

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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 requests to present additional evidence and submissions on sentence
and scheduling the sentencing hearing**

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

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States Representatives

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REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

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**Victims Participation and Reparations
Section**

Ms Isabelle Guibal

Other

Trial Chamber III (“Chamber”) of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”), issues the following Decision on requests to present additional evidence and submissions on sentence and scheduling the sentencing hearing (“Decision”).

I. Background

1. On 26 May 2014, the Chamber, *inter alia*, decided to issue separate decisions on the merits pursuant to Article 74 and, in the event of a conviction, on sentence pursuant to Article 76 of the Rome Statute (“Statute”), and ordered the parties and legal representative of victims (“Legal Representative”) to file written requests to submit further evidence or to call witnesses following the issuance of the judgment on the merits.¹
2. On 21 March 2016, the Chamber issued its Judgment pursuant to Article 74 of the Statute (“Judgment”), convicting Mr Jean-Pierre Bemba Gombo under Article 28(a) of the Statute of the crimes against humanity of murder and rape, and the war crimes of murder, rape, and pillaging.² That same day, the Chamber decided upon the timeline for the parties to make submissions and requests to present additional evidence concerning the sentence.³
3. On 11 April 2016, the Office of the Prosecutor (“Prosecution”) requested (“Prosecution Request”) to call an expert witness and make final oral submissions, including its response to any evidence and submissions presented by the Defence for Mr Bemba (“Defence”).⁴

¹ Decision on the timetable and on the sentencing procedure, 26 May 2014, ICC-01/05-01/08-3071, para. 18.

² Judgment pursuant to Article 74 of the Statute, 21 March 2016, ICC-01/05-01/08-3343.

³ Decision on “Defence Request for clarification of the Decision on the timetable and on the sentencing procedure” and related issues, 21 March 2016, ICC-01/05-01/08-3344, para. 11. At the Defence’s request, the Chamber modified the deadline of two weeks initially set for the filing of requests to present addition evidence. See ICC-01/05-01/08-3071, para. 18.

⁴ Prosecution’s Application to Submit Additional Evidence and Present Final Oral Submissions on Sentencing, 11 April 2016, ICC-01/05-01/08-3362.

4. Also on 11 April 2016, the Legal Representative requested that the Chamber authorise victims a/1226/11,⁵ a/0272/08,⁶ a/0555/08,⁷ and a/0480/08⁸ ("Proposed Victims") to testify in person before the Chamber, subject to measures for three of the victims in order protect their identifies and location from the public ("Legal Representative Request").⁹
5. On 15 April 2016, pursuant to an order of the Chamber,¹⁰ the Prosecution identified Dr Daryn Reicherter as its proposed expert ("Expert") and submitted, *inter alia*, his *curriculum vitae* and a report ("Report").¹¹
6. On 18 April 2016, the Defence requested to (i) call General Jacques Seara (witness D53), protected witness P15, and Monseigneur Fridolin Ambongo; (ii) submit documentary evidence; and (iii) present additional written submissions on the relevance of any evidence admitted at the sentencing phase ("Defence Request").¹²

⁵ Granted participating status in Decision on 471 applications by victims to participate in the proceedings, 9 March 2012, ICC-01/05-01/08-2162, para. 19 and Annex A, pp. 48 to 49. *See also*, application for participation: ICC-01/05-01/08-1854-Conf-Exp-Anx198.

⁶ Granted participating status (at the pre-trial stage of the case) by Pre-Trial Chamber II's Fourth Decision on Victims' Participation, 12 December 2008, ICC-01/05-01/08-320, page 36. Authorised to continue participating in the trial proceedings by Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants, 22 February 2010, ICC-01/05-01/08-699, para. 39(i). *See also* application for participation: ICC-01/05-01/08-137-Conf-Exp-Anx2.

⁷ Granted participating status by Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 30 June 2010, ICC-01/05-01/08-807-Cor and ICC-01/05-01/08-Conf-Exp-Anx, pages 72 to 74. *See also* application for participation: ICC-01/05-01/08-653-Conf-Exp-Anx36.

⁸ Granted participating status (at the pre-trial stage of the case) by PTC II's Fourth Decision on Victims' Participation, 12 December 2008, ICC-01/05-01/08-320, page 37. Authorised to continue participating in the trial proceedings by Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants, 22 February 2010, ICC-01/05-01/08-699, para. 39(i). *See also* application for participation: ICC-01/05-01/08-224-Conf-Exp-Anx33.

⁹ Requête de la Représentante légale des victimes aux fins d'être autorisée à faire comparaître des victimes supplémentaires à l'audience de fixation de la peine, 11 April 2016, ICC-01/05-01/08-3364-Conf, with four confidential, *ex parte* annexes. Confidential, redacted versions of the four annexes were filed on 26 April 2016.

¹⁰ Decision on "Defence request for disclosure and/or clarification of the timeline for Sentencing Requests", 13 April 2016, ICC-01/05-01/08-3365.

¹¹ Prosecution's Submission of Additional Information regarding its Proposed Expert Witness, 15 April 2016, ICC-01/05-01/08-3368, with eight confidential annexes.

¹² Defence request to submit evidence on sentence and for leave to present additional written submissions, 18 April 2016, ICC-01/05-01/08-3372-Conf, with one confidential annex. A public, redacted version was filed on 18 April 2016.

