

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 March 2016

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 clarification of the Decision on the timetable and on the sentencing procedure” and related issues

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

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”), issues the following Decision on “Defence Request for clarification of the Decision on the timetable and on the sentencing procedure” and related issues (“Decision”).

1. On 26 May 2014, the Chamber issued its “Decision on the timetable and on the sentencing procedure”,¹ in which it, *inter alia*, (i) decided that it would “issue separate decisions pursuant to Article 74 and, in the event of a conviction, Article 76 of the Statute;”² and (ii) ordered “the parties and the legal representative, in the event of a conviction, to file written requests to submit further evidence or to call witnesses, including any requests for protective measures [(“Sentencing Requests”)], within two weeks of the issuance of the judgment on the merits.”³ In this context, the Chamber further clarified that “even though the defence and the legal representative will not have an immediate translation into French of the full judgment on the merits, they will be provided with a detailed French and English summary of the judgment in the context of the reading of the summary of the judgment in court, and soon thereafter, with a translation into French of parts of the judgment which are considered by the Chamber to be relevant to sentencing issues”, and that “[t]he translation into French of the remaining parts of the judgment will be provided on a regular and expeditious basis.”⁴
2. On 17 August 2015, the Defence for Mr Jean-Pierre Bemba Gombo (“Defence”) filed its “Defence Request for clarification of the Decision on

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

² ICC-01/05-01/08-3071, para. 18(vi).

³ ICC-01/05-01/08-3071, para. 18(vii).

⁴ ICC-01/05-01/08-3071, para. 16.

the timetable and on the sentencing procedure” (“Request”),⁵ in which it requests that the Chamber:⁶

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.

In support of its Request, the Defence submits that successive filings would (i) be “in harmony 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” and “during the trial phase of the [*Bemba*] case”,⁷ and which would be “consistent with previous practice at the ICC”;⁸ (ii) “encourage[...] efficiency and expeditiousness of the proceedings”, by ensuring that the Defence does not make “unnecessary submissions responding to evidence ‘that is no longer relied upon’”;⁹ and (iii) involve “no additional delays in the proceedings, as the two-week timeframe allocated by the Chamber in its Decision can still be met.”¹⁰

3. On 21 August 2015, Ms Marie-Edith Douzima-Lawson, the legal representative of victims (“Legal Representative”), filed her “Réponse de la Représentante légale des victimes à la « Defence Request on clarification

⁵ Defence Request for clarification of the Decision on the timetable and on the sentencing procedure, 17 August 2015, ICC-01/05-01/08-3285.

⁶ ICC-01/05-01/08-3285, para. 11.

⁷ ICC-01/05-01/08-3285, para. 7.

⁸ ICC-01/05-01/08-3285, para. 8.

⁹ ICC-01/05-01/08-3285, para. 9, citing *The Prosecutor v. Thomas Lubanga Dyilo*, Order on the timetable for closing submissions, 12 April 2011, ICC-01/04-01/06-2722, para. 2.

¹⁰ ICC-01/05-01/08-3285, para. 10.

of the Decision on the timetable and on the sentencing procedure » (ICC-01/05-01/08-3285)",¹¹ in which she requests that the Chamber reject the Request.¹² She submits that (i) one week as suggested by the Defence is insufficient to prepare her Sentencing Request,¹³ thus affecting the personal interests of the victims she represents;¹⁴ (ii) the Defence's right "to speak last" could be guaranteed in the context of the sentencing hearing;¹⁵ and (iii) the Defence argument that successive filings would increase efficiency and expeditiousness is speculative, as the Chamber explicitly authorised the parties and the Legal Representative to file requests to submit further evidence or to call witnesses.¹⁶

