Cour Pénale Internationale

International Criminal Court

Original: **English**

No.: **ICC-01/05-01/08**
Date: **26 November 2014**

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 defence request for an extension of the page limit

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

The Office of the Prosecutor
Ms Fatou Bensouda
Mr Jean-Jacques Badibanga

Counsel for the Defence
Mr Peter Haynes
Ms Kate Gibson
Ms Melinda Taylor

Legal Representatives of the Victims
Ms Marie 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
Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber III ("Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on defence request for an extension of the page limit ("Decision").

I. Background and Submissions

1. On 11 November 2014, the defence for Mr Jean-Pierre Bemba Gombo ("defence") filed the "Defence Request for Relief for Abuse of Process" ("Document 3203"),[1] a 87-page filing with nine annexes, in which the defence submits that, "[t]hrough a combination of different events and actions, the constituent elements of Mr Jean-Pierre Bemba Gombo's [("Mr Bemba")] right to a fair, impartial and independent trial have been irreparably ruptured".[2] The defence requests that the Chamber stay the proceedings and order the immediate release of Mr Bemba.[3] In the same filing, the defence submits its justification for an extension of the page limit ("Defence Request") pursuant to Regulation 37(2) of the Regulations of the Court ("Regulations").[4]

2. The defence argues that exceptional circumstances warrant an extension of the page limit for Document 3203, submitting that:[5]

> The Prosecution has been engaged in litigation before two Chambers of the ICC, often conducted *ex parte*, and widespread investigations across multiple jurisdictions for a period of years. Each of these steps has the potential to impact significantly the fair trial rights of Mr. Bemba. Privileges and immunities have been lifted, documents and casefiles seized, privileged phone conversations recorded and listened to, Mr. Bemba's cell and his Defence Office raided, and his lawyers arrested. The number of potentially relevant and complex issues require a full

[1] Defence Request for Relief for Abuse of Process, 11 November 2014, ICC-01/05-01/08-3203-Conf-Exp with confidential *ex-parte* Annexes I to III and confidential Annexes IV to IX. The defence filed confidential and public redacted versions of its filing on 25 November 2014, respectively: ICC-01/05-01/08-3203-Conf-Red and ICC-01/05-01/08-3203-Red2 with Annexes IV to VIII-Red.
[2] ICC-01/05-01/08-3203-Red2, paragraph 1.
[3] ICC-01/05-01/08-3203-Red2, paragraph 327.
[4] ICC-01/05-01/08-3203-Red2, paragraphs 13 to 15.
[5] ICC-01/05-01/08-3203-Red2, paragraph 14.

> discussion and consideration, and many of the questions raised are not only novel before this Court, but novel to international criminal law. The individuals involved, and the facts and law which will need to be engaged for a proper analysis of the impact of the Prosecution's investigative stance constitute exceptional circumstances, and warrant an extension of the page limit.

3. The defence further submits that Document 3203 "in terms of substance and effect is of equal if not greater importance to a challenge to jurisdiction or admissibility, which attract a 100 page limit".[6] According to the defence, the extension of page limit is justified as further curtailing the defence's ability to develop Mr Bemba's "right to an effective remedy as concerns repeated and grave violation of his rights would in itself, violate his rights".[7]

4. On 18 November 2014, the defence filed its "Addendum to Defence Request for Relief for Abuse of Process, ICC-01/05-01/08-3203," ("Document 3207")[8], a nine-page filing in which the defence adds further arguments to Document 3203.[9]

5. On 21 November 2014, the prosecution filed its "Prosecution's Response to the Defence Request for an Extension of Page Limit" ("Prosecution Response"),[10] in which it requests that the Chamber reject Document 3203 in its entirety and order the defence to resubmit a new request within the 20-

[6] ICC-01/05-01/08-3203-Red2, paragraph 15.
[7] ICC-01/05-01/08-3203-Red2, paragraph 15.
[8] Addendum to Defence Request for Relief for Abuse of Process, ICC-01/05-01/08-3203, 18 November 2014, ICC-00/05-01/08-3207-Conf-Exp, this document was reclassified as confidential on 26 November 2014. Further, on 25 November 2014, the defence filed a public redacted version of Document 3207: ICC-01/05-01/08-3207-Red.
[9] ICC-01/05-01/08-3207-Red, paragraphs 6 and 26.
[10] Prosecution's Response to the Defence Request for an Extension of Page Limit, 21 November 2014, ICC-01/05-01/08-3209-Conf. The Chamber notes that Prosecution Response is currently classified as confidential. However, in light of the principle of publicity under Article 64(7) and 67(1) of the Rome Statute and Regulation 20 of the Regulations of the Court, the present Decision is classified as public. The Chamber is of the view that its reference to the Prosecution Submission does not warrant confidential treatment at this time.

page limit or, in the alternative, order the defence to submit a substantiated request for a reasonable extension of the page limit.[11]

6. The prosecution submits that the Defence Request is in breach of the Regulations of the Court ("Regulations").[12] The prosecution notes that the Appeals Chamber has ruled that "...[a]n application for an extension of the page limit envisaged by the Regulations [...] and its approval by a Chamber are *prerequisites* for the submission of an extended document",[13] and that the Regulations "do not provide for a retroactive extension of page limits".[14] Further, the prosecution submits that the Defence Submission does not demonstrate the exceptional circumstances necessary for an extension of page limit.[15]

II. Analysis and conclusions

7. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber has considered Articles 64(2) of the Statute and Regulations 29(1) and 37 of the Regulations.