7. On 29 April 2016,¹³ the parties and Legal Representative filed their respective responses. The Prosecution opposes the recall of D53 and P15 and defers any response to the documents upon which the Defence intends to rely for sentencing purposes to its final oral submissions ("Prosecution Response").¹⁴ The Legal Representative opposes the Defence Request to (i) hear any of the proposed witnesses, (ii) admit proposed documents not already admitted at trial, and (iii) make additional written submissions ("Legal Representative Response").¹⁵ The Defence requests that the Chamber (i) reject the Prosecution Request, or, in the alternative, grant the Defence three months in which to identify, consult, and instruct its own expert to review the Expert's report; and (ii) reject the Legal Representative Request, or, in the alternative, grant the Defence adequate time to conduct investigations into the veracity of the Proposed Victims' testimony ("Defence Response").¹⁶
8. On 2 May 2016, the Chamber notified the parties and participants of the envisaged schedule for the sentencing hearing, including the witnesses to be called and submissions to be heard.¹⁷

II. Analysis

9. For purposes of the present Decision, the Chamber has considered, *inter alia*, Articles 64(2), 64(9)(a), 67, 68, 69, 76, and 78 of the Statute, Rules 63, 64, 86, 87, 93, 140, and 143 of the Rules of Procedure and Evidence ("Rules"), and Regulations 43 and 44 of the Regulations of the Court ("Regulations").

¹³ The Chamber instructed the parties and Legal Representative to file any response to the Prosecution Request, Defence Request, and Legal Representative Request by 29 April 2016. See Email communication from the Chamber to the parties and participants on 19 April 2016, at 09:10.

¹⁴ Prosecution's Response to "Defence request to submit evidence on sentence and for leave to present additional written submissions", ICC-01/05-01/08-3372-Conf, 29 April 2016, ICC-01/05-01/08-3380-Conf. A public, redacted version was filed on 3 May 2016.

¹⁵ Réponse de la Représentante légale des victimes à la « Defence request to submit evidence on sentence and for leave to present additional written submissions », 29 April 2016, ICC-01/05-01/08-3378-Conf.

¹⁶ Defence Response to the Prosecution and LRV Requests to present additional evidence on sentence, 29 April 2016, ICC-01/05-01/08-3379-Conf. A public, redacted version was filed on 2 May 2016.

¹⁷ Email from the Chamber to the parties and participants on 2 May 2016, at 13:34.

A. Expert

10. According to the Prosecution, the Expert's anticipated evidence is purely relevant to sentencing, as he will testify "on the longitudinal and intergenerational impact of crimes such as (mass) rape and sexual violence, on the mental health of victims, their families, and the affected population".¹⁸ The Prosecution submits that the anticipated testimony is unique and goes beyond other evidence in the record.¹⁹ It stresses that the parties and Legal Representative will have the opportunity to examine the Expert, thus no prejudice will result from his appearance.²⁰
11. The Defence submits that the Expert (i) cannot be reliably established as the Report's author,²¹ and (ii) is anticipated to give evidence that is repetitive of other evidence already in the record.²²
12. The Chamber considers that the Expert's anticipated evidence is relevant and that his testimony on the topics identified in the Prosecution Request and Report may be of assistance to the Chamber in determining the appropriate sentence.²³ Further, in light of his extensive experience and qualifications,²⁴ the Chamber is satisfied that his evidence could provide a unique perspective in relation to the impact of the crimes on the victims. The Expert's evidence will cover the "longitudinal and intergenerational impact of crimes", including aspects which have not previously featured in the evidentiary record thus far, for example, the effects of trauma on parenting, intergenerational transmission of trauma, and healing prospects.²⁵
13. The Chamber notes that, while there is some ambiguity as to the exact authors of the Report, the Expert's contribution and connection to the Report are sufficiently

¹⁸ Prosecution Request, ICC-01/05-01/08-3362, paras 3 to 5, and 8.

¹⁹ Prosecution Request, ICC-01/05-01/08-3362, paras 6 to 7.

²⁰ Prosecution Request, ICC-01/05-01/08-3362, para. 9.

²¹ Defence Response, ICC-01/05-01/08-3379-Red, paras 13 to 18.

²² Defence Response, ICC-01/05-01/08-3379-Red, paras 19 to 25.

²³ See Article 78(1) of the Statute; and Rule 145 of the Rules.

²⁴ ICC-01/05-01/08-3368-Conf-Anx4. The Chamber notes, in particular, his experience in relation to "trauma mental health" and the fact that he has interviewed more than a thousand victims of violence and rape.

²⁵ Report, ICC-01/05-01/08-3368-Conf-Anx3, pages 24 to 26, and 32 to 33.

established, demonstrating his ability to testify in relation to the Report, as well as the topics addressed therein. Although the Report is a product of the Human Rights in Trauma Mental Health Laboratory, the Expert's opinions were incorporated into the Report.²⁶ Further, the Expert is the Director of the Program for Human Rights in Trauma Mental Health.²⁷ As the Defence acknowledges,²⁸ the parties and Legal Representative can explore further issues surrounding the source and authors of the Report when examining the Expert.

14. In these circumstances, noting that the Expert is on the list of experts maintained by the Registry,²⁹ the Chamber decides to hear the Expert. The Chamber prefers that he appear in person. In the event that this is not practicable, in order to avoid undue delay, the Chamber authorises the Expert to testify by video-link.
15. In the interest of expeditiousness, the Chamber considers it appropriate to restrict the scope and duration of the Expert's testimony. Thus, the Chamber provisionally admits the Report, subject to the appearance of the Expert before the Chamber. The Chamber directs the parties and Legal Representative to avoid eliciting evidence from the Expert that is repetitive of the Report's contents or other evidence already in the record. In the circumstances, the Chamber considers that the Prosecution's estimate of three hours to examine the Expert is excessive.³⁰ The Prosecution shall have one hour, the Legal Representative shall have 30 minutes, and the Defence shall have one hour to examine the Expert.
16. Finally, the Chamber notes the Defence's alternative request for three months to identify, consult, and instruct its own expert to review the Report. In this regard, as the Defence acknowledges,³¹ the Chamber has previously ordered that the

²⁶ Report, ICC-01/05-01/08-3368-Conf-Anx3, page 3.

²⁷ ICC-01/05-01/08-3368-Conf-Anx4.

²⁸ Defence Response, ICC-01/05-01/08-3379-Red, para. 18.

²⁹ Prosecution Request, ICC-01/05-01/08-3362, para. 11.

³⁰ Prosecution Request, ICC-01/05-01/08-3362, para. 10.

