

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 29 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

**Prosecution's Response to Defence Motion for clarification and reconsideration of
the timetable for the parties' final submissions of evidence**

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

Mrs. Fatou Bensouda, Prosecutor
Mr. James Stewart, Deputy Prosecutor
Mr. Jean-Jacques Badibanga

Counsel for the Defence of Jean-Pierre Bemba Gombo

Mr. Aimé Kilolo Musamba
Mr. Peter Haynes

Legal Representatives of Victims

Ms. Marie-Edith Douzima-Lawson
Mr. Zarambaud Assingambi

Legal Representatives of 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

Mr. Xavier-Jean Keita

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Other Section

I. Introduction

1. On 24 October 2013, the Defence of Jean-Pierre Bemba Gombo (“Accused”) filed a Motion¹ requesting clarifications from Trial Chamber III (“Chamber”) on whether the Defence will have the opportunity to call evidence in reply to the evidence that the Chamber has called under Article 69(3) of the Statute. The Defence further requested that the Chamber reconsider its order² (“Order 2824”) and instruct the parties to file applications for admission of documents only after the submission of the evidence requested by the Chamber.³ The Defence based its Motion on the Accused’s right to have the final word in the case against him.⁴

2. The right of the accused to have the last word is a right to address the Court before the trial is over. It is distinct from, and does not include a right to be the last one presenting evidence. The Defence will have the opportunity to examine the witnesses called by the Chamber and to confront them, if needed.

3. In the unlikely event that the evidence of the witnesses called pursuant to Article 69(3) raises specific issues justifying the exceptional submission of rebuttal evidence, the Defence will have the opportunity to present a targeted request. Any application in the abstract at this stage is however premature and should be rejected.

4. In light of the above, there is no need for the Chamber to reconsider its Order. Further, the Chamber has the statutory authority to call for evidence at any stage of the proceedings, including after the presentation of the Defence’s case.

¹ ICC-01/05-01/08-2844, Motion for clarification and reconsideration of the timetable for the parties’ final submissions of evidence, 24 October 2013.

² 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, para.13 (i).

³ ICC-01/05-01/08-2844, para. 21.

⁴ *Ibid*, at paras 9 to 11.

II. Submissions

5. The Defence argues that the Chamber's Order 2837⁵ contained two significant "revelations": the first one was the Chamber's "intention to call two witnesses after the close of the Defence case;"⁶ the second one, the Chamber's indication that it was considering admission of "unspecified additional material as evidence in the case at some unspecified future point in time."⁷

6. Nothing of this, however, was new. Already on 19 November 2010, the Chamber had notified the parties and participants that it might "decide to call additional witnesses" at the end of the parties' evidence, and might further intervene at any given time "to order the production of such new evidence as it considers necessary for the determination of the truth, in accordance with Articles 64(6)(d) and 69(3) of the Statute".⁸ Therefore, the recent order cannot be fairly described as a "revelation".

7. Similarly, the Chamber had already foreshadowed that the admission of the relevant documents was being considered in its Order 2841.⁹ In addition, these documents have been discussed at trial and the Chamber has given the parties the opportunity to file their observations on their admission. The Defence fails to mention this.

8. The Chamber's Order is further consistent with the Chamber's statutory authority under Article 64(6)(b), (d) and (8)(b) and Article 69(3). The Defence itself

⁵ ICC-01/05-01/08-2837-Conf, Second decision on issues related to the closing of the case, 18 October 2013.

⁶ ICC-01/05-01/08-2844, para. 5.

⁷ *Ibid.*, para. 6.

⁸ ICC-01/05-01/08-1023, Decision on Directions for the Conduct of the Proceedings, 19 November 2010, para. 5.

⁹ ICC-01/05-01/08-2841, Order seeking observations on the submission as evidence of items used during the questioning of witnesses but not submitted as evidence by the parties and participants, 23 October 2013.

“does not dispute the Chamber’s right to decide to call additional witnesses” *at the end of the presentation of the Defence’s evidence’*.¹⁰

9. The Defence wrongly assumes that it has a right to call evidence in reply under Article 69(3). The Defence misconstrues the Accused’s right to have the last word in the case against him as a right to be the last to present evidence.

10. In many legal systems the accused is granted the right to say the last word so that he or she can always have a final opportunity to comment on the charges and the evidence brought in a trial against him or her. This principle has been enshrined in Rule 141(2). This right, however, has nothing to do with a right of the Accused to be the last party to present evidence which is not recognized by the Statute or the Rules.

11. Similarly, the Accused’s right to be the last to examine a witness under Rule 140(2)(d) cannot be expanded so as to include an inexistent right to be the last to call evidence.

12. The references made by the Defence to the ICC case law do not support its arguments.¹¹ The Defence has not identified a single case where the Accused was the last to present evidence. Furthermore, in the cases cited, other factors were determinative of the timing of the presentation of evidence. For example, in *Lubanga*, Trial Chamber I “reiterated its view that *expert evidence of this nature* should be called at the beginning of evidence in the case in order to put the evidence that relates to the individual charges in its proper context.” There was no reference to the accused’s right to have the last word.¹² As the Defence itself points out, in that case Trial

¹⁰ ICC-01/05-01/08-2844, para. 12 (*emphasis added*).

¹¹ *Ibid*, paras. 13 – 15.

¹² ICC-01/04-01/06-1558, Instructions to the Court’s expert on background and context, 17 December 2008, para. 2.

Chamber I recognized its own statutory basis to order or allow the production of evidence *at any stage* during the trial.¹³

13. Finally, the Prosecution submits that while it is highly unlikely that the evidence of the witnesses called by the Chamber would be of a nature requiring the exceptional submission of rebuttal evidence, the Defence will have the opportunity to submit a tailored request if it considers that such is the case. At this stage, any request is premature and made in the abstract, and therefore to be rejected.

III. Relief sought

14. For the reasons set out above, the Prosecution respectfully requests the Chamber to reject the Defence Motion.



Fatou Bensouda, Prosecutor

Dated this 29th Day of October 2013

At The Hague, The Netherlands

¹³ ICC-01/05-01/08-2844, para. 13 (*emphasis added*).