

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 14/12/2011

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**

Confidential, ex parte Defence Only

Filing on Preliminary Information on the Defence Case

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

Counsel for the Defence

Mr Nkwebe Liriss

Mr Aimé Kilolo-Musamba

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

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Deputy Registrar

Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

A. BACKGROUND

1. During the course of the proceedings on 8 December 2011, the Presiding Judge stated as follows:¹

First, the Chamber would like to have an indication - only an indication, if possible - on whether the Defence anticipates asking for a break in the proceedings to enable it to prepare its presentation of evidence. If the answer is "Yes," what would be the approximate duration of that break that the Defence anticipates asking for? Are we talking about a few days, weeks, months?

Relatedly, if the Defence anticipates asking for a break in proceedings, does it propose the break after the Prosecution has completed its case, its presentation of evidence, or after the legal representatives' presentation of evidence, assuming of course that the Chamber grants the legal representatives' applications in whole or in part? Second, it would be helpful in terms of scheduling if the Defence could provide the Chamber with a preliminary indication on the duration of the Defence's presentation of evidence, assuming of course that the Defence chooses to present evidence. The Chamber appreciates that this will be a preliminary estimate only and may well change as the cases -- as the case progresses. We are not asking to be informed of the identities of potential witnesses, or the nature of the evidence to be presented. What we would like is that the Defence -- the Defence's best sense at this stage of how long its presentation of evidence might last, approximately how many witnesses are we talking about and how long might that their testimony last? Again, the Chamber understands that the information we are asking for will be preliminary in nature and cannot bind the Defence in any way. Nevertheless, it would be useful for the Chamber to have whatever information the Defence can reasonably provide at this stage, even for the purpose of adjusting the Court calendar for next year.

The Chamber asks the Defence to provide this information as soon as it is reasonably able and, in any event, no later than the end of the day on Wednesday, 14 December. It should be formally recorded, so the Chamber would prefer if the Defence could provide its response in a written filing by that day.

2. Pursuant to that order, the Defence makes the following submissions.

B. EX PARTE NATURE OF THE FILING

3. As indicated by the Defence during the proceedings on 8 December 2011,² the Defence submits the current filing as *ex parte* and confidential.

¹ ICC-01/05-01/08-T-199-CONF-ENG ET 08-12-2011, pp. 64 - 65

² ICC-01/05-01/08-T-199-CONF-ENG ET 08-12-2011, pp. 64 - 65.

4. Regulation 23 bis (1) of the Regulations of the Court provides that “any document filed by the Registrar or a participant and marked “*ex parte*”, “under seal” or “confidential”, shall state the factual and legal basis for the chosen classification and, unless otherwise ordered by a Chamber, shall be treated according to that classification throughout the proceedings.”

5. The Defence is being asked to make submissions on issues which are directly relevant to defence strategy; most notably whether it intends to present any evidence at all. At this stage, the Defence submits that it is under no statutory obligation to reveal such strategy to either the Prosecution or the Legal Representatives for Victims. The information supplied below, which is certainly subject to change as the ongoing Prosecution case unfolds, is solely for the planning purposes of the Chamber. In such circumstances, the Defence respectfully submits that the *ex parte* filing of such information is justified.

C. SUBMISSIONS

(a) Does the Defence anticipate a break in the proceedings, and if so, the approximate duration?

6. The Defence respectfully submits that the need for a break in the proceedings to enable the preparation of the Defence case depends largely on how the proceedings evolve in the new year. While it appears that the Prosecution intends to complete the presentation of its evidence by mid-February, the Defence is mindful of the purported availability issues which may still affect the witnesses who remain to be called. Perhaps more significantly, the Defence is still unaware whether the Legal Representatives for Victims will be authorised to call witnesses, how many witnesses they will summon, and the length of any break between the close of the Prosecution case and the presentation of this evidence.

7. In such circumstances, the Defence regrets that it is unable to provide an estimate of the length of the break it anticipates will be required in the proceedings with any degree of accuracy. However, for the assistance of the Chamber, the Defence estimates that it will require a break of at least one month, even two months, depending on the outcome of the outstanding issues mentioned above.

(b) Timing of a potential break

8. In the event that the Chamber should authorise the Legal Representatives of Victims to present evidence, the Defence submits that the break should only be taken after the completion of the presentation of this evidence. This would allow the Defence to prepare its case after taking into account the entirety of the evidence against the accused.

(c) Preliminary indication of the approximate length of the Defence presentation of evidence

9. Again, the Defence respectfully highlights the difficulties in giving an estimate as to the approximate length of the potential presentation of evidence, having still not heard the evidence of the four Prosecution "insider" witnesses, nor any potential evidence from the Legal Representatives of Victims. Evidently, the Defence strategy may dramatically change depending on the evidence heard in 2012. As such, the Defence respectfully insists that the exercise of guessing which witnesses, if any, will be required to impeach a continually evolving Prosecution case cannot be done with any level of accuracy.

10. However, in order to be of assistance to the Chamber, the Defence provides an approximate estimate of four (4) months for the presentation of its evidence, with approximately 15 witnesses being called, on the understanding that this is also

subject to change (and potentially dramatically change) given the factors outlined above.

THE WHOLE respectfully submitted.



Aimé Kilolo Musamba
Associate Counsel

Done at The Hague, the Netherlands

14 December 2011