

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 26 May 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 the timetable and on the sentencing procedure

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-Édith 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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Mr Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Other
Reparations Section**

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

I. Background and submissions

1. On 16 July 2013, the Chamber issued its “Decision on the timeline for the completion of the defence’s presentation of evidence and issues related to the closing of the case” (“Decision 2731”),¹ in which it, *inter alia*, established a schedule and gave directions for the filing of closing briefs and the presentation of final oral submissions by the parties and participants. In this context, the Chamber ordered (i) the Office of the Prosecutor (“prosecution”) and the legal representatives to submit their respective closing briefs within eight weeks of the date on which the presentation of evidence is formally closed; (ii) “the prosecution to work closely with the Translation and Interpretation Section of the Registry in order to facilitate the production of a draft translation of the prosecution’s closing brief within eight weeks of the date of its filing, at the latest”; and (iii) “the defence to file its closing brief within twelve weeks of the filing of the prosecution’s and legal representatives’ closing briefs”.²

2. On 7 April 2014, the Chamber issued its “Decision on closure of evidence and other procedural matters” (“Decision 3035”),³ in which it declared the submission of evidence closed.⁴ In addition, the Chamber (i) ordered the prosecution and the legal representative of victims, Maître Marie-Édith Douzima-Lawson (“Me Douzima” or “legal representative”) to submit their

¹ Decision on the timeline for the completion of the defence’s presentation of evidence and issues related to the closing of the case, 16 July 2013, ICC-01/05-01/08-2731.

² ICC-01/05-01/08-2731, paragraphs 28 to 30 and 38(i).

³ Decision on closure of evidence and other procedural matters, 7 April 2014, ICC-01/05-01/08-3035.

⁴ ICC-01/05-01/08-3035, paragraph 3.

final closing briefs by 2 June 2014; (ii) “[noting] the recent changes in the composition of the defence team, in particular the fact that all counsel are now Anglophone, [...] invite[d] the defence to consider whether it still requires a French translation of the prosecution’s closing brief”; and (iii) ordered the parties and participants to file submissions on the issue of whether the Chamber should (a) take its decisions pursuant to Article 74 of the Rome Statute (“Statute”) and, in the event of a conviction, on the appropriate sentence to be imposed under Article 76 of the Statute separately, or (b) render a single decision pursuant to Article 74 and, in the event of a conviction, Article 76 of the Statute, by 21 April 2014.⁵

3. On 10 April 2014, the defence for Mr Jean-Pierre Bemba Gombo (“defence”) filed its “Submission of the Defence as to the Scheduling of its Final Brief”,⁶ in which it, *inter alia*, requests that (i) the prosecution’s closing brief be made available in French, “before he is required to respond to it”, submitting that “the period of 12 weeks for the Defence to respond should not be disturbed”;⁷ and (ii) the time limits for the submission of its closing brief be suspended over the summer judicial recess (“defence’s closing brief requests”).⁸
4. On 17 April 2014, Me Douzima filed her observations on Decision 3035,⁹ in which she states her preference for a judgment on the merits and a separate decision on sentencing in the case of a conviction.¹⁰ The legal representative submits, *inter alia*, that prior written submissions on sentencing issues would be hypothetical as they would be based on a “possible” conviction of the accused. However, to submit them after the issuance of the judgment on the

⁵ ICC-01/05-01/08-3035, paragraphs 5 and 7.

⁶ Submissions of the Defence as to the Scheduling of its Final Brief, 10 April 2014, ICC-01/05-01/08-3037.

⁷ ICC-01/05-01/08-3037, paragraph 10.

⁸ ICC 01/05-01/08 3037, paragraphs 6 to 11.

⁹ Observations de la Représentante légale des victimes, Me. Douzima-Lawson conformément à la « *Decision on closure of evidence and other procedural matters*, ICC-01/05-01/08-3035 » sur l’opportunité de rendre une décision unique incluant le jugement sur la culpabilité et le prononcé de la peine, 17 April 2014, ICC-01/05-01/08-3050.