³¹ Defence Response, ICC-01/05-01/08-3379-Red, paras 26 and 28.

Defence be notified of an expert's report 30 days before his testimony.³² The Defence received the Report on 15 April 2016, more than 30 days before the Expert is scheduled to testify. Nevertheless, the Defence claims it requires additional time due to questions as to the Report's contents and methodology.³³ The Chamber considers that such matters are best explored during the Expert's testimony. Accordingly, stressing the limited scope of the current phase and the Chamber's obligation to ensure the fair and expeditious conduct of the proceedings, the Chamber considers that the Defence's alternative request is not justified.

B. Witnesses D53 and P15

17. Two of the witnesses proposed by the Defence, D53 and P15, already appeared before the Chamber. D53 testified for seven days, from 14 to 28 August 2012.³⁴ P15 testified for five days, from 7 to 13 February 2012.³⁵

18. Pursuant to Article 76(2), the sentencing hearing is part of the trial. Throughout the trial, the parties were permitted to question all witnesses on, *inter alia*, "mitigating and/or aggravating circumstances" when they appeared.³⁶ As held by Trial Chamber I, the hearing of evidence relevant to sentencing at the same time as hearing evidence relevant to guilt is in the interest of expeditious proceedings, particularly insofar as it avoids the unnecessary recall of witnesses.³⁷ Accordingly, "judicial economy demands that recall [including for purposes of sentencing] should be granted only in the most compelling circumstances where the evidence

³² Decision on the Prosecution's Request for Approval of a Proposed Expert and for Extension of Time for the Submission of the Expert Report, 7 October 2010, ICC-01/05-01/08-928, para. 14.

³³ Defence Response, ICC-01/05-01/08-3379-Red, paras 27 to 28.

³⁴ T-229; T-230; T-231; T-232; T-233; T-234; and T-235.

³⁵ T-207; T-208; T-209; T-210; and T-211.

³⁶ Decision on Directions for the Conduct of the Proceedings, 19 November 2010, ICC-01/05-01/08-1023, para. 13. The Chamber later emphasised that interpretation of this direction should not have the consequence of, *inter alia*, the unjustified recall of witnesses later in the proceedings. *See* Decision on the Prosecution's Request for Leave to Appeal the Trial Chamber's Decision on Directions for the Conduct of the Proceedings, 15 December 2010, ICC-01/05-01/08-1086, paras 21 to 22.

³⁷ *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I, Decision on judicial questioning, 18 March 2010, ICC-01/04-01/06-2360, para. 38.

is of significant probative value and not of a cumulative nature”.³⁸ The parties must therefore demonstrate “good cause” to recall a witness.³⁹

1. D53

19. The Defence submits that the Chamber did not accept D53’s evidence, although “no question was raised over his qualifications or expertise.”⁴⁰ It submits that D53 can provide further expert evidence on (i) the command levels within a military structure in general and specifically within the MLC, and (ii) the efficacy ordinarily to be expected of the measures Mr Bemba took.⁴¹
20. The Prosecution submits that D53’s evidence, which would infringe on the Chamber’s fact-finding function,⁴² relates to findings on the merits already reached in the Judgment, not mitigating circumstances, and therefore cannot be admitted at this stage.⁴³ The Legal Representative submits that D53’s evidence is cumulative of other evidence already in the record.⁴⁴
21. D53’s prior evidence, to which the Chamber attached no weight in the Judgment,⁴⁵ touched upon on the issues of command and control, including over the MLC forces in the Central African Republic (“CAR”).⁴⁶ D53 also identified those responsible for taking disciplinary measures, as well as the efficacy of

³⁸ Public redacted version of “Decision on ‘Defence Motion concerning ‘Information on contacts [of] Witnesses 169 and 178 with other witnesses’”, 11 December 2014, ICC-01/05-01/08-2924-Red, para. 35. *See also* Second Redacted version of “Decision on ‘Prosecution’s Information to Trial Chamber III on issues involving witness CAR-OTP-PPPP-0169’ (ICC-01/05-01/08-3138-Conf-Red) and ‘Defence Urgent Submissions on the 5 August Letter (ICC-01/05-01/08-3139-Conf)’”, 11 December 2014, ICC-01/05-01/08-3154-Red, para. 27.

³⁹ ICC-01/05-01/08-2924-Conf, para. 35.

⁴⁰ Defence Request, ICC-01/05-01/08-3372-Red, para. 4.

⁴¹ Defence Request, ICC-01/05-01/08-3372-Conf, para. 5.

⁴² Prosecution Response, ICC-01/05-01/08-3380-Red, paras 15 to 23.

⁴³ Prosecution Response, ICC-01/05-01/08-3380-Red, paras 10 to 14.

⁴⁴ Legal Representative Response, ICC-01/05-01/08-3378-Conf, paras 5 to 8.

⁴⁵ Judgment, para. 369, as it was “unable to discern the basis for D53’s conclusions and in light of the risk that they were reached on the basis of unreliable information, the Chamber attache[d] no weight to D53’s evidence”.

⁴⁶ *See, inter alia*, **D53**: T-229, page 28, line 13 to page 29, line 20, page 30, lines 14 to 23, page 31, line 24 to page 32, line 24, page 40, line 9 to page 41, line 4, page 42, lines 3 to 19, page 57, line 21 to page 58, line 23, and page 62, lines 6 to 14; T-231, page 4, line 3 to page 9, line 4; T-233, page 16, lines 15 to 19, page 19, lines 9 to 23, and page 54, line 19 to page 55 line 7; and T-234, page 14, line 24 to page 15, line 10.

certain measures taken.⁴⁷ Further, there is ample other evidence in the record concerning military structures – both generally and specifically in relation to the MLC – and the efficacy of measures Mr Bemba took. It was on the basis of this evidence that the Chamber reached findings on these matters in the Judgment.⁴⁸ The sentencing phase is not an opportunity to re-litigate such matters. The Chamber therefore finds that the Defence has not demonstrated good cause to recall D53.

