

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 6 September 2010

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 Document

**Order setting deadlines for agreements as to facts and evidence
and for the filing of expert reports**

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

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor
Ms Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Mr Nkwebe Liriss
Mr Aimé Kilolo-Musamba

Legal Representatives of the Victims

Ms 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**

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") issues the following Order to set a deadline for agreements as to facts and evidence between the parties and for the filing of expert reports.

A - AGREEMENTS AS TO FACTS AND EVIDENCE BETWEEN THE PARTIES

I. Background and Submissions

1. On 7 October 2009, the Chamber instructed the parties and participants to liaise with each other with a view to reaching potential agreements on non-contentious issues. The Chamber ordered the Office of the Prosecutor ("prosecution") to inform the Chamber as to the outcome of such discussions by 4 November 2009.¹
2. On 4 November 2009, the prosecution made a written filing, detailing the outcome of discussions as to potential agreements of facts on non-contentious issues.² The prosecution stated that it had met with representatives of the defence team and the Office of Public Council for Victims ("OPCV") on 3 November 2009. It was submitted that although the defence "expressed its willingness to explore the possibility of reaching an agreement on non-contentious issues", the defence considered it would only be able to engage in this exercise after the prosecution had disclosed the evidentiary materials, the deadline for which was 30 November 2009.³
3. The prosecution further submitted that the OPCV expressed its interest in providing views, through a common position for all victims, once agreements

¹ Transcript of hearing on 7 October 2009, ICC-01/05-01/08-T-14-ENG ET WT, page 23, lines 12 – 20.

² The Prosecution's Notification to the Chamber concerning Negotiations on Agreed Facts, 4 November 2009, ICC-01/05-01/08-591.

³ ICC-01/05-01/08-591, paragraph 2.

on facts are reached by the parties and to the extent that victims' personal interests are concerned.⁴

4. The prosecution informed the Chamber of that in terms of negotiations on stipulations of non-contentious issues, an agreement was reached that such negotiations will take place only between the parties.⁵
5. Finally, the prosecution submitted that the parties had agreed on a methodology for consideration of proposals on agreed facts whereby the prosecution will periodically submit charts to the defence (or *vice versa*, as appropriate), setting out proposals for stipulations regarding facts alleged in the charges, the first chart to be submitted to the defence by 27 November 2009.⁶ Communications in respect of this matter were to be via e-mail, with meetings where necessary, and the Chamber would be informed on an ongoing basis as agreement is reached on non-contentious issues.⁷
6. On 20 January 2010, the prosecution updated the Chamber on the status of negotiations to reach agreements on facts.⁸ The prosecution submitted that 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, the prosecution 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 the prosecution submits that no response by the defence has been received to date.⁹

⁴ ICC-01/05-01/08-591, paragraph 2.

⁵ ICC-01/05-01/08-591, paragraph 3.

⁶ ICC-01/05-01/08-591, paragraphs 3 and 6.

⁷ ICC-01/05-01/08-591, paragraphs 4 and 5.

⁸ The Prosecution's Submission Concerning the Status of Negotiations on Agreed Facts, 20 January 2010, ICC-01/05-01/08-671.

⁹ ICC-01/05-01/08-671, paragraph 3.

7. At a status conference on 8 March 2010, the Trial Chamber vacated the trial date of 27 April 2010, in order that the Chamber may resolve the defence's application challenging the admissibility of the case prior to the commencement of trial, and a new date of 5 July 2010 was fixed.¹⁰
8. On 2 June 2010, the Chamber issued its "Order for the filing of submissions in preparation for the commencement of the trial," in which the parties were instructed, in view of the commencement of the trial, to file their submissions on any agreements as to facts pursuant to Rule 69 of the Rules of Procedure and Evidence ("Rules").¹¹
9. On 10 June 2010, the defence informed the Chamber that agreements of facts were not possible as the prosecution had only disclosed its last incriminatory evidence on 20 May 2010, that being just one month prior to the commencement of the trial, and it had been agreed that such negotiations could only take place after final disclosure was complete.¹²
10. The prosecution filed its response on the same day, reiterating the efforts made to reach an agreement on facts with the defence and also submitting that no agreement had been possible as no response had been received from the defence in respect of this matter.¹³
11. On 25 June 2010, the Trial Chamber issued an order postponing the commencement of trial due to administrative reasons and to facilitate necessary preparation for the commencement of the trial, fixing a new date

¹⁰ Transcript of hearing on 8 March 2010, ICC-01/05-01/08-T-20-Red-ENG WT2, page 15, lines 2 – 8.