4. The Office of the Prosecutor ("Prosecution") did not file any submissions in relation to the Request.

5. On 21 March 2016, the Chamber issued its Judgment, finding Mr Jean-Pierre Bemba Gombo guilty, under Article 28(a) of the Rome Statute ("Statute"), as a person effectively acting as a military commander, of the crimes of murder as a crime against humanity under Article 7(1)(a) of the Statute; murder as a war crime under Article 8(2)(c)(i) of the Statute; rape as a crime against humanity under Article 7(1)(g) of the Statute; rape as a war crime under Article 8(2)(e)(vi) of the Statute; and pillaging as a war crime under Article 8(2)(e)(v) of the Statute.¹⁷

¹¹ Réponse de la Représentante légale des victimes à la « Defence Request on clarification of the Decision on the timetable and on the sentencing procedure » (ICC-01/05-01/08-3285), 21 August 2015, ICC-01/05-01/08-3287.

¹² ICC-01/05-01/08-3287, page 8.

¹³ ICC-01/05-01/08-3287, paras 4 to 6.

¹⁴ ICC-01/05-01/08-3287, paras 9 and 12.

¹⁵ ICC-01/05-01/08-3287, para. 8.

¹⁶ ICC-01/05-01/08-3287, para. 11.

¹⁷ Judgment pursuant to Article 74 of the Statute, 21 March 2016, ICC-01/05-01/08-3343.

6. For the submission of the Sentencing Requests, noting the Defence's arguments on the benefits of successive filings, the Chamber considers it appropriate to grant the Defence's request to file its Sentencing Request within a week of receipt of the Prosecution's and the Legal Representative's Sentencing Requests. Accordingly, and noting further the timing of the spring judicial recess, and the Legal Representative's submissions as to the time required for her preparations, the Chamber considers it appropriate for the Prosecution and the Legal Representative to file their Sentencing Requests by 11 April 2016 and for the Defence to file its Sentencing Request by 18 April 2016.

7. Should the parties or the Legal Representative request to call witnesses, the Chamber may consider the possibility of hearing such witnesses via video-link in accordance with Rule 67 of the Rules of Procedure and Evidence ("Rules").¹⁸

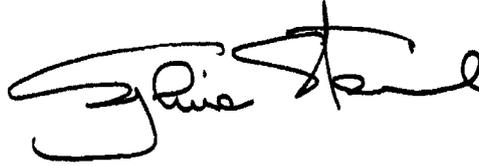
8. In addition to their Sentencing Requests, the parties and the Legal Representative shall make submissions on (i) the principles to be applied by the Chamber when considering the appropriate sentence to be imposed; and (ii) their views on the appropriate sentence, taking into consideration, *inter alia*, any aggravating and mitigating factors in accordance with Rule 145 of the Rules ("Sentencing Submissions"). For the preparation of their Sentencing Submissions, the Chamber considers that the Legal Representative and the Defence should be provided with a draft translation of Section VI of the Judgment on "Legal Findings". The

¹⁸ For a similar approach, see *The Prosecutor v Germain Katanga*, Ordonnance portant calendrier de la procédure relative à la fixation de la peine (article 76 du Statut), 7 March 2014, ICC-01/04-01/07-3437, para. 7.

Registry informed the Chamber that it will be able to complete an unrevised draft translation by 11 April 2016.

9. Accordingly, the Chamber considers it appropriate for the Prosecution to file its Sentencing Submissions by 11 April 2016; for the Legal Representative to file her Sentencing Submissions by 18 April 2016; and for the Defence to file its Sentencing Submissions by 25 April 2016.
10. Any further modalities as to the presentation of final submissions on the sentence, as applicable, will be considered in due course.
11. In view of the above, pursuant to Regulations 34 and 37 of the Regulations of the Court, the Chamber hereby **DECIDES** that
 - (i) the Prosecution shall file its Sentencing Request and its Sentencing Submissions by 11 April 2016;
 - (ii) the Legal Representative shall file her Sentencing Request by 11 April 2016 and her Sentencing Submissions by 18 April 2016;
 - (iii) the Defence shall file its Sentencing Request by 18 April 2016 and its Sentencing Submissions by 25 April 2016; and
 - (iv) the Sentencing Submissions shall not exceed 30 pages.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 21 March 2016

At The Hague, the Netherlands