¹⁰ ICC-01/05-01/08-3050, paragraph 2.

merits would allow the parties and participants to make more informed and less speculative submissions on sentencing issues.¹¹ The legal representative further notes that, given the large number of victims in the case, the complex issue of reparations cannot be fully addressed before the issuance of a judgment on the merits. The legal representative argues that, if the Chamber decides to proceed with a single decision on the guilt or innocence of the accused and sentencing, in the event of a conviction, she would be deprived of the opportunity to make additional submissions on reparations pursuant to Article 75 of the Statute during a further hearing as set out in Article 76(3) of the Statute.¹²

5. On 22 April 2014, the prosecution filed its "Prosecution's Submissions on issuing a single judgment or separate decisions on Article 74 and 76 of the Rome Statute",¹³ in which it requests that the Chamber issue a decision on the merits of the case pursuant to Article 74 of the Statute and, in the event of a conviction, a separate decision on the appropriate sentence to be imposed in accordance with Article 76 of the Statute.¹⁴ The prosecution argues that this approach would allow the parties and participants to benefit from the Chamber's decision on the merits of the case, and to make informed and targeted submissions before any judgment on sentencing is rendered.¹⁵ In addition, the prosecution states that separate judgments on the merits and sentencing would permit the prosecution to call witnesses and submit limited documentary evidence for sentencing purposes only, if applicable.¹⁶ The prosecution further refers to the procedure adopted before Trial Chamber I

¹¹ ICC-01/05-01/08-3050, paragraph 6.

¹² ICC-01/05-01/08-3050, paragraph 11.

¹³ Prosecution's Submissions on issuing a single judgment or separate decisions on Articles 74 and 76 of the Rome Statute, 22 April 2014, ICC-01/05-01/08-3053.

¹⁴ ICC-01/05-01/08-3053, paragraph 3.

¹⁵ ICC-01/05-01/08-3053, paragraph 2.

¹⁶ ICC-01/05-01/08-3053, paragraph 2.

and Trial Chamber II.¹⁷

6. On 22 April 2014, the defence filed its “Defence Submission pursuant to the ‘Decision on closure of evidence and other procedural matters, ICC-01/05-01/08-3035’”,¹⁸ in which it argues that avoiding a separate stage of proceedings would ensure expeditiousness.¹⁹ The defence submits that there is no need for a separate procedure through which the parties could present evidence relevant to the sentence, and that submissions on evidence relating to the sentence can be properly dealt with in the context of written closing submissions and/or oral arguments.²⁰ In the event that a separate sentencing phase is conducted, the defence states that, considering the on-going Article 70 proceedings, it would not be in a position to seek contact with its witnesses and to expose them to a public examination on the basis of conversations held in the understanding of a reasonable right to privacy.²¹ The defence further notes that the calling of any new defence witnesses for the purpose of a hearing on sentencing issues only would be impossible due to, *inter alia*, the lack of investigative budget and the current security situation in the Democratic Republic of the Congo.²² The defence finally notes that, in the event the prosecution makes a request for a “bifurcated trial”, it would request the opportunity to submit further observations on the prosecution’s submissions.²³

7. On 9 May 2014, upon the Chamber’s instruction,²⁴ the parties and participants were invited to file any responses to the above submissions by no later than

¹⁷ Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, “Decision on Sentence pursuant to Article 76 of the Statute”, 10 July 2012, ICC-01/04-01/06-2901 and Trial Chamber II, *The Prosecutor v. Germain Katanga*, Transcripts of hearings on 5 and 6 May 2014, ICC-01/04-01/07-T-344-ENG and ICC-01/04-01/07-T-345-ENG.

¹⁸ Defence Submission pursuant to “Decision on closure of evidence and other procedural matters, ICC-01/05-01/08-3035”, 22 April 2014, 3054-Conf. A public redacted version was filed on the same day.

¹⁹ ICC-01/05-01/08-3054-Red, paragraph 3.

²⁰ ICC-01/05-01/08-3054-Red, paragraph 4.

²¹ ICC-01/05-01/08-3054-Red, paragraph 6.

²² ICC-01/05-01/08-3054-Red, paragraph 7.

²³ ICC-01/05-01/08-3054-Red, paragraph 8.

