

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: **1 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

Prosecution's Updated Order of Presentation of its Witnesses at 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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I. Introduction

1. On 10 June 2010, the Office of the Prosecutor (“Prosecution”) submitted the order in which it intended to call its witnesses,¹ which was subsequently amended on 7 July 2010,² and 21 September 2010.³

2. During the status conference on 24 September 2010, Trial Chamber III (“Chamber”) expressed concerns about the overall length of the Prosecution’s case and the possibility that its evidence would be overly repetitive and duplicative.⁴ In that regard, it proposed that the Prosecution might reduce the number of witnesses it intends to present at trial.⁵ It also requested the Prosecution to consider revising the order in which it intends to present its witnesses and evidence.

3. Mindful of the Chamber’s concerns, the Prosecution reiterates its proposal at the status conference to reduce the time for the presentation of its case.⁶ Throughout the trial, moreover, the Prosecution will focus on the relevant topics and avoid unnecessary duplication, while at the same time respecting its obligations to prove its case to the required standard.

4. The Prosecution also takes note of the Chamber’s suggestion that the order of witnesses be amended to present overview and expert witnesses at the beginning. With respect to the compelling interest that the case be presented both efficiently and in a manner that will make the case understandable to the Chamber and the public, the

¹ ICC-01/05-01/08-793-AnxA, The Prosecution’s Submissions in Preparation for the Commencement of the Trial, 10 June 2010.

² ICC-01/05-01/08-812, The Prosecution’s Updated Order of Witnesses, 7 July 2010.

³ ICC-01/05-01/08-891, The Prosecution’s Updated Order of Witnesses, 21 September 2010.

⁴ ICC-01/05-01/08-T-25-CONF-ENG, page 7, lines 8 to 13.

⁵ ICC-01/05-01/08-T-25-CONF-ENG, page 7, lines 8 to 13.

⁶ ICC-01/05-01/08-T-25-CONF-ENG, page 4, line 22 to page 7, line 1.

Prosecution urges that the testimony of sexual violence victims, followed by relevant expert testimony, be heard first, and that the specific military command evidence be heard last. As to the other topics and witnesses, the Prosecution is amenable to any suggestions for reordering. To that end, it proposes a brief status conference to discuss in detail the anticipated evidence and how it should be presented.

II. Submissions

5. The complexity of the case and the number of different crimes alleged to have been committed by the Accused's troops at multiple locations necessitate the testimony of multiple witnesses to prove the alleged crimes and the mode of liability. In view of the high standard of proof beyond a reasonable doubt the Prosecution must meet in order to prove its case, it may be necessary not simply to offer evidence on the requisite elements, but also to corroborate that evidence with additional proof from other witnesses or tangible evidence. The number of witnesses the Prosecution seeks to present at trial reflects the nature, scale, impact, gravity, manner of the crimes charged, the context in which they were committed and the Accused's criminal responsibility.

6. That said, the Prosecution also respects the need to present a case within reasonable time limits. Thus, it has attempted to select only necessary witnesses in order to avoid unwarranted duplication. The Prosecution will make similar ongoing judgments throughout the trial on the feasibility of reducing the matters about which witnesses may testify and/or electing not to call particular witnesses, taking into account the progress of the proceedings and the shape of evidence already introduced, in order to streamline its case.

7. The Prosecution has also carefully considered the Chamber's observations regarding a possible reduction in the number of crime-based witnesses,⁷ and may well decide during the trial that a reduction will not impair the Prosecution's case. At this stage, however, the Prosecution deems that the witnesses chosen are essential to reflect the exemplary crimes committed throughout the Central African Republic, including their nature, gravity, pattern, and scale, and the impact of the crimes on the civilian population. For example, with respect to rape, the witnesses will demonstrate the aggravating circumstances under which the acts were committed, including rape by multiple perpetrators, rape of infants, rape in front of family members and rape in public to humiliate the victims and intimidate the civilian population. The Prosecution's crime-based witnesses also are expected to testify about, *inter alia*, pillaging, murder, and how they identified their perpetrators as *Mouvement de Libération du Congo* soldiers.

