

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 10 June 2010

TRIAL CHAMBER III

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio-Benito
Judge Joyce Aluoch

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

**Public document
With Public Annexes A, B, D, F, G
And Confidential, *Ex Parte*, Prosecution, Defence, and VWU Only Annexes C1-
C33
And Confidential, *Ex Parte*, Prosecution and Defence Only Annex E
The Prosecution's Submissions in Preparation for the Commencement of the Trial**

Source: The Office of the Prosecutor

Document to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

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Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Other Section

I. Introduction

1. On 2 June 2010, Trial Chamber III (“Chamber”) issued an order instructing the parties and participants to file their submissions and/or views on issues relevant to preparation for the commencement of the trial.¹ In particular, it ordered the Office of the Prosecutor (“Prosecution”) to file its submissions regarding the following issues:²

- a) the order in which the Prosecution intends to call its witnesses, together with a general explanation of the proposed order;
- b) the overall length of the evidence the Prosecution intends to rely on;
- c) the estimated length of the questioning by the Prosecution of each witness;
- d) a summary of the subjects which each witness will testify on;
- e) the proposed length of its opening statement;
- f) whether the prosecution intends to rely on prior recorded testimony (Rule 68 of the Rules of Procedure and Evidence (“Rules”));
- g) whether the Prosecution intends to request that evidence is given by means of audio or video-link technology;
- h) whether the Prosecution intends to request the admission of documents from the bar table;
- i) whether any issue of self incrimination may arise in relation to the witnesses called by the Prosecution (Rule 74 of the Rules);
- j) whether the Prosecution intends to file applications for protective measures pursuant to Rules 87 and 88 of the Rules;
- k) the ERN numbers of witness statements and their corresponding translations in the form of a table.

¹ ICC-01/05-01/08-785.

² ICC-01/05-01/08-785, para. 2.

2. Further, the Chamber instructed the Prosecution and the Defence to file submissions on any agreements as to facts pursuant to Rule 69 of the Rules,³ and instructed the parties and participants to notify the Chamber of their views on any further issues that require determination prior to the commencement of the trial.⁴

II. Request for the receipt of Annexes as Confidential

3. The Prosecution requests that Annexes C1-C33 appended to this application be received by the Chamber as Confidential, *Ex Parte*, Prosecution, Defence and the Victims and Witnesses Unit (“VWU”) only since they contain information pertaining to its witnesses, revelation of which may identify the Prosecution witnesses and jeopardize their safety and security. Further, the Prosecution requests that Annex E be received by the Chamber as Confidential, *Ex Parte*, Prosecution and Defence only since it contains a confidential document from the Government of the Democratic Republic of Congo (DRC).

III. The Prosecution’s submissions

A. Issues specifically addressed to the Prosecution⁵

4. The Prosecution hereby provides its submissions to its respective issues as instructed by the Chamber.

a) The Order in which the Prosecution intends to call its witnesses with a general explanation of the proposed order

³ ICC-01/05-01/08-785, para. 4.

⁴ ICC-01/05-01/08-785, para. 6.

⁵ ICC-01/05-01/08-785, para. 2.

5. The Prosecution sets out its current anticipated order of witnesses and the explanation for the order in Annex A attached to this filing.

b) The overall length of the evidence the Prosecution intends to rely on

6. Consistent with its previous submission during the first status conference before the Chamber,⁶ the Prosecution estimates a period not exceeding 120 working days to present its case at trial. In reaching this estimate, the Prosecution has taken into account the complexity of the case, the number of witnesses it intends to call to testify, and the illiteracy and level of education of some of its witnesses which will impact on the length of their testimony. The Prosecution also based its calculation on the availability of simultaneous interpretation which weighed in favour of reducing the time anticipated for examining its witnesses. The Prosecution further assesses that with the exclusion of daily breaks, a working day during trial will consist of 4.5 hours on average.⁷ This estimate assumes the availability of courtrooms and does not attempt to predict delays that might occur on account of unexpected legal issues or other procedural events.

c) The estimated length of the questioning by the Prosecution of each witness

7. The Prosecution sets out its submissions on this issue in Annex B attached to this filing.

d) A summary of the subjects about which each witness will testify

8. The Prosecution sets out its submissions on this issue in Annexes C1-C33 attached to this filing.

⁶ ICC-01/05-01/08-T-14-ENG at page 11, lines 20-25 and page 12, lines 1-2.