²⁴ Email from Associate Legal Officer of Trial Chamber III to the parties and participants sent on 9 May 2014 at 14:23.

14 May 2014. Neither the defence nor the legal representative filed responses.

8. On 14 May 2014, the prosecution filed its "Prosecution's response to 'Defence Submission pursuant to the 'Decision on closure of evidence and other procedural matters, ICC-01/05-01/08-3035'" ("Prosecution Response").²⁵ The prosecution submits that "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".²⁶ The prosecution further specifies that it intends to call two or three witnesses and to adduce limited documentary evidence during the separate sentencing phase.²⁷ The prosecution argues that, despite the accused's waiver of a hearing on sentencing issues, the prosecution's right, pursuant to Article 76(2) of the Statute, to a further hearing or additional submissions on sentencing "cannot be excluded".²⁸ The prosecution contests the defence's argument that a separate sentencing phase would be prejudicial to the accused.²⁹ On the contrary, the prosecution submits that "[it] would be prejudiced if it were expected to address submissions on sentencing in its closing brief" as it was not put on notice of this possibility and its closing brief is to be filed on 2 June 2014.³⁰ The prosecution therefore requests that the Chamber issue a separate decision on sentencing, if applicable, following the issuance of the judgment on the merits of the case. The prosecution further submits that "[a]lternatively, should the Chamber disagree and adopt a single decision, the Prosecution requests a separate sentencing phase to present additional evidence and make submissions on sentencing".³¹ In addition, the prosecution requests that the Chamber permit the submission of a sentencing brief

²⁵ Prosecution's response to "Defence Submission pursuant to the 'Decision on closure of evidence and other procedural matters, ICC-01/05-01/08-3035'", 14 May 2014, ICC-01/05-01/08-3065.

²⁶ ICC-01/05-01/08-3065, paragraph 2.

²⁷ ICC-01/05-01/08-3065, paragraph 2.

²⁸ ICC-01/05-01/08-3065, paragraph 4.

²⁹ ICC-01/05-01/08-3065, paragraph 5.

³⁰ ICC-01/05-01/08-3065, paragraphs 6 to 8 and ICC-01/05-01/08-3035, paragraph 7(ii).

³¹ ICC-01/05-01/08-3065, paragraph 9.

following the oral hearing.³²

II. Analysis and conclusion

9. For the purpose of the present Decision and in accordance with Article 21(1) of the Statute, the Chamber has considered Articles 64(2), 67(1)(b), 74, 75, 76 and 78 of the Statute, Rule 145 of the Rules of Procedure and Evidence ("Rules"), and Regulation 19bis(2) of the Regulations of the Court ("Regulations").

Defence's closing brief Requests

10. The Chamber notes the defence's submissions on the continued necessity of a French translation of the prosecution's closing brief. In these circumstances, the Chamber decides to follow the procedure established in Decision 2731 and reiterates the relevant orders that (i) "the prosecution [...] work closely with the Translation and Interpretation Section of the Registry in order to facilitate the production of a draft translation of the prosecution's closing brief within eight weeks of the date of its filing, at the latest"; (ii) "the Translation and Interpretation Section of the Registry [...] provide the defence with completed sections of the draft translation on a rolling basis, i.e. as soon as they become available"; (iii) "the Registry [...] give priority to the translation of the prosecution's closing brief in the *Bemba* case"; and (iv) "the defence [...] file its closing brief within twelve weeks of the filing of the prosecution and legal representative's closing briefs".³³ Accordingly, the defence's closing brief is to be filed by 25 August 2014.

11. The Chamber further notes that the defence does not provide any legal or

³² ICC-01/05-01/08-3065, paragraph 9.

³³ ICC-01/05-01/08-3065, paragraph 38(f), (g), (h) and (i)

factual basis for its request for suspension of the time limits during the summer recess. The defence simply asserts that “it would be unfair and oppressive to expect the Defence to spend the summer recess drafting its closing brief”.³⁴ The Chamber considers that no justification has been provided for departing from the application of Regulation 19bis(2) of the Regulations, which states that “[u]nless otherwise determined by a Chamber, during the judicial recess [...] time limits shall not be suspended”. Furthermore, the Chamber notes that the defence has insisted on the necessity of proceeding expeditiously to conclude the trial, for example, when arguing in favour of a single decision under Articles 74 and 76 of the Statute. Therefore, the Chamber will not suspend the time limit for the filing of the defence’s closing brief during the summer recess.