8. The Chamber's suggestion to combine and present expert and overview witnesses during the commencement of the trial is also based on multiple considerations - efficiency and potential reduction of the length of the Prosecution's case, as well as the belief that it will facilitate understanding of the context of the Prosecution's case. The Prosecution shares these concerns, but respectfully submits that grouping the expert and overview witnesses at the start of the trial is not likely to promote those objectives. In particular, the "overview" witnesses - a slightly misleading characterization by the Prosecution - are not multiple witnesses presenting an overview over all the events and time period charged in this case. Rather, their perspectives are more individual, more related to the different crimes - lootings, sexual assaults, and murders - and locations. For that reason, the Prosecution deemed it more efficient to call particular overview witnesses in connection with the groups of witnesses who will testify on particular offenses. And because this is a case involving command responsibility and direct

⁷ ICC-01/05-01/08-T-25-CONF-ENG, page 7, lines 8 to 22.

perpetrators who are not the Accused himself, the presentation of evidence must focus on the actual crimes - which themselves are multiple and spread over a broad geographic area - and the military structure/mode of liability.

9. The Prosecution believes it will make the Prosecution case more understandable if at least some of the crime evidence is heard before the contextual and expert evidence. This is a criminal prosecution. As such, the crux of this case is the series and severity of crimes with which the Accused is charged. The Prosecution's view is that evidence of context or the testimony of experts without first hearing the facts of the crimes themselves will, in the end, be less meaningful.

10. Equally important, the Prosecution must respect the needs and concerns of these particularly vulnerable witnesses. Several have already expressed concerns about the delay, and it is in the interest of the Court that their appearance not be further delayed without good cause. Delay could also raise the possibility that they may reconsider their decision to testify. For those reasons, the Prosecution strongly prefers *not* to reorder their appearances and call them after the presentation of other evidence.

11. This proposed order of witnesses, calling the primary sexual violence witnesses first, is additionally consistent with the *Lubanga* case proceedings, about which Trial Chamber I stated:

“the court acknowledges the force in the argument that the hearing is likely to be more readily comprehensible if the first testimony relates to the ‘primary’ evidence in the case which is said to support the charges the accused faces. There is a real risk that if immediately following the opening statements the court turns to matters of history and context, it

will be difficult to understand the nature and true course of the trial to come⁸".

12. With regard to experts on issues related to sexual violence and gender crimes,⁹ the Chamber's proposal that they testify first is not likely to shorten the trial or make it more efficient. Moreover, the Chamber may have particular questions inspired by matters that might arise during the crime-based witnesses' testimony. Accordingly, the Prosecution proposes to call the experts after the relevant factual testimony to enable the expert evidence to be considered not in abstract but in the context of the facts of the case. This is supported by Rule 140(3) of the Rules of Procedure and Evidence which does not prohibit experts from being present during the testimony of other witnesses.

13. The Prosecution also submits that it is more effective and efficient to hear as a single block the evidence regarding the military command structure, including the evidence of the military expert. This evidence does not particularly address the criminal acts; it relates instead to the Accused's mode of liability. The Prosecution proposed this at the end of the trial, after the earlier evidence has established the context, i.e. the conduct of the military actors. The Prosecution prefers that this order be maintained for these reasons.

14. As to the remaining witnesses, the Prosecution ordered these witnesses to prove matters in what it deemed to be a logical sequence. Plainly, however, there are equally valid ways to present a case, and the Prosecution is understanding of the Chamber's concerns. It proposes that a brief status conference to discuss the presentation of the case may be appropriate. The Prosecution reiterates that it remains open to suggestions and

⁸ See ICC-01/04-01/06-T-104-ENG, 16 January 2009, page, 6, lines 2 to 8.

⁹ The same rationale applies for the linguistic expert to be heard after Witnesses 6, 9 and 63.

proposals. It also agrees that corroborating witnesses, to the extent that they are not closely linked in the current schedule, will be reordered to testify in sequence.



Luis Moreno-Ocampo, Prosecutor

Dated this 1st Day of October 2010

At The Hague, The Netherlands