2. P15

22. The Defence submits that P15 will predominantly offer character evidence, and can also assist the Chamber in relation to (i) the aims and ambitions of the MLC, and (ii) Mr Bemba's contribution to the development of peace in the Democratic Republic of the Congo ("DRC") and the wider Central African region.⁴⁹
23. The Prosecution submits that, in the interest of expeditiousness, the Defence should have questioned P15 upon the relevant matters when he first appeared before the Chamber.⁵⁰ The Legal Representative claims that P15's anticipated evidence is cumulative⁵¹ and irrelevant, as it concerns matters falling outside the geographical scope of the *Bemba* case.⁵²
24. During the trial, the Chamber heard extensive evidence – from P15 and others – related to the aims and ambitions of the MLC.⁵³ In addition, P15, as well as many others,⁵⁴ also testified about matters relevant to Mr Bemba's character and addressed the issue of Mr Bemba's "contribution to the development of peace in

⁴⁷ See D53: T-231, page 39, line 21 to page 40, line 16, page 48, line 19 to page 49, line 13, page 49, line 24 to page 52, line 10, and page 55, line 3 to page 57, line 18.

⁴⁸ See, *inter alia*, Judgment, paras 382 to 390, 399 to 401, 427, 697 to 701, 706, and 719 to 734.

⁴⁹ Defence Request, ICC-01/05-01/08-3372-Red, para. 8.

⁵⁰ Prosecution Response, ICC-01/05-01/08-3380-Red, paras 24 to 30.

⁵¹ Legal Representative Response, ICC-01/05-01/08-3378-Conf, paras 5 to 8.

⁵² Legal Representative Response, ICC-01/05-01/08-3378-Conf, paras 9 to 10.

⁵³ See, *for example*, Judgment, para. 382 and the evidence cited therein.

⁵⁴ See, *inter alia*, the evidence of P33, P36, P44, P45, D15, D19, D21, D39, and D48. See also, *inter alia*, Judgment, paras 382, 453, 555, and 582.

the DRC”.⁵⁵ Indeed, as noted by the Prosecution,⁵⁶ P15, during questioning by the Defence, testified about Mr Bemba’s cause and his movement, Mr Bemba’s support for P15’s family, and peace negotiations in Pretoria and Sun City.⁵⁷ The Defence could have further questioned P15 upon these matters when he appeared. It does not justify its choice not to. Accordingly, the Chamber finds that the Defence has not demonstrated good cause to recall P15.

C. Monseigneur Fridolin Ambongo

25. The Defence submits that Monseigneur Fridolin Ambongo – a Bishop and President of the Episcopal Justice and Peace Commission, who was President of the CDI-Bwamanda project and superior of the Capuchin friars in the DRC – was present in the Équateur province during the events at issue in the *Bemba* case.⁵⁸ The Defence submits that he is in a position to give evidence on matters relevant to mitigating circumstances, particularly (i) Mr Bemba’s behaviour prior and subsequent to the events, and (ii) “the role of Mr Bemba and the MLC in bringing peace and stability to the region during the relevant events”.⁵⁹

26. The Legal Representative submits that this anticipated evidence is irrelevant, as it concerns matters falling outside the geographical scope of the *Bemba* case.⁶⁰

27. The Chamber notes that the Defence previously indicated its intention to call Monseigneur Ambongo, identifying him as its only character witness whose anticipated evidence was solely related to sentencing.⁶¹ The Chamber considers that his proposed testimony may indeed be relevant in order to determine the

⁵⁵ See, *inter alia*, P15: T-208, page 38, lines 1 to 23, T-209-Conf, page 49 line 19 to page 53 line 25; and T-210-Conf, page 4 lines 1 to 19, page 9, lines 10 to 24.

⁵⁶ Prosecution Response, ICC-01/05-01/08-3380-Red, para. 28.

⁵⁷ P15: T-210-Conf, page 33, lines 7 to 25; and T-211, page 16, line 16 to page 18, line 14, and page 23, line 8 to page 24, line 13.

⁵⁸ Defence Request, ICC-01/05-01/08-3372-Conf, para. 10.

⁵⁹ Defence Request, ICC-01/05-01/08-3372-Red, para. 11.

⁶⁰ Legal Representative Response, ICC-01/05-01/08-3378-Conf, paras 9 to 10.

⁶¹ ICC-01/05-01/08-2222-Conf-AnxA, page 65; ICC-01/05-01/08-2214-Conf-Exp-AnxA, page 1; ICC-01/05-01/08-2238-Conf-Exp-AnxA, page 2; ICC-01/05-01/08-2243-Conf-AnxA, page 3. See also T-283-Conf-Exp, page 19, lines 13 to 18.

existence of mitigating circumstances, for example, Mr Bemba's conduct after the events.⁶² Contrary to the Legal Representative's submissions, mitigating circumstances are not limited to those falling within the geographical scope of the charges.⁶³ Accordingly, the Chamber decides to hear the testimony of Monseigneur Ambongo, who does not request any protective measures.⁶⁴

28. The Chamber prefers that Monseigneur Ambongo appear before the Chamber in person. However, in the event that this is not practicable and in order to avoid undue delay, the Chamber authorises Monseigneur Ambongo to testify by video-link. The Defence shall have one hour, the Legal Representative shall have 30 minutes, and the Prosecution shall have one hour to examine the witness.

D. Proposed Victims

29. The accounts of the Proposed Victims generally concern the following acts, locations, and harm:

- (i) a/1226/11: as a result of acts of pillaging and rape at PK16, she claims to have contracted HIV and suffered physical, psychological, and material harm; for example, her husband abandoned her and her children were stigmatised;⁶⁵
- (ii) a/0272/08: as a result of acts of pillaging and rape in Bangui, the victim claims to have lost everything and was left hopeless, unable to pay for her medical treatment, and entirely dependent on relatives;⁶⁶
- (iii) a/0555/08: as a result of acts of pillaging and, after being abducted, repeated rape in Bossangoa and Bossembélé, the victim claims to have suffered

⁶² Rule 145(2)(a)(ii) of the Rules.

