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

Date: 7 October 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

**Decision on the Prosecution's Request for Approval of a Proposed Expert and for
Extension of Time for the Submission of the Expert Report**

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

Legal Representatives of the Victims

Ms Marie Edith Douzima-Lawson

Counsel for the Defence

Mr Nkwebe Liriss

Mr Aimé Kilolo Musamba

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”) in the case of The Prosecutor v. Jean-Pierre Bemba Gombo issues the following Decision on the “Prosecution’s Request for Approval of a Proposed Expert and for Extension of Time for the Submission of the Expert Report”.¹

I. Background and Submissions

1. On 7 October 2009, the Chamber requested the Office of the Prosecutor (“prosecution”) to identify the expert witnesses that it intends to rely upon at trial. The parties and the participants were requested to consider the relevant jurisprudence of the Court on this issue and the possibility of joint instruction by the parties of any expert witnesses.²
2. On 28 January 2010, the prosecution filed the “Prosecution’s Request for Approval of its Proposed Experts and Joint Instructions by the Prosecution and Legal Representatives”.³ In annexes A, B, C, the prosecution, with the agreement of the legal representatives,⁴ submitted the *curriculum vitae* of three expert witnesses, including that of Dr Binaifer Nowroje, as the expert on gender crime and especially, sexual violence as a tool of war.⁵
3. On 29 March 2010, the Chamber issued an oral decision approving the proposed prosecution experts.⁶

¹ Prosecution’s Request for Approval of a Proposed Expert and for Extension of Time for the Submission of the Expert Report, with Public Annex A and Confidential Annex B, 23 September 2010, ICC-01/05-01/08-896.

² Transcript of hearing on 7 October 2009, ICC-01/05-01/08-T-14-ENG ET WT, page 18, lines 18- 25 and page 19, lines 1-8.

³ Prosecution’s Request for Approval of its Proposed Experts and Joint Instructions by the Prosecution and Legal Representatives, 21 January 2010, ICC-01/05-01/08-681 with confidential annexes A, B and C. The annexes were notified to the legal representatives on 12 February 2010 in accordance with an instruction from the Trial Chamber sent by email dated 11 February 2010 at 17.17.

⁴ ICC-01/05-01/08-681, paragraph 4.

⁵ ICC-01/05-01/08-681, paragraphs 6 and 8.

⁶ Transcript of hearing on 29 March 2010, ICC-01/05-01-T-21-ENG ET WT, pages 20-24.

4. On 7 May 2010, the prosecution and the Office of the Public Counsel for Victims filed their "Submission of Joint Instructions to Experts by the Prosecution and the Office of Public Counsel for Victims".⁷
5. On 6 September 2010, the Chamber issued its order setting deadlines for agreements as to facts and evidence and for the filing of expert reports, in which it fixed the deadline for the submission of expert reports to 4 October 2010.⁸
6. On 23 September 2010, the prosecution filed its "Prosecution's Request for Approval of a Proposed Expert and for Extension of Time for the Submission of the Expert Report", in which it informs the Chamber of the withdrawal of Dr Binaifer Nowroje, and requests the approval of Dr André Tabo as the new prosecution expert on sexual violence as a tool of war.⁹ The prosecution further informs the Chamber that it has already initiated the procedure for the inclusion of Dr Tabo in the Registry's list of experts.¹⁰ The prosecution also requests an extension of time for the submission of the expert report, until 31 December 2010.¹¹
7. On 1 October 2010, the defence for Mr Jean-Pierre Bemba Gombo ("defence") filed its "Réponse de la Défense à la requête de l'Accusation intitulée : « Request for approval of a proposed expert and for extension of time for the submission of an expert report » du 23 Septembre 2010"¹² in which it argues that the substitution of the prosecution expert is premature, as Dr Tabo is not

⁷ 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.

⁸ Order setting deadlines for agreements as to facts and evidence and for the filing of expert reports, 6 September 2010, ICC-01/05-01/08-872, paragraph 25.

