



Original: English

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

Date: 17/08/2015

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

**Defence Request for clarification of the Decision on the timetable and on the
sentencing procedure**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

The Office of the Prosecutor

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

Applicants

(Participation/Reparation)

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

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REGISTRY

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Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

A. INTRODUCTION

1. On 26 May 2014, Trial Chamber III ('the Chamber') rendered its Decision on the sentencing procedure for the present proceedings ('the Decision'),¹ in which it held the following:²

In the event of a conviction, the parties and participants are thus to file any requests to submit further evidence or to call witnesses, including any requests for protective measures, within two weeks of the issuance of the judgment on the merits. A decision on any evidentiary or procedural matters, including a hearing, will be taken thereafter as required, in accordance with Rule 143 of the Rules and the precedents of the Court.

2. The Defence respectfully requests that the Chamber clarify this Decision, by ordering successive Prosecution and Defence filings within the proscribed 2-week (or, alternatively, other appropriate) period.

B. SUBMISSIONS

3. The Trial Chamber's decision to order an additional sentencing phase pursuant to Article 76(2) of the Statute, followed from a request from the Prosecution.³

4. The Defence had objected to a separate sentencing phase on the basis of concerns over, *inter alia*, the expeditiousness of the trial proceedings, the lack of an investigative budget, the current security situation in the Democratic Republic of Congo, the experience thus far in securing cooperation from the DRC authorities to present Defence witnesses, and the Prosecution's access to recordings and transcripts of conversations with Mr. Bemba's family members, the most obvious

¹ ICC-01/05-01/08-3071.

² ICC-01/05-01/08-3071, para. 17.

³ ICC-01/05-01/08-3053.

candidates for potential Defence evidence at a sentencing hearing.⁴ These concerns were dismissed and a separate sentencing phase was ordered, with the Chamber finding that the Prosecution's request was 'well founded'.⁵

5. The Prosecution's submissions, relied upon by the Chamber to grant its request, demonstrate that in May 2015 the Prosecution had already formed a clear idea on the scope and form of its submissions on sentencing. The Prosecution submitted that:

The Prosecution elicited evidence relevant to sentencing during the trial. In accordance with previous practice, it intends to make targeted submissions regarding sentencing based on evidence adduced at trial and further evidence submitted pursuant to Article 76(2) in a separate sentencing phase. At present, the Prosecution's intention is to call two to three witnesses over the course of two to three days, and to adduce very limited documentary evidence. However, any such submissions on sentencing would be more meaningful and better informed with the benefit of the Chamber's Article 74 decision on the merits of the case.

6. References to 'two or three witnesses' and 'limited documentary evidence' could not have been made in the abstract. In these circumstances, affording the Prosecution a week to formalise its request to call further evidence, in light of the Judgment under Article 74, is entirely reasonable.

7. Affording the Prosecution a week to finalise its request for further evidence would then allow the Defence a week to review the Prosecution's proposed evidence, seek instructions from Mr. Bemba, and prepare its own request for the presentation of evidence, if indeed deemed necessary. Whether the Chamber clarifies its earlier decision to abbreviate the period for the Prosecution and Legal Representative of Victims' filing or not, successive filings would be in harmony

⁴ ICC-01/05-01/08-3054-Conf

⁵ ICC-01/05-01/08-3071.

with Rule 141 of the Rules of Procedure and Evidence, which affords the Defence an explicit right to speak last, a principle that has been applied consistently throughout ICC proceedings.⁶ It would also be consistent with the practice for the successive filing of Final Trial Briefs during the trial phase of the present case. In the Defence submission, logic and consistency of practice dictates that the Defence respond to the Prosecution's case and evidence similarly in the sentencing phase of proceedings.

8. Successive filings in the sentencing phase would also be consistent with previous practice at the ICC. In *Lubanga*, the Prosecution and Legal Representatives of Victims filed their submissions on evidence relevant to sentence on 14 May 2012.⁷ The Defence submissions on sentence and its request to present additional evidence were not filed until 3 June 2012, nearly three weeks later.⁸ This afforded the Lubanga Defence an opportunity to review the submissions of the Prosecution and Legal Representatives of Victims, prior to determining which evidence, if any, was necessary in response.

9. This approach also encourages efficiency and expediency of the proceedings. If, following a review of the Judgement, the Prosecution indeed decides not to call *viva voce* evidence or present additional documentary material, but prefers instead to rely on the evidence submitted at trial, it is far more likely that the Defence will receive instructions to also limit its submissions to evidence presented during the trial phase. It will also ensure that the Defence does not make unnecessary submissions responding to evidence 'that is no longer relied upon',⁹ identified in *Lubanga* as a justification for the filing of successive briefs.

⁶ *Prosecutor v. Muthaura, Kenyatta and Ali*, ICC-01/09-02/11-T-15-Red-ENG WT 05-10-2011, pp. 87-89; *Prosecutor v. Ruto, Kosgey and Sang*, ICC-01/09-01/11-T-12-ENG ET WT 08-09-2011, pp. 76-77; *Prosecutor v. Mbarushimana*, ICC-01/04-01/10-T-9-ENG ET WT 21-09-2011, p. 29; *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-T-50-ENG ET WT, pp. 8-9.

⁷ ICC-01/04-01/06-2881; ICC-01/04-01/06-2880; ICC-01/04-01/06-2882.

⁸ ICC-01/04-01/06-2891-Red.

⁹ ICC-01/04-01/06-2722, para. 2.

10. Moreover, the approach suggested by the Defence involves no additional delays in the proceedings, as the two-week timeframe allocated by the Chamber in its Decision can still be met. A clarification of this kind is not without precedent. The Pre-Trial Chamber in *Lubanga* revised its original request that the parties file simultaneous briefs, after submissions from Mr. Lubanga's counsel advocating for the Defence to be given the final word.¹⁰

C. RELIF SOUGHT

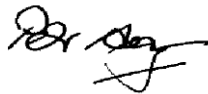
11. In light of the above, the Defence respectfully requests that the Chamber

CLARIFY the terms of its Decision on the timetable and on the sentencing procedure; and

ORDER the Prosecution and Legal Representatives of Victims to file any requests to submit further evidence or to call witnesses, including any requests for protective measures, within one week of the issuance of the judgment on the merits; alternatively, and in any event

ORDER the Defence to file any request within a week of receipt of the Prosecution and Legal Representative of Victim's requests.

The whole respectfully submitted.



Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

¹⁰ ICC-01/04-01/06-T-29-EN, p.24; ICC-01/04-01/06-678, p.14.

Done at The Hague, the Netherlands

17 August 2015