⁶³ *The Prosecutor v. Germain Katanga*, Trial Chamber II, Decision on Sentence pursuant to Article 76 of the Statute, 23 May 2014, ICC-01/04-01/07-3484-tENG-Corr, para. 32.

⁶⁴ Defence Request, ICC-01/05-01/08-3372-Red, para. 12.

⁶⁵ ICC-01/05-01/08-3364-Conf-Anx1-Red; and Legal Representative Request, ICC-01/05-01/08-3364-Conf, para. 18.

⁶⁶ ICC-01/05-01/08-3364-Conf-Anx2-Red; and Legal Representative Request, ICC-01/05-01/08-3364-Conf, para. 22.

moral, psychological, and material harm as a result of her kidnapping, rape, and use as a sexual slave;⁶⁷ and

- (iv) a/0480/08: as a result of acts of pillaging and, after she and her father were detained, acts of rape and the killing of her father in Bossembélé, the victim claims to have suffered psychological and physical harm, including HIV.⁶⁸

30. The Legal Representative submits that the Proposed Victims will provide supplementary evidence, generally similar to those accounts already reflected in the record, but including details not previously adduced in relation to certain aspects of the harm suffered by the victims.⁶⁹ In relation to victim a/0555/08, she notes that, although the Chamber found that MLC soldiers committed crimes in Bossangoa, no witness from that village was called to testify at trial.⁷⁰ In relation to victim a/0480/08, the Legal Representative submits that there is insufficient evidence concerning the impact of killings on the victims' families.⁷¹

31. The Defence submits that additional evidence from the Proposed Victims is unnecessary and inconsistent with the Accused's rights because (i) the sentencing hearing is not an opportunity to "fill gaps" or bolster evidence in the record, (ii) the evidence is repetitive and unnecessary, and (iii) parts of the Proposed Victims' accounts fall outside the scope of the charges and/or Judgment.⁷²

32. The Chamber must oversee and regulate the presentation of evidence by victims with due regard to the rights of the accused and the fairness of the trial. In particular, the Chamber must seek to prevent undue delays resulting from the presentation of cumulative evidence.⁷³ The Chamber has identified as necessary

⁶⁷ ICC-01/05-01/08-3364-Conf-Anx3-Red; and Legal Representative Request, ICC-01/05-01/08-3364-Conf, para. 26.

⁶⁸ ICC-01/05-01/08-3364-Conf- Anx4-Red; and Legal Representative Request, ICC-01/05-01/08-3364-Conf, para. 29.

⁶⁹ Legal Representative Request, ICC-01/05-01/08-3364-Conf, paras 19 to 21, 23 to 25, 27 to 28, and 30 to 33.

⁷⁰ Legal Representative Request, ICC-01/05-01/08-3364-Conf, para. 28.

⁷¹ Legal Representative Request, ICC-01/05-01/08-3364-Conf, paras 30 to 32.

⁷² Defence Response, ICC-01/05-01/08-3379-Red, paras 36 to 45.

⁷³ Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims, 21 December 2011, ICC-01/05-01/08-2027, para. 9.

conditions that a victim's evidence (i) is presented in a manner consistent with the rights of the accused, particularly the rights to an expeditious trial and adequate time and facilities; (ii) makes a genuine contribution to the ascertainment of the truth; and (iii) is not anonymous.⁷⁴

33. The Legal Representative acknowledges that the accounts of the Proposed Victims generally corroborate and/or are cumulative of other evidence and information already in the record, and upon which the Chamber reached its findings in the Judgment.⁷⁵ In these circumstances, the Chamber considers that it is neither necessary, nor appropriate, to authorise the Proposed Victims to testify or give evidence at this stage. Nevertheless, the threshold to grant applications by victims to give evidence is significantly higher than the threshold applicable to the presentation of victims' views and concerns in person. For this reason, victims who fail to reach the threshold to be authorised to give evidence may still be permitted to express their views and concerns.⁷⁶

34. The Chamber notes the Legal Representative's submission that the views and concerns presented at trial were not taken into account for purposes of the Judgment,⁷⁷ indicating her concern that any such views and concerns will not be taken into account in determining the sentence. In this regard, the Chamber recalls that, although they do not form part of the trial evidence, the victims' views and concerns may assist the Chamber in its approach to the evidence.⁷⁸ Further, the Chamber, in considering the appropriate sentence pursuant to Article 76(1) of the Statute, shall take into account the relevant evidence presented and submissions made during the trial. The victims' views and concerns are

⁷⁴ Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, 22 February 2012, ICC-01/05-01/08-2138, para. 23.

⁷⁵ Legal Representative Request, ICC-01/05-01/08-3364-Conf, paras 19 to 21, 23 to 25, 27 to 28, and 30 to 33.

⁷⁶ ICC-01/05-01/08-2138, paras 19 to 20.

⁷⁷ Legal Representative Request, ICC-01/05-01/08-3364-Conf, para. 31.

⁷⁸ ICC-01/05-01/08-2138, para. 19.

equivalent to submissions.⁷⁹ Accordingly, the Chamber will take them into account, as relevant and appropriate, in determining the sentence.

35. In deciding whether to hear the Proposed Victims' views and concerns, the Chamber considers whether (i) the personal interests of the individual victims are affected and (ii) the accounts expected to be provided are representative of a larger number of victims, taking into account the nature of the harm suffered and the location of the events.⁸⁰

36. The first criterion is met as the personal interests of all Proposed Victims are affected at the sentencing phase of the proceedings.