⁹ ICC-01/05-01/08-896, paragraphs 2-3 and 5.

¹⁰ ICC-01/05-01/08-896, paragraph 5.

¹¹ ICC-01/05-01/08-896, paragraphs 7 and 9.

¹² Réponse de la Défense à la requête de l'Accusation intitulée : « *Request for approval of a proposed expert and for extension of time for the submission of an expert report* » du 23 Septembre 2010, 1 October 2010, ICC-01/05-01/08-916.

included on the Registry list of experts.¹³ The defence also stresses that it continues to hold the view that sexual violence as a tool of war is not a recognised expertise and that the prosecution has not demonstrated that the Chamber would need the conclusions of the expert for the purposes of rendering its verdict in the present case.¹⁴ The defence further alleges that the proposed expertise of Dr Tabo on the effects and impact of acts of sexual violence on the civilian population of the Central African Republic (“CAR”) is superfluous, since the prosecution already intends to call another expert on this issue of psychological trauma and post-traumatic stress.¹⁵ Finally, with regard to the extension of time for the filing of the expert report, the defence declines to take a position, but requests that the report be received well ahead of the testimony of any witness of crimes of sexual violence.¹⁶

II. Relevant Provisions

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

Article 64(2) and (3) 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 regards for the protection of victims and witnesses.
3. Upon assignment of a case for trial in accordance with this Statute, the Trial Chamber assigned to deal with the case shall:
 - (a) Confer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings;
 - (b) Determines the language of languages to be used at trial; and
 - (c) Subject to any other relevant provisions of this Statute, provide for disclosure of documents or information not previously disclosed, sufficiently in advance of the commencement of the trial to enable adequate preparation for trial.

¹³ ICC-01/05-01/08-916, paragraph 6.

¹⁴ ICC-01/05-01/08-916, paragraph 7.

¹⁵ ICC-01/05-01/08-916, paragraph 7.

¹⁶ ICC-01/05-01/08-916, paragraphs 8-9.

Regulation 44 of the Regulations of the Court**Experts**

1. The Registrar shall create and maintain a list of experts accessible at all times to all organs of the Court and to all participants. Experts shall be included on such a list following an appropriate indication of expertise in the relevant field. A person may seek review by the Presidency of a negative decision of the Registrar.
2. The Chamber may direct the joint instruction of an expert by the participants.
3. On receipt of the report prepared by an expert jointly instructed, a participant may apply to the Chamber for leave to instruct a further expert.
4. The Chamber may *proprio motu* instruct an expert.
5. The Chamber may issue any order as to the subject of an expert report, the number of experts to be instructed, the mode of their instruction, the manner in which their evidence is to be presented and the time limits for the preparation and notification of their report.

Regulation 35 of the Regulations of the Court**Variation of time limits**

1. Applications to extend or reduce any time limit as prescribed in these Regulations or as ordered by the Chamber shall be made in writing or orally to the Chamber seized of the matter setting out the grounds on which the variation is sought.
2. The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.

III. Analysis and Conclusions

9. The Chamber recalls that the relevant criteria for the instruction of expert witnesses have been established by Trial Chamber I in the case of *The Prosecutor v. Thomas Lubanga Dyilo*,¹⁷ and have been explicitly adopted by this Chamber.¹⁸
10. The Chamber reiterates, as stated during the status conference held on 29 March 2010, that expert evidence on the issue of sexual violence as a tool of war is relevant to the present case, as it will assist the Chamber “in arriving at a full understanding of the relevant factual matrix in this case and to an understanding of the nature of the charge or charges brought against the

¹⁷ Decision on the procedures to be adopted for instructing expert witnesses, 10 December 2007, ICC-01/04-01/06-1069.

¹⁸ Decision on the procedures to be adopted for instructing expert witnesses, 12 February 2010, ICC-01/05-01/08-695, paragraph 12.

accused”.¹⁹ Thus, the Chamber rejects the defence’s argument that the proposed expertise is superfluous.