¹¹ Order for the filing of submissions in preparation for the commencement of the trial, 2 June 2010, ICC-01/05-01/08-785, paragraph 4.

¹² Réponse de la Défense conformément à l'ordonnance de la Chambre de Première Instance III du 2 Juin 2010, 10 June 2010, ICC-01/05-01/08-792, paragraph 3iii).

¹³ The Prosecution's Submissions in Preparation for the Commencement of the Trial, 10 June 2010, ICC-01/05-01/08-793, paragraphs 19 – 21.

for 14 July 2010.¹⁴

12. In light of the defence's application to the Appeals Chamber on 5 July 2010 for suspensive effect of its appeal against the decision on admissibility and abuse of process,¹⁵ the Trial Chamber considered that, as a matter of principle, the trial should not commence, at least until the application for suspension had been resolved and so the Chamber issued another "Order for postponing the commencement of trial" on 7 July 2010.¹⁶ In this order, the Chamber fixed a status conference to be held on 30 August 2010.¹⁷

13. At the status conference on 30 August 2010, having asked the parties and participants for their submissions on a possible date for the commencement of the trial, the Chamber decided orally that trial proceedings shall continue, pending the outcome of the appeal against the Decision on the Admissibility and Abuse of Process Challenge.¹⁸

II. Relevant provisions

14. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Trial Chamber has considered the following provisions:

Article 64(2) of the Statute Functions and powers of the Trial Chamber

[...]

2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

Rule 69 of the Rules of Procedure and Evidence Agreements as to evidence

¹⁴ Order postponing the commencement of the trial, 25 June 2010, ICC-01/05-01/08-803, paragraphs 2 – 3.

¹⁵ Demande de l'effet suspensif relative à l' Acte d'Appel de la Défense contre la décision de la Chambre de Première Instance III du 24 Juin 2010 intitulée '*Decision on the Admissibility and Abuse of Process Challenge*', 5 July 2010, ICC-01/05-01/08-809 OA03.

¹⁶ Order postponing the commencement of the trial, 7 July 2010, ICC-01/05-01/08-811.

¹⁷ ICC-01/05-01/08-811, paragraph 6.

¹⁸ Transcript of hearing on 30 August 2010, ICC-01/05-01/08-T-24-ENG ET WT, page 16, lines 11 – 14.

The Prosecutor and the defence may agree that an alleged fact, which is contained in the charges, the contents of a document, the expected testimony of a witness or other evidence is not contested and, accordingly, a Chamber may consider such an alleged fact as being proven, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims.

Regulation 54 of the Regulations of the Court
Status conferences before the Trial Chamber

At a status conference, the Trial Chamber may, in accordance with the Statute and the Rules, issue any order in the interests of justice for the purposes of the proceedings on, inter alia, the following issues:

[...]

(n) Evidence to be introduced under rule 69 as regards agreed facts.

[...]

III. Analysis and conclusions

15. In the present case, as set out above, the Chamber was notified that as of 4 November 2009, the parties agreed in principle to negotiate potential agreements on non-contentious issues. A French version of a list of suggested non-contentious facts was provided by the prosecution to the defence on 4 December 2010.

16. The Chamber notes the defence's argument concerning the additional disclosure by the prosecution on 20 May 2010 as a justification for not having been able to so far to reach any agreements as to evidence in the present case. However, disclosure of incriminatory evidence is now complete and the parties are therefore now able to meet to discuss reaching possible agreements as to facts and evidence.

