

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 March 2012

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 for the submission as evidence of material used during
questioning of witnesses**

Order 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 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**

**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”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”) hereby delivers the following Order on the procedure for the submission as evidence of material used during questioning of witnesses (“Order”).

1. On 31 May 2011, the Chamber issued the “Order on the procedure relating to the submission of evidence”,¹ wherein the parties were requested to submit a list of documents which they wanted to submit as evidence, ranging in date from the commencement of the trial to the testimony of witness 209.² Further, the parties were instructed that, from the testimony of Witness 110 onwards, they shall announce, in their respective lists of materials to be used during questioning of a witness, whether or not they intended to submit any of these items as evidence.³ Any objections to the admission of an item as evidence should have been announced *via* email before the hearing at which the document would have been submitted by the opposing party. Since the submission must be memorialised in the record of the case, the submitting party was instructed to submit the relevant item as evidence in court, and if applicable, the opposing party was to formally raise the objections orally.⁴

¹ Order on the procedure relating to the submission of evidence, 31 May 2011, ICC-01/05-01/08-1470.

² ICC-01/05-01/08-1470, paragraph 3.

³ ICC-01/05-01/08-1470, paragraph 7(a).

⁴ ICC-01/05-01/08-1470, paragraph 7(b).

2. On 15 December 2011, the Chamber issued the “First decision on the prosecution and defence requests for the admission of evidence”,⁵ wherein it ruled on the admissibility of the materials the parties requested to be admitted as evidence through the lists submitted through the testimony of Witness 209. In the same decision, the Chamber also ruled on the admissibility of those documents that were materially submitted as evidence in court by the parties through the completion of the testimony of Witness 213.⁶ Further, the Chamber stressed that only documents which the parties formally submitted into evidence in court were decided upon and not documents which, although included in the lists of documents to be used during questioning witnesses, were not formally submitted as evidence.⁷
3. Notwithstanding the abovementioned, during the questioning of Witness 15, the defence was uncertain as to whether or not certain materials were part of the evidence of the case.⁸ The Chamber is concerned that this may be the case for other items, especially since a review of the parties’ lists of documents shows that many documents marked “to be tendered” were never materially submitted into evidence in court by the parties.⁹

⁵ First decision on the prosecution and defence requests for the admission of evidence, 15 December 2011, ICC-01/05-01/08-2012-Conf, it has 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.

⁶ ICC-01/05-01/08-2012-Red, paragraph 9.

⁷ ICC-01/05-01/08-2012-Red, paragraphs 157-162.

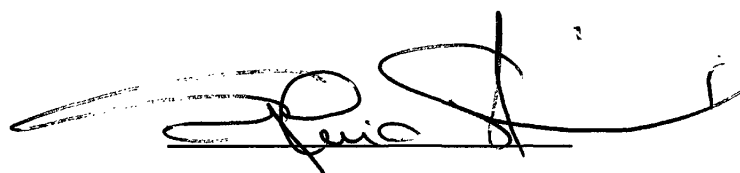
⁸ ICC-01/05-01/08-T-210-CONF-ENG ET 10-02-2012, page 47 lines 4-5. In relation to document CAR-DEF-0001-0078 the defence initially did not intend to submit the item as evidence since it thought that it was already evidence at the trial stage. However, at that time, the document had not yet been submitted nor admitted into evidence at the trial stage, and it only had an EVD number assigned at the pre-trial stage of the case.

⁹ See for example item CAR-DEF-0002-0001, which has been used for the questioning of at least 5 witnesses (Witnesses 32, 33, 45, 213 and 36), appears in the parties’ lists of some of those witnesses as “to be tendered”, but no party moved the document to be submitted as evidence in court.


4. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber, in making its Order, has considered the following provisions: Articles 64 (2), (6)(f), and (10) and 69 of the Statute; Rules 63 and 64 of the Rules of Procedure and Evidence ("Rules"); and Regulations 28(2) and 34(a) of the Regulations of the Court.
5. In view of the foregoing, the Chamber hereby orders the parties to make a filing by 16.00 on 16 April 2012 identifying all materials which they wish to submit as evidence ranging in date from the testimony of Witness 110 to the testimony of Witness 36. The filings should include all relevant information in accordance with the Statute and the Rules. This should also be in accordance with the three part test of relevance, probative value and potential prejudice which is necessary for the Chamber's determination of the admissibility of each piece of evidence.¹⁰
6. The Chamber further orders that any issue regarding the relevance or admissibility of any specific material in accordance with Rule 64(1) of the Rules shall be raised in writing by 16.00 on 23 April 2012. Thereafter, a party that wishes to respond to the objection shall do so in writing by 1 May 2012.
7. The Chamber will issue a decision on the admissibility of the evidence in due course.

¹⁰ ICC-01/05-01/01/08-2012-Red, paragraphs 13-18.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 26 March 2012

At The Hague, The Netherlands