11. The Chamber notes that, according to Dr Tabo’s *curriculum vitae* which is annexed to the prosecution’s request, Dr Tabo is a medical doctor with over 25 years experience, and is also a practising psychologist with 18 years experience. He has participated in a large number of seminars of academic and medical nature, and has been a World Health Organization consultant on sexual violence in the CAR. He has also published a substantial number of papers on the subject of sexual violence and has been professionally dealing with nearly a hundred victims of sexual violence related to the conflict in the CAR. Finally, he has acted as an expert psychiatrist before the national courts of the CAR.²⁰ The Chamber is therefore satisfied that Dr Tabo’s expertise is relevant to the present case.

12. The Chamber recalls that the prior inclusion of an expert’s name in the Registry’s list of experts is not a prerequisite for his eligibility to receive instruction.²¹ However, the admission onto the Registry’s list must have been confirmed prior to the expert’s testimony.²² Should the Registrar refuse to include Dr Tabo in the list, it will be necessary to raise the matter before the Chamber so that the issue can be resolved in a timely manner.²³

13. With regard to the prosecution’s request for an extension of time, the Chamber is mindful that the new expert will require sufficient time to produce his report and therefore the deadline of 4 October 2010 that was previously set by the Chamber should be vacated. The Chamber finds that the extension of time-limit is for a good cause and that fixing the new deadline to

¹⁹ ICC-01/05-01-T-21-ENG ET WT, page 21.

²⁰ ICC-01/05-01/08-896, Confidential Annex B.

²¹ ICC-01/05-01-T-21-ENG ET WT, page 20, lines 7 to 12.

²² ICC-01/05-01-T-21-ENG ET WT, page 20, lines 13-15.

²³ ICC-01/05-01-T-21-ENG ET WT, page 20, lines 15-18.

17 December 2010 appears reasonable as it would allow Dr Tabo over two months to produce his expert report.

14. The Chamber however notes that the extension of time-limit for the filing of the expert report on sexual violence must not cause prejudice to the rights of the defence to receive the expert report well in advance of the expert's testimony. In this regard, the Chamber notes that although the prosecution informed the Chamber of its intention to present first the testimony of victims of sexual violence, followed by the relevant expert testimony,²⁴ the prosecution also indicates that Dr Tabo would only testify as the 15th witness at trial, which would give the defence sufficient preparation time.²⁵ Subject to any further decision on the Prosecution's Update Order of Presentation of its Witnesses at Trial of 1 October 2010, the Chamber finds this arrangement to be reasonable and practicable in the circumstances of this case, as long as the prosecution ensures that the expert's report is communicated to the defence at least 30 days prior to the testimony of the expert.

IV. Orders

15. For these reasons, pursuant to Article 64 (2) and (3) of the Statute, Regulation 44 and Regulation 35 of the Regulations of the Court, the Chamber hereby:

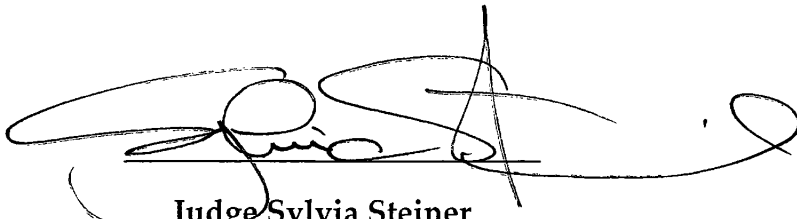
- i) approves the instruction of Dr André Tabo as expert witness on the issue of sexual violence as a tool of war, subject to his admission to the Registry's list of experts, for which the Chamber is to receive confirmation of this information by way of email to the Legal Adviser to the Trial Division;

²⁴ Prosecution's Update Order of Presentation of its Witnesses at Trial, 1 October 2010, ICC-01/05-01/08-918, paragraph 4.

²⁵ ICC-01/05-01/08-896, paragraph 7.

- ii) extends the time limit for the submission of Dr Tabo's expert report to 17 December 2010, at 16.00.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 7 October 2010

At The Hague, The Netherlands