised in writing by 16:00 on 21 June 2011. Thereafter, a party who wishes to respond to the objection shall do so in writing by 27 June 2011.
5. The Chamber will issue a decision on the admissibility of the evidence in due course.
6. As a result of the above procedure, any separate application previously filed with the Chamber seeking a ruling on the relevance or admissibility

⁴ 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, ICC-01/05-01/08-1386, paragraphs 59 and 75 to 80.

of a specific item of evidence in accordance with Article 69(4) of the Statute shall be considered moot.⁵

Procedure for the submission of evidence by the parties starting as of the testimony of Witness 110

7. The Chamber orders that the material included in the lists of documents or other material to be used in Court starting as of the testimony of Witness 110 and for the remainder of the trial shall be subject to the following procedure:
 - a. When submitting their respective lists of documents intended to be used during the questioning of each witness, in accordance with the time-limit set in the Decision on Directions for the Conduct of the Proceedings,⁶ the parties shall identify the specific material intended to be submitted as evidence during the questioning of a witness.
 - b. Any objections as regards the relevance or admissibility of the material that the parties identify as intended to be submitted as evidence shall be provided with detailed reasons for preparation purposes by way of an email sent to the opposing party and participants and copied to the Chamber as soon as practicable and before the hearing at which the document is to be submitted as evidence. The objection shall then be formally raised in court at the time the material is submitted to the Chamber. The opposing party

⁵ See Defence Application for the admission into evidence of a witness's statements made during the Prosecution investigation, 8 March 2011, ICC-01/05-01/08-1319-tENG (translation into English filed on 5 April 2011).

⁶ Decision on Directions for the Conduct of the Proceedings, 19 November 2010, ICC-01/05-01/08-1023, paragraph 16.

will be given an opportunity to respond to the objection orally. The fact that notice of any objection is to be provided by email in advance of the hearing for preparation purposes will not preclude a party from raising any issue related to the relevance or admissibility of the material at the time the evidence is submitted to the Chamber, in accordance with the Rules.⁷

- c. Whenever the parties do not raise an objection as regards the relevance or admissibility of an item which is submitted, it will be admitted into evidence and receive an EVD-T number, following consideration by the Trial Chamber. The Chamber will rule on any objections that are raised to the admission of items as evidence in due course.
8. The procedure as set out in paragraph 7 above does not preclude the parties from requesting the submission as evidence of any item, listed or not, either in the course of the questioning of a witness or at a later stage during the proceedings through a motion.⁸ The Chamber will decide, after giving the opposing party and participants the opportunity to raise any objections they may have.

Submission of written statements of a witness called to testify

9. The Chamber in its Decision on the "Prosecution Application for Leave to Submit in Writing Prior-Recorded Testimonies by CAR-OTP-WWWW-0032, CAR-OTP-WWWW-0080, and CAR-OTP-WWWW-0108" of 16 September 2010 adopted Trial Chamber I's approach on the scope of Rule

⁷ See Rule 64(1) of the Rules.

⁸ Consistent with the approach defined by the Chamber in its Oral decision on 21 October 2010, Transcript of hearing on 21 October 2010, ICC-01/05-01/08-T-30-ENG, page 14, lines 5 to 25.

68 of the Rules and determined that written statements fall under this provision.⁹

10. When a party intends to submit as evidence the statement(s) of a witness called to testify, this intention and any subsequent objection should be made known in writing, pursuant to the conditions established in paragraph 7 above. The ensuing oral submissions should in principle take place at the beginning of the questioning and after having ensured that the witness does not object to the submission in accordance with Rule 68(b) of the Rules.¹⁰ The statement(s) may be admitted as evidence and accordingly receive an EVD-T number following consideration by the Chamber of any objections raised in accordance with the Statute and the Rules.
11. The Majority of the Chamber, Judge Ozaki dissenting, favours the submission into evidence of the entirety of the witnesses' statement(s), as opposed to excerpts, when considered necessary for the determination of the truth in accordance with Article 69(3) of the Statute and to ensure that information is not taken out of context, and consistent with the relevant provisions of the Statute and the Rules.¹¹ The Chamber will assess the admissibility of each statement considering any objection raised in accordance with, *inter alia*, Article 69(4) of the Statute and Rule 64(1) of the Rules and consistent with the rights of the accused.¹²

⁹ Decision on the "Prosecution Application for Leave to Submit in Writing Prior-Recorded Testimonies by CAR-OTP-WWWW-0032, CAR-OTP-WWWW-0080, and CAR-OTP- WWWW-0108", 16 September 2010, ICC-01/05-01/08-886, paragraphs 5 and 6.

¹⁰ ICC-01/05-01/08-1386, paragraphs 77 and 78.

¹¹ See Article 69(2) and (4) of the Statute and Rule 68 of the Rules.

¹² See Article 69(4) of the Statute.

12. 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.¹³ The parties will be given an opportunity to raise any objection to the potential admission of these statement(s) into evidence.

Victims' participation in the procedure for the submission of evidence

13. In accordance with the framework for the participation of victims at trial established in the present case,¹⁴ the victims authorised to participate in the proceedings ("participants") may submit evidence and raise issues relating to the relevance and admissibility of evidence when their interests are affected and upon leave being granted by the Chamber, in accordance with Articles 69(3) and 68(3) of the Statute.¹⁵

14. Therefore, the procedure set out in the present Decision will apply to the participants as follows:

- a) When the participants wish to submit an item as evidence, they shall first file a written application setting out the reasons as to why the personal interest of the victims they represent are affected;

¹³ See Article 69(3) of the Statute and Rule 68 of the Rules.

¹⁴ See Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 30 June 2010. ICC-01/05-01/08-807-Corr.

¹⁵ Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 30 June 2010. ICC-01/05-01/08-807-Corr, paragraphs 29 to 37.

- b) When the participants wish to raise an issue relating to the relevance or admissibility of evidence submitted by the parties, they shall first file a written application setting out the reasons as to why the personal interest of the victims they represent are affected.

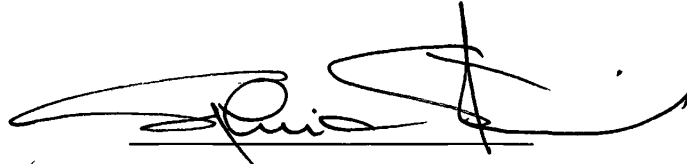
Procedure to be followed as regards the confidentiality level of all material sought to be tendered as evidence

15. The parties and participants are instructed to indicate the level of confidentiality of each item contained in the list of documents sent in advance of the testimony of each witness¹⁶ and, if a change of confidentiality level is requested, the reasons supporting such request. Any objections to a change in the level of confidentiality are to be raised forthwith. In addition, whenever there are several redacted versions of material to be submitted, the parties and participants are required to refer to the available lesser redacted version unless there are justified reasons not to do so.


Judge Ozaki's partly dissenting opinion related to paragraphs 11 and 12 of the present Order will follow in due course.

¹⁶ Decision on Directions for the Conduct of the Proceedings, 19 November 2010, ICC-01/05-01/08-1023, paragraph 16.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 31 May 2011

At The Hague, The Netherlands