37. Concerning the second criterion, the Chamber notes that victims a/1226/11 and a/0272/08 claim that they suffered harm as a result of acts of rape and pillaging committed in Bangui and PK16, on the Bangui-PK22 axis.⁸¹ Evidence and views and concerns of victims of acts of rape and pillaging in Bangui and along the Bangui-PK22 axis, who suffered harm similar to that suffered by victims a/1226/11 and a/0272/08, have already been presented at trial. The Chamber entered findings thereupon in the Judgment.⁸² Accordingly, stressing the limited scope of the current phase and its obligations to ensure the fair and expeditious conduct of the proceedings, the Chamber does not consider it necessary to hear the views and concerns of victims a/1226/11 and a/0272/08.

38. In relation to victim a/0555/08, although a majority of the Chamber, Judge Steiner dissenting, rejected a prior request for her to testify,⁸³ the victim's account is relevant to sentencing in light of various findings in the Judgment, in particular,

⁷⁹ ICC-01/05-01/08-2138, paras 19 to 20.

⁸⁰ ICC-01/05-01/08-2138, para. 22.

⁸¹ ICC-01/05-01/08-3364-Conf-Anx1-Red; ICC-01/05-01/08-3364-Conf-Anx2-Red; and Legal Representative Request, ICC-01/05-01/08-3364-Conf, paras 18 and 22.

⁸² See, *inter alia*, Judgment, Sections V(C)(3), V(C)(5), and V(C)(14).

⁸³ Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, 22 February 2012, ICC-01/05-01/08-2138, para. 36, finding that "the major part of the events related in the victim's written statement occurred after 15 March 2003", and her account was not considered representative of a larger number of victims.

concerning evidence of crimes committed in Bossangoa⁸⁴ and Bossembélé,⁸⁵ and the impact of the crimes on victims, in particular of rape⁸⁶ and pillaging.⁸⁷ Further, insofar as she was abducted and repeatedly raped, V1 provided an account similar to that of victim a/0555/08 following the Majority's decision not to call her.⁸⁸ The victim's account of acts in Bossangoa and Bossembélé is more geographically and temporally representative of other victims than that provided by V1. The Legal Representative submits that the victim's account is representative of the harm suffered by a number of victims who were subjected to repeated rapes, abduction, and detention.⁸⁹ In these circumstances, the Chamber considers that victim a/0555/08's account is representative of a larger number of victims and decides to authorise her to present her views and concerns.

39. The Chamber also considers that victim a/0480/08's account is relevant to sentencing in light of various findings in the Judgment, in particular, concerning evidence of crimes committed in Bossembélé,⁹⁰ and the impact of the crimes of rape, murder, and pillaging on victims and their families.⁹¹ According to the Legal Representative, there is limited information in the record concerning victims of crimes in Bossembélé and the impact on the relatives of murder victims.⁹² Accordingly, the Chamber considers that victim a/0480/08's account is representative of a larger number of victims and decides to authorise her to present her views and concerns. For the reasons provided by the Legal Representative,⁹³ in particular, the victim's concerns regarding her security, physical and psychological well-being, dignity, and privacy, the Chamber finds that measures necessary to protect the victim's identity and location are justified.

⁸⁴ Judgment, para. 534.

⁸⁵ Judgment, para. 527.

⁸⁶ Judgment, para. 567.

⁸⁷ See, *inter alia*, Judgment, para. 566.

⁸⁸ Judgment, paras 546 to 551.

⁸⁹ Legal Representative Request, ICC-01/05-01/08-3364-Conf, para. 27 and footnote 53.

⁹⁰ Judgment, para. 527.

⁹¹ See, *inter alia*, Judgment, paras 566 to 567.

⁹² Legal Representative Request, ICC-01/05-01/08-3364-Conf, paras 30 to 32.

⁹³ Legal Representative Request, ICC-01/05-01/08-3364-Conf, para. 15.

40. Having authorised victims a/0555/08 and a/0480/08 to present their views and concerns, the Chamber decides that the procedure previously followed when hearing victims' views and concerns shall continue to apply, *mutatis mutandis*, at the sentencing hearing, subject to the following modifications.⁹⁴ The Chamber considers that video-link is the most appropriate and expeditious manner in which to hear the victims. Each victim shall have one hour in order to present her views and concerns. The Legal Representative should limit her questions to those that would facilitate the presentation of the victims' views and concerns.
41. Finally, noting that the victims do not oppose the disclosure of their identities to the parties,⁹⁵ the Chamber considers it appropriate to order the Legal Representative and Victims Participation and Reparations Section ("VPRS") to provide less redacted versions of the victims' statements and applications, respectively, to the parties, lifting any redactions to their identities and maintaining redactions to the identities of third parties, the victims' addresses, and/or other sensitive or personal information unrelated to the proceedings.

E. Documentary Evidence

42. The Defence seeks authorisation "to rely on and/or submit" the 51 documents listed in Annex A of the Defence Request.⁹⁶ It submits that these documents are (i) relevant to sentencing;⁹⁷ (ii) have sufficient probative value, as they were already admitted, are publicly available, or were prepared by the Registry or Mr Bemba's counsel in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, et al.* ("case ICC-01/05-01/13");⁹⁸ and (iii) will not unfairly prejudice any party.⁹⁹

⁹⁴ Decision on the presentation of views and concerns by victims a/0542/08, a/0394/08 and a/0511/08, 24 May 2012, ICC-01/05-01/08-2220.

⁹⁵ Legal Representative Request, ICC-01/05-01/08-3364-Conf, para. 6.

⁹⁶ Defence Request, ICC-01/05-01/08-3372-Red, para. 13; and ICC-01/05-01/08-3372-Conf-AnxA.

⁹⁷ Defence Request, ICC-01/05-01/08-3372-Red, para. 15.

⁹⁸ Defence Request, ICC-01/05-01/08-3372-Red, para. 14.

⁹⁹ Defence Request, ICC-01/05-01/08-3372-Red, para. 14.

