

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/08
Date: **10 October 2013**

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

**Prosecution's Response to Defence Motion on outstanding decisions on the
admission of evidence**

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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I. Introduction

1. On 7 October 2013 the Defence filed its *Defence Motion on outstanding decisions on the admission of evidence* ("Defence Motion"). The Defence requests Trial Chamber III ("Chamber") to clarify its 16 July 2013 order ¹ whereby the Defence was directed to complete its presentation of evidence by 25 October 2013 at the latest, and the parties and participants were ordered to file closing briefs within time limits running from "the date on which the presentation of evidence is formally closed." ² The Defence also requests that the Chamber stay its order until an admissibility decision is rendered. The Office of the Prosecutor ("Prosecution") does not oppose the Defence request for additional clarity. The Prosecution opposes the Defence request to stay the Chamber's order requiring the Defence to conclude its presentation of evidence by 25 October 2013 until a decision on admission of evidence is rendered.

II. Prosecution's Response

2. Further to the parties' applications for admission of materials into evidence,³ the decision on the admissibility of 124 documents is pending. Pursuant to the Chamber's 1 October order,⁴ more materials will be submitted by the parties for admission into evidence by 31 October.

3. In the Prosecution's view, determining what documents are in evidence before the formal closing of the presentation of evidence and the drafting of the closing

¹ ICC-01/05-01/08-2731, Decision on the timeline for the completion of the defence's presentation of evidence and issues related to the closing of the case, 16 July 2013.

² *Ibid.*, para. 38.

³ ICC-01/05-01/08-2590-Conf, Defence submission in compliance with the Third Order on the submission into evidence of materials used during the examination of witnesses, and ICC-01/05-01/08-2590-Conf-AnxA, 22 April 2013; ICC-01/05-01/08-2596-Conf, Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, and ICC-01/05-01/08-2596-Conf –AnxA, 22 April 2013.

⁴ ICC-01/05-01/08-2824, Order on the submission of final applications for the admission of material into evidence and seeking observations on the admission into evidence of witnesses' written statements, 1 October 2013.

briefs would ensure a fair and efficient completion of the proceedings. In order to efficiently draft the closing submissions, the parties and participants need to know the admitted evidence that the Chamber will consider in its Article 74 decision. While the Prosecution recognizes that the Statute affords Chambers of this Court a margin of discretion as to when and how to decide on the admissibility of evidence, it submits that in this case the amount of outstanding documents (currently 124) militates in favour of a ruling being made before completion of the evidentiary phase.

4. The Prosecution accordingly does not oppose the Defence request seeking clarification as to whether the Chamber intended to declare the submission of evidence formally closed on 25 October; and whether the timelines for the submission of the closing briefs will run from 25 October or from a subsequent declaration under Rule 141(1).

5. The Chamber, however, has already distinguished the two concepts of “completion of the defence’s presentation of evidence” and “formal closing of the presentation of evidence.”⁵ The Prosecution’s understanding is therefore that the 16 July order, whereby the Chamber required the Defence to conclude the presentation of its evidence by 25 October, did not amount to a declaration pursuant to Rule 141 (1) that the submission of evidence shall be formally closed on 25 October.

6. The Prosecution therefore submits that the 16 July order does not prevent the Chamber from rendering a decision on the admissibility of the outstanding documents prior to the formal closing of the presentation of evidence. This would ensure the most efficient completion of the trial. The timelines of the closing submissions would then run from the time that the declaration under Rule 141(1) is

⁵ ICC-01/05-01/08-2731, para. 38

made, and the knowledge of what documents are in evidence would assist the parties and participants to draft the closing submissions.

7. The Defence Motion aims at obtaining a decision on the admission of the outstanding documents before the formal closing of the presentation of evidence. To this end the Defence requests that the Chamber stay the 16 July order. The Chamber, however, need not stay its order since “the closing of the defence’s presentation of evidence” is not equal to the “formal closing of the presentation of evidence” under Rule 141(1). The Chamber’s order that the Defence must conclude its presentation of evidence by 25 October 2013, at the latest, does not mean that the Chamber must formally declare the closing of the submission of evidence at the same time. Therefore the Defence request to stay the 16 July order is premature and unnecessary.

III. Conclusion

8. In light of the foregoing, the Prosecution:

- i. Does not oppose the Defence request seeking clarifications, as stated in paragraph 4 above;
- ii. Respectfully requests that the Chamber reject the Defence request for stay of the 16 July order.



Fatou Bensouda, Prosecutor

Dated this 10th Day of October 2013

At The Hague, The Netherlands