⁷ Consistent with the availability of interpretation services at hearings as set out in Regulation 64 of the Regulations of the Registry.

e) The proposed length of the Prosecution's opening statement

9. The Prosecution estimates 90 minutes for its opening statement.

f) Prior recorded testimony

10. The Prosecution intends to rely on prior recorded statements of witnesses CAR-OTP-WWWW-0032, CAR-OTP-WWWW-0080, and CAR-OTP-WWWW-0108 in lieu of oral examination by the Prosecution, pursuant to Rule 68 of the Rules.⁸ The Prosecution intends to file its submissions on this issue at the latest by 24 June 2010.

g) Testimony by means of audio or video-link technology

11. The Prosecution does not currently intend to present evidence by means of audio or video-link technology; if it develops that audio or video-link evidence is the most feasible course for one or more witnesses, the Prosecution will make appropriate application to the Court.

h) Whether the Prosecution intends to request the admission of documents from the bar table

12. The Prosecution intends to request the admission of evidence from the bar table and will file its detailed submissions in advance of the commencement of the trial.

⁸ In this context, the Prosecution notes the jurisprudence established by Trial Chamber I, in which it stated: "[...], applying the straightforward language of Rule 68, its correct interpretation is that the Chamber has the discretion to order that written statements (viz. "the transcript or other documented evidence of[...] the testimony") are to replace "live" evidence if, but only if, one of the two following conditions are met: either that the defence and the prosecution have had the opportunity to question the witness if he or she is not present before the Court, or, for a witness before the Court, the witness - who gives consent to the introduction of the evidence - is available for examination by the prosecution and the defence." ICC-01/04-01/06-1603.

i) Issue of self incrimination in relation to the witnesses called by the Prosecution

13. The Prosecution will not prosecute any of the witnesses it intends to present at trial either on the basis of the information contained in their past statements or for crimes disclosed during testimony before the Court.

14. In the Prosecution's assessment, the DRC and the Central African Republic ("CAR") have the statutory power to prosecute persons who testify before this Court, on territorial or nationality-based jurisdictional grounds.

15. Both countries ratified the Agreement on Privileges and Immunities of the Court (APIC),⁹ which stipulates in article 19 that:

"Witnesses shall enjoy the following privileges, immunities and facilities to the extent necessary for their appearance before the Court [...]:

[...] (c) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their testimony, which immunity shall continue to be accorded even after their appearance and testimony before the Court[.]".

16. That provision, in the Prosecution's view, protects the witnesses from the possibility that their self-incriminating statements can be used against them in a domestic proceeding. In addition, following the practice in the DRC situation,¹⁰ the Prosecution consulted with the DRC authorities, who confirm that they will not prosecute any of the Prosecution witnesses in their national criminal or military

⁹ The APIC was ratified by the CAR on 6 October 2006 and the DRC on 3 July 2007.

¹⁰ See Annex E - The letter containing the assurances provided by the DRC authorities in relation to the DRC situation.

tribunal proceedings.¹¹ Similarly, the Prosecution consulted with the CAR authorities and awaits a formal correspondence from both authorities on this issue. The Prosecution will update the Chamber.

j) Applications for protective measures pursuant to Rules 87 and 88 of the Rules

17. The Prosecution will seek limited in-court protective measures – primarily the continued use of pseudonyms, voice and face distortion, and the taking in private or closed sessions of particular evidence that would identify vulnerable or threatened witnesses -- to protect the identity of victims of sexual violence and other witnesses whose security interests will be implicated by public identification. It will file detailed submissions in consultation with the VWU at the latest by 24 June 2010.

k) The ERN numbers of witness statements and their corresponding translations in the form of a table

18. The ERN numbers of witness statements and their corresponding translations are contained in Annex D attached to this filing.