43. While the Prosecution defers any response to the proposed documents until its oral statements,¹⁰⁰ the Legal Representative submits that the documents are, *inter alia*, cumulative and/or irrelevant.¹⁰¹
44. As noted by the Defence, documents 1 to 15 in Annex A have already been admitted into evidence.¹⁰² Document 47 is a report filed by the Registrar in the record of the *Bemba* case.¹⁰³ Pursuant to Article 76(1), the Chamber can consider these documents, as relevant and appropriate, in determining the sentence. Accordingly, no further action is required in relation to documents 1 to 15 and 47.
45. As to documents 16 to 26 in Annex A, the Defence submits that they are “relevant to the degree of culpability”.¹⁰⁴ The documents are printouts of online articles published by sangonet.com from 23 January to 13 March 2003. They contain information concerning (i) the diplomatic and military involvement of CEMAC in attempts to deal with the crisis in the CAR;¹⁰⁵ (ii) proposals as to the necessary conditions for a CAR national dialogue;¹⁰⁶ (iii) President Patassé’s instructions to the loyalist forces to lower the intensity of the war efforts against the rebels;¹⁰⁷ and (iv) the reactions of Mr Bemba and the CAR government to allegations of crimes committed by loyalist forces and the MLC in the CAR.¹⁰⁸ The Chamber considers that the Defence has not sufficiently justified the documents’ relevance to Mr Bemba’s “degree of culpability”. Instead, these documents concern matters that the Chamber has already addressed in the Judgment.¹⁰⁹ As noted above,¹¹⁰ the

¹⁰⁰ Prosecution Response, ICC-01/05-01/08-3380-Red, para. 31.

¹⁰¹ Legal Representative Response, ICC-01/05-01/08-3378-Conf, paras 11 to 17.

¹⁰² Defence Request, ICC-01/05-01/08-3372-Red, para 14; and ICC-01/05-01/08-3372-Conf-AnxA, page 2.

¹⁰³ ICC-01/05-01/08-3372-Conf-AnxA, page 9, *identifying* Report of the Registrar providing feedback on the implementation of the “Decision on the Defence’s urgent Request concerning Mr Jean-Pierre Bemba’s Attendance of his Father’s Funeral”, 10 July 2009, ICC-01/05-01/08-445-Conf.

¹⁰⁴ ICC-01/05-01/08-3372-Conf-AnxA, page 4.

¹⁰⁵ CAR-D04-0004-0369; CAR-D04-0004-0370; CAR-D04-0004-0373; CAR-D04-0004-0375; CAR-D04-0004-0376; CAR-D04-0004-0381; and CAR-D04-0004-0382.

¹⁰⁶ CAR-D04-0004-0377; and CAR-D04-0004-0381.

¹⁰⁷ CAR-D04-0004-0369; and CAR-D04-0004-0373.

¹⁰⁸ CAR-D04-0004-0378; CAR-D04-0004-0379; and CAR-D04-0004-0380.

¹⁰⁹ See, *inter alia*, Judgment, Sections V(B)(1), V(B)(2), V(D), and VI.

¹¹⁰ See para. 21 above.

sentencing hearing is not an opportunity for the parties to re-litigate such issues.

The Chamber therefore rejects the Defence's request to admit documents 16 to 26.

46. As to documents 27 to 42 in Annex A, the Defence submits that they are "material for the consideration of the Prosecution's proposed expert witness and any victim witness".¹¹¹ The Defence relies on some of these documents in its submissions on sentence, for example, in order to draw a comparison between the measures taken by Mr Bemba in 2002-2003 and those currently being taken by French President François Hollande and UN Secretary-General Ban-Ki Moon.¹¹² The documents are press releases and NGO and UN documents referring to allegations of crimes, notably rape and sexual abuse, alleged to have been recently committed on CAR territory by French soldiers and other peacekeeping forces,¹¹³ ex-Seleka and anti-balaka militias,¹¹⁴ and General Bozizé's fighters.¹¹⁵ The Chamber notes that actions taken and crimes committed by third parties – particularly when committed a decade after the events relevant to Mr Bemba's conviction – are, without more, irrelevant to sentencing.¹¹⁶ The Defence has not demonstrated how these documents are relevant to the purposes for which it submits them, let alone to the factors set out in Article 78 of the Statute and Rule 145 of the Rules. Accordingly, the Chamber rejects the Defence's request to admit documents 27 to 42.

47. Finally, documents 44 to 46 in Annex A are submitted as relevant to an "assessment of the Registry's report on solvency and the impact of detention on Mr Bemba to date";¹¹⁷ documents 43 and 49 to 51 are submitted as relevant to Mr

¹¹¹ ICC-01/05-01/08-3372-Conf-AnxA, pages 5 to 8.

¹¹² ICC-01/05-01/08-3376-Conf, para. 73.

¹¹³ CAR-D04-0005-0535; CAR-D04-0005-0383; CAR-D04-0005-0389; CAR-D04-0005-0392; CAR-D04-0005-0395; CAR-D04-0005-0397; CAR-D04-0005-0402; CAR-D04-0005-0404; and CAR-D04-0005-0493.

¹¹⁴ CAR-D04-0005-0407; CAR-D04-0005-0411; CAR-D04-0005-0414; and CAR-D04-0005-0425.

¹¹⁵ CAR-D04-0005-0481; CAR-D04-0005-0486; and CAR-D04-0005-0491.

¹¹⁶ Article 76(2) of the Statute. *See also*, Judgment, para. 695 and footnote 2130.

¹¹⁷ ICC-01/05-01/08-3372-Conf-AnxA, page 9.