17. Such agreements, if reached, would enable the Chamber to ensure the expeditious conduct of the upcoming trial pursuant to Article 64(2) of the Statute. In addition, the Chamber would be in a position to effectively exercise its case-management powers under Regulation 54(n) of the Regulations of the Court and, in particular, to ensure that witnesses are not needlessly brought

to court when their evidence is not in dispute.¹⁹

18. The Chamber also refers to the Trial Chamber II's oral order issued at a status conference on 2 November 2009, in which it requested a *"document in two parts, one which talks about the general consensus there is and the second part which also raises what has been proposed so far and which has perhaps partially been accepted, and what has been proposed and what has been totally refused as well."*²⁰

19. This Chamber finds the approach of Trial Chamber II to be an appropriate way of proceeding in the present case and accordingly orders that a list similar to that already circulated by the prosecution on 4 December 2009, as referred to above in paragraph 6, containing the agreed facts, the partially agreed facts and the matters of disagreement, shall be submitted for the Chamber's consideration no later than 4 October 2010.²¹

20. To the extent that the views and concerns of participating victims are affected by agreements as to evidence, the document filed by the parties is to be notified to the legal representatives of victims, who may then file submissions no later than 11 October 2010.

B - EXPERT WITNESSES' REPORTS

21. At a status conference on 29 March 2010,²² the Chamber issued an oral decision approving four expert witnesses to be called by the prosecution at trial on the condition that they are admitted to the Registry's list of experts. The four experts concerned are:

¹⁹ Trial Chamber I has taken a similar approach, see "Decision on agreements between the parties", ICC-01/04-01/06-1179, paragraph 11.

²⁰ Transcripts of hearing on 2 November 2009, ICC-01/04-01/07-T-74-Red-ENG CT WT, page 40, lines 4 – 10.

²¹ The prosecution in Trial Chamber II followed a similar approach, see "Prosecution's Observations on Agreements as to Evidence", ICC-01/04-01/07-1609, pages 3 – 5.

²² Transcript of Hearing on 29 March 2010, ICC-01/05-01/08-T-21-ENG ET WT, page 13, line 20 to page 24, line 19.

- a. Dr Binaifer Nowrojee, sexual violence expert,
- b. Dr Adeyinka M. Akinsulure-Smith, expert on gender crime and PTSD,
- c. Professor William Samarin, linguistic expert, and
- d. General Daniel Opande, military expert.

22. On 7 May 2010, the prosecution and the legal representatives filed their "Submission of Joint Instructions to Experts by the Prosecution and the Office of Public Counsel for Victims", in which they agreed on the experts' joint instructions and also filed a list of suggested questions and themes to be addressed by the expert witnesses.²³ In addition, they informed the Chamber that the defence had notified the prosecution by email on 19 April 2010 of its opposition to the experts, and of its refusal to participate in their joint instruction.²⁴

23. On 27 August 2010, the Registry informed the Chamber that all expert witnesses have been admitted to the Registry's list.²⁵

24. At the status conference on 30 August 2010, the Presiding Judge specified that the defence will receive the expert witnesses' reports well in advance, in order to allow reasonable time for the preparation of its defence.²⁶

25. Accordingly, pursuant to Articles 64(3)(c) and 67(1)(b) of the Statute, and Regulation 54 (l) and (m) of the Regulations of the Court, the Chamber orders the prosecution to disclose to the defence the four expert witnesses' reports by 4 October 2010.

²³ Submission of Joint Instructions to Experts by the Prosecution and the Office of Public Counsel for Victims, 7 May 2010, ICC-01/05-01/08-768, pages 3 – 7.

²⁴ ICC-01/05-01/08-768, paragraph 2 and footnote 3.

²⁵ E-mail communication from the Registry to the Legal Adviser to the Trial Division, 27 August 2010.

²⁶ ICC-01/05-01/08-T-24-ENG ET WT, page 12, lines 5 – 11.

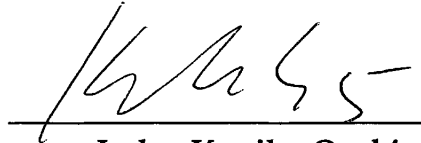
Done in both English and French, the English version being authoritative.

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Judge Sylvia Steiner

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Judge Joyce Aluoch

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Judge Kuniko Ozaki

Dated this 6 September 2010

At The Hague, The Netherlands