8. The Chamber notes that Regulation 37(1) of the Regulations provides that a filing may not exceed 20 pages unless otherwise ordered by, *inter alia*, the Chamber. Further, Regulation 37(2) of the Regulations provides that the Chamber may, at the request of a participant, extend the page limit in exceptional circumstances.

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[11] ICC-01/05-01/08-3209-Conf, paragraph 7. The Chamber notes that on 25 November 2014, the defence informed the Chamber via email that it intends to file a request for leave to reply to the Prosecution Request. Email from the defence to the Chamber on 25 November 2014, at 15.29.
[12] ICC-01/05-01/08-3209-Conf, paragraph 4.
[13] ICC-01/05-01/08-3209, paragraph 4 (citing Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal", 13 July 2006, ICC-01/04-168, paragraph 4; Decision on the "Observations de la Défense relatives à l'irrecevabilité du «Prosecution's Document in Support of Appeal against Trial Chamber Vs decision of 8 July to stay the proceedings for abuse of process», daté du 26 juillet 2010", 30 July 2010, ICC-01/04-01/06-2543, paragraph 11; Decision on requests related to page limits and reclassification of documents, 16 October 2012, ICC-02/11-01/11-266, paragraph 9)
[14] ICC-01/05-01/08-3209, paragraph 4 (citing Decision on the re-filing of the document in support of the appeal, 22 July 2008, ICC-01/04-01/06-1445, paragraph 8 and ICC-02/11-01/11-266, paragraph 9.
[15] ICC-01/05-01/08-3209, paragraphs 5 and 6.

9. In the present case, the defence submits Documents 3203 and 3207, which are 96 pages combined; thus the defence exceeds the page limit set by Regulation 37(1) of the Regulations by 76 additional pages. Further, the defence makes submissions justifying an extension of page limit within Document 3203, rather than filing a formal request for approval by the Chamber. The defence thereby presents the Chamber with a *fait accompli* and encroaches upon the Chamber's authority to decide on a request for extension of the page limit. As noted by the Appeals Chamber, an extension of a page limit cannot be granted retroactively.[16] The Chamber thereby finds Document 3203 is in breach of Regulation 37(2) of the Regulations and considers that this non-compliance cannot be cured by retroactively extending the page limit.[17]

10. Despite its dissatisfaction with the manner in which the defence presents its filing, the Chamber, pursuant to Regulation 29(1) of the Regulations, finds it necessary in the interests of justice to authorise the re-filing of the defence submissions related to the alleged abuse of process. The Chamber finds that, in Document 3203, the defence demonstrates exceptional circumstances justifying an extension of the page limit to present its arguments.

11. However, the Chamber considers that, while the issues at stake are indeed complex, the defence has not sufficiently demonstrated the necessity for 76 additional pages. The Chamber notes the defence's submission that Document 3203 should be treated similarly to a challenge to jurisdiction or admissibility and finds that such a comparison is unsubstantiated. The Chamber expects the defence to present its submissions in a concise and focused manner, avoiding repetition of matters that have already been adjudicated;

[16] The Chamber notes that the Appeals Chamber has accepted filings that it found did not comply with Regulation 37(2) of the Regulations in the interest of justice pursuant to Regulation 29(1) of the Regulations. However, the Chamber also notes that these filings deviated minimally from the prescribed page limit, i.e. by 1 or 2 pages. *See, inter alia,* Judgment on the appeals of William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V (A) of 17 April 2014 entitled "Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation", 9 October 2014, ICC-01/09-01/11-1598, paragraphs 25 and 26.
[17] ICC-02/02-01/11-266, paragraph 9.

accordingly, it considers that an extension of the page limit up to 40 pages is adequate and sufficient.

12. In view of the above, the Chamber hereby:

(a) REJECTS Documents 3203 and 3207 as non-compliant with Regulation 37(1) of the Regulations;

(b) GRANTS the defence an extension of the page limit up to 40 pages and INSTRUCTS the defence to re-file Documents 3203 and 3207 in one consolidated filing that does not exceed the allotted page limit;

(c) ORDERS the defence, should it re-file its motion as confidential *ex-parte*, to simultaneously file a confidential redacted version;

(d) GRANTS the prosecution and legal representative an extension of the page limit up to 40 pages for their responses to the defence consolidated filing; and

(e) ORDERS the prosecution to file a public redacted version of the Prosecution Response or inform the Chamber that it may be reclassified as public without redactions.

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

Judge Sylvia Steiner

Judge Joyce Aluoch **Judge Kuniko Ozaki**

Dated this 26 November 2014

At The Hague, the Netherlands