B. The status of agreements as to facts pursuant to Rule 69 of the Rules

19. The Prosecution has been unable to reach any agreements with the Defence on facts.

20. Following the Chamber's order to provide information on the Parties and Participants' discussions regarding potential agreements on non-contentious issues

¹¹ The DRC authorities have indicated that they intend to apply the same assurances they provided in the DRC situation (Annex E) to all witnesses appearing before the ICC regardless of the case in which they testify.

by 4 November 2009,¹² the Prosecution, the Defence and the Office of Public Counsel for Victims (“OPCV”) met on 3 November 2009. In that meeting, the Defence affirmed its willingness to take part, while stressing that it could only engage in this exercise after the Prosecution’s disclosure of evidentiary material. The OPCV stated its interest in providing views, through a common position for all victims, once agreements on facts are reached by the Parties and to the extent that victims’ personal interests are concerned. On 4 November 2009, the Prosecution notified the Chamber of the agreement to negotiate non-contentious issues.¹³

21. On 27 November 2009, after having disclosed its trial evidence and following the agreed procedure, the Prosecution submitted to the Defence its first set of proposed stipulations and suggested a two-week timeline for a response by the Defence. On 4 December 2009, it provided a French translation of the suggested non-contentious facts. On 14 December 2009, the Prosecution asked the Defence for its position by 18 December 2009, but no response was provided. On 20 January 2010, the Prosecution informed the Chamber of the status of the efforts to reach an agreement on facts.¹⁴ To date, the Defence has not expressed its position in this regard.

C. Further issues that require determination prior to the commencement of the trial

a) Use of flash presentations and updated maps

22. The Prosecution requests authorization to use “flash presentations” during its opening statement.

¹² ICC-01/05-01/08-T-14-ENG, page 23, lines 12-20.

¹³ ICC-01/05-01/08-591.

¹⁴ ICC-01/05-01/08-671.

23. The intended “flash presentations” are visual aids that incorporate animations, maps, video and audio features. They are pre-loaded onto a laptop and would be presented with the aid of one of the Prosecution’s technical assistants. They do not require the use of Ringtail. Their purpose is to enhance the court’s understanding of the oral presentation.

24. For the purpose of its opening statement and its case-presentation during trial, the Prosecution has prepared detailed maps of 1) the CAR; 2) the western region of the CAR; 3) the Bangui-Damara Road; 4) Bangui; and 5) Bangui with its Arrondissements and Groupements.¹⁵ These maps will be mutually beneficial to the parties and participants as they show with sufficient detail regions and locations that are relevant to the case. Therefore, the Prosecution seeks the Chamber’s authorization to serve them to the Defence and to include them into the case record, so that they may be equally available to the parties and participants in presenting their arguments and views. The Prosecution provides in Annex G a chart including the geo-coordinates of the relevant locations and the source upon which the Prosecution relied to prepare those maps.

b) Issues that are still pending

25. The Prosecution notes that there are outstanding matters relevant to the conduct of trial that remain pending before the Chamber for its determination: the Prosecution’s submission to conduct part of the trial *in situ*;¹⁶ the Defence’s request titled “Requête aux fins d’obtenir une Décision ordonnant la correction et le dépôt du Second Document Amendé Contenant les Charges”;¹⁷ the Prosecution's submission on victims' participation at trial;¹⁸ the Prosecution's observations on 86 applications

¹⁵ Those maps are appended to this application as Annex F.

¹⁶ ICC-01/05-01/08-555.

¹⁷ ICC-01/05-01/08-694.

¹⁸ ICC-01/05-01/08-594.

for victim's participation in the proceedings;¹⁹ the Prosecution's submission on whether the Chamber should adopt or depart from the jurisprudence of Trial Chamber I on the manner of submission of evidence by the parties and participants at trial;²⁰ the eCourt Protocol;²¹ the Prosecution's request for restriction on the use of confidential material for Defence investigations;²² the Prosecution applications for redactions;²³ and finally the application challenging the admissibility of the case pursuant to Articles 17 and 19(2)(a) of the Rome Statute.²⁴



Luis Moreno-Ocampo, Prosecutor

Dated this 10th Day of June 2010

At The Hague, The Netherlands

¹⁹ ICC-01/05-01/08-723.

²⁰ ICC-01/05-01/08-569.

²¹ ICC-01/05-01/08-588.

²² ICC-01/05-01/08-784.

²³ ICC-01/05-01/08-572, ICC-01/05-01/08-621, ICC-01/05-01/08-689, ICC-01/05-01/08-724, ICC-01/05-01/08-772, and ICC-01/05-01/08-778.

²⁴ ICC-01/05-01/08-704-Conf.