The prosecution’s request for a further hearing pursuant to Article 76(2) of the Statute

12. Pursuant to Article 76(1) and (2) of the Statute, “in the event of a conviction”, the Chamber “may on its own motion and shall, at the request of the Prosecutor or the accused hold a further hearing to hear any additional evidence or submissions relevant to the sentence”. In the present case, the Chamber notes that the parties have divergent views on the need for “a further hearing” on sentencing issues and whether a separate sentencing phase should take place in the event of a conviction.

13. The Chamber is mindful that the accused has expressed concerns as to equality of arms between the parties if a separate sentencing phase is conducted.³⁵ However, in the present case, the prosecution has made a clear request pursuant to Article 76(2) of the Statute for a *further* sentencing hearing, and the Chamber, noting the prosecution’s submissions, is satisfied

³⁴ ICC-01/05-01/08-3037, paragraph 11.

³⁵ ICC-01/05-01/08-3054-Red, paragraphs 5 and 7.

that the request is well-founded. Accordingly, the Chamber will issue separate decisions pursuant to Article 74 and, in the event of a conviction, Article 76 of the Statute. In the event of a conviction, this procedure will allow the parties to benefit from the judgment on the merits and make focused and meaningful submissions on sentencing for the purposes of Article 78 of the Statute, including submissions on mitigating or aggravating circumstances as set out under Rule 145(2) of the Rules.

14. In respect of the defence's concerns regarding equality of arms or other issues which may implicate the fairness and expeditiousness of the proceedings, the Chamber considers that, in the event of a conviction, such matters can be adequately addressed during the sentencing phase itself, including through decisions on the procedure to be followed at that stage.
15. In light of the above, in order to ensure expeditiousness and avoid conducting an unnecessarily long sentencing phase, the parties and participants, in the event of a conviction, are to respect the strict timeline for their respective submissions as set out below.
16. In the event of a conviction, the Chamber underlines 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. The translation into French of the remaining parts of the judgment will be provided on a regular and expeditious basis.³⁶

³⁶ See for a similar approach, Trial Chamber II, "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, paragraph 3.

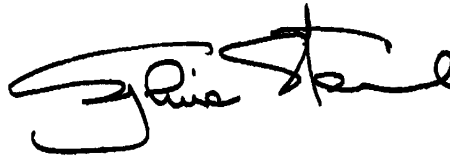
17. In the event of a conviction, the parties and participants are thus to file any requests to submit further evidence or to call witnesses, including any requests for protective measures, within two weeks of the issuance of the judgment on the merits. A decision on any evidentiary or procedural matters, including a hearing, will be taken thereafter as required, in accordance with Rule 143 of the Rules and the precedents of the Court.³⁷

18. In view of the above, the Chamber hereby

- (i) REJECTS the defence's request for suspension of the time limits during the summer recess;
- (ii) ORDERS, in accordance with Decision 2731, the defence to file its closing brief by 25 August 2014;
- (iii) ORDERS the prosecution and legal representative to file any responses to the defence's closing brief by 8 September 2014;
- (iv) ORDERS the defence to file its reply, if any, to responses by 22 September 2014;
- (v) DECIDES that the oral closing arguments will be heard as of 13 October 2014, unless otherwise decided;
- (vi) DECIDES that it will issue separate decisions pursuant to Article 74 and, in the event of a conviction, Article 76 of the Statute; and
- (vii) ORDERS 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, within two weeks of the issuance of the judgment on the merits.

³⁷ Trial Chamber I, "Order on the defence request to present evidence during the sentencing hearing", 11 June 2012, ICC-01/04-01/06-2895; Trial Chamber II, "Ordonnance relative aux requêtes du Procureur et de la Défense en vue de faire déposer des témoins lors de l'audience sur la peine", 8 April 2014, ICC-01/04-01/07-3458.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 26 May 2014

At The Hague, the Netherlands