Bemba's family and character;¹¹⁸ and document 48 is submitted as relevant to the "cooperation of the MLC with the ICC".¹¹⁹

- (i) Document 43 is UN Document S/PRST/2006/50, a Statement by the President of the Security Council, welcoming the announcement of the presidential election results in the DRC and Mr Bemba's commitment "to continue to participate actively in Congolese politics within the framework of the institutions of the Republic".¹²⁰
- (ii) Documents 44 to 46 include a Defence submission in case ICC-01/05-01/13,¹²¹ an annex thereto,¹²² and a Registry report, all related to an assessment of Mr Bemba's solvency.¹²³
- (iii) Document 48 is a printout of an online article published by radiookapi.net on 4 September 2012. Referring to the testimony of D53, it states that the MLC is satisfied with the developments of the *Bemba* case and indicates that many Central African and Congolese officers will appear as witnesses.¹²⁴
- (iv) Documents 49 to 51 refer to the constitution and charity work of the NGO "El Lyon" in Gbadolite, of which Mr Bemba's wife is a member.¹²⁵

48. The Chamber finds that these documents are *prima facie* relevant to the factors and considerations set out in Article 78 of the Statute and Rule 145 of the Rules, have sufficient probative value, and will not have a prejudicial effect on the fairness of the proceedings. Accordingly, the Chamber admits into evidence for the purpose of sentencing documents 43 to 46 and 48 to 51 (CAR-D04-0005-0499, CAR-D04-0005-0501, CAR-D04-0005-0509, CAR-D04-0005-0511, CAR-D04-0005-0514, CAR-D04-0005-0519, CAR-D04-0005-0527, and CAR-D04-0005-0536).

¹¹⁸ ICC-01/05-01/08-3372-Conf-AnxA, pages 8 to 10.

¹¹⁹ ICC-01/05-01/08-3372-Conf-AnxA.

¹²⁰ CAR-D04-0005-0499.

¹²¹ CAR-D04-0005-0501.

¹²² CAR-D04-0005-0509.

¹²³ CAR-D04-0005-0511.

¹²⁴ CAR-D04-0005-0514.

¹²⁵ CAR-D04-0005-0519; CAR-D04-0005-0527; and CAR-D04-0005-0536.

F. Additional Submissions

49. The Prosecution requests the opportunity to make oral submissions to address any evidence adduced at the sentencing phase and respond to the Defence's sentencing submissions.¹²⁶ The Defence responds that any additional submissions should be limited to addressing the evidence heard at the sentencing hearing and not be an opportunity to respond to sentencing submissions.¹²⁷ It also requests leave to present written submissions on the relevance of the evidence presented during the sentencing phase.¹²⁸ The Legal Representative submits that additional written submissions are unnecessary.¹²⁹
50. Noting the limited number of witnesses and victims to be heard at the sentencing hearing and the fact that the Defence already refers to the documentary evidence it proposes in its sentencing submissions,¹³⁰ the Chamber considers that the opportunity for additional written submissions is unnecessary. Instead, the Chamber authorises the parties and Legal Representative to make oral submissions as part of the sentencing hearing. The Prosecution shall be limited to two hours, the Legal Representative shall have 30 minutes, and the Defence shall have two hours.
51. The Chamber does not consider it necessary or useful to limit the subject matter of these submissions, as requested by the Defence. In this regard, it notes that, in similar circumstances, other Chambers have not so limited final oral submissions at the sentencing phase.¹³¹ Further, the Defence will make its submissions last, affording it the opportunity to address any evidence and oral submissions of the Prosecution and Legal Representative.

¹²⁶ Prosecution Request, ICC-01/05-01/08-3362, para. 12.

¹²⁷ Defence Response, ICC-01/05-01/08-3379-Red, para. 30.

¹²⁸ Defence Request, ICC-01/05-01/08-3372-Red, para. 16.

¹²⁹ Legal Representative Response, ICC-01/05-01/08-3378-Conf, paras 19 to 20.

¹³⁰ See, for example, ICC-01/05-01/08-3376-Conf, paras 66 and 73.

¹³¹ See, for example, *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I, Order fixing the date for the sentencing hearing, 24 April 2012, ICC-01/04-01/06-2871.

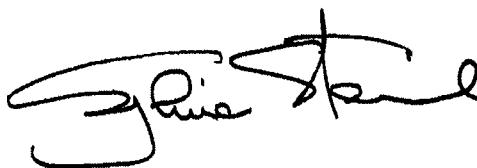
III. Conclusion

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

- (i) **SCHEDULES** a hearing from 16 to 18 May 2016 for the presentation of evidence and submissions on the appropriate sentence;
- (ii) **DECIDES** to hear the testimony of the Expert, Dr Daryn Reicherter, in accordance with the instructions set out in paragraphs 14 to 15 above;
- (iii) **PROVISIONALLY ADMITS** the Report, subject to the Expert's appearance before the Chamber;
- (iv) **DECIDES** to hear the testimony of Monseigneur Fridolin Ambongo in accordance with the instructions set out in paragraph 28 above;
- (v) **DECIDES** to hear the views and concerns of victims a/0555/08 and a/0480/08 in accordance with the instructions set out in paragraph 40 above;
- (vi) **GRANTS** victim a/0480/08 those measures necessary to protect her identity and exact location, and **ORDERS** the Legal Representative to, in consultation with the Victims and Witnesses Unit, inform the Chamber and parties of the specific, recommended measures no later than 13 May 2016;
- (vii) **ORDERS** the Legal Representative and VPRS to, no later than 13 May 2016, disclose to the parties less redacted versions of the statements and applications, respectively, of victims a/0555/08 and a/0480/08, in accordance with the instructions set out in paragraph 41 above;
- (viii) **ADMITS** documents CAR-D04-0005-0499, CAR-D04-0005-0501, CAR-D04-0005-0509, CAR-D04-0005-0511, CAR-D04-0005-0514, CAR-D04-0005-0519, CAR-D04-0005-0527, and CAR-D04-0005-0536, and **INSTRUCTS** the Registry to assign these documents EVD numbers;

- (ix) **DECIDES** to hear final oral submissions from the parties and Legal Representative, in accordance with the instructions set out in paragraphs 50 to 51 above;
- (x) **INFORMS** the parties and participants that a decision on the schedule for the hearing, including the order of appearance of witnesses and victims, once their availability has been established, will be issued in due course;
- (xi) **ORDERS** the Legal Representative to file public, redacted versions of the Legal Representative Request and Legal Representative Response no later than 20 May 2016; and
- (xii) **REJECTS** all other requests.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 4 May 2016

At The Hague, The Netherlands