



Original: English

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

Date: 23/07/2013

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 timeline for the completion of the defence's presentation of evidence and issues related to the closing of the 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

Ms. Fatou Bensouda

Mr. Jean-Jacques Badibanga

Counsel for the Defence

Mr. Aimé Kilolo-Musamba

Mr. Peter Haynes QC

Legal Representatives of the Victims

Ms. Marie-Edith Douzima-Lawson

Mr. Assingambi Zarambaud

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

(Participation/Reparation)

Applicants

The Office of Public Counsel for the Victims

Ms. Paolina Massida

The Office of Public Counsel for the Defence

Mr. Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Defence Support Section

Deputy Registrar

Mr. Didier Priera

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section Other

A. BACKGROUND

1. On 27 June 2013, Trial Chamber III (“the Chamber”) held a status conference to discuss, *inter alia*, the timeframe for the filing of closing briefs and closing arguments in the present proceedings.¹

2. On 16 July 2013, the Chamber rendered 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”), in which it set timeframes for the filing of closing written submissions.² The Decision does not set dates for these filings, but rather provides timelines for their preparation.

3. The winter judicial recess of the International Criminal Court (“the Court”) is scheduled to run between Monday 16 December 2013 and Friday 3 January 2014. By any sensible calculation, the preparation of closing briefs in the present case will necessarily span this recess. The Defence accordingly files the present motion to seek clarification that the timeframes set by the Decision will be suspended over the winter judicial recess.

B. APPLICABLE LAW

4. Regulation 19 *bis* (2) gives a Trial Chamber the power to suspend time limits over the judicial recess period. The practice of the Chamber has been to do so. As the Chamber noted at the close of proceedings in 2010:³

As you will be aware, the judicial recess begins 18 December 2010 up to and including 9 January 2011. **This recess is not only to allow Judges and Chamber staff a break, but also for counsel.** During the course of the recess, of course, the Judges will deal with all matters of real urgency, but we wish to make it clear that we intend to take

¹ ICC-01/05-01/08-T-331-CONF-ENG ET 27-06-2013

² ICC-01/05-01/08-2731

³ ICC-01/05-01/08-T-43-Red-ENG, p. 31.

some vacation and that there is no point in the parties and participants in putting filings, expecting early responses to matters which are essentially routine. Pursuant to Regulation 19(b)(2) of the Regulations of the Court, the Chamber will of course not schedule hearings during the recess unless a matter of real urgency arises. If any decisions are issued during the course of the recess, time limits will remain suspended, which will be an advantage to the parties and the participants as it will give you longer to consider them than you would otherwise have had. We do not see that this will cause any material inconvenience. On the contrary.

5. This practice has also been observed by Trial Chambers I and II. On the eve of the summer judicial recess in *Lubanga*, Trial Chamber I held as follows:⁴

Third, we've been asked whether the Chamber will suspend any time-limits if necessary during the course of the formal recess. Once again, we will do so in accordance with the power that has clearly been given to the Chamber under Regulation 19 bis. The dates of the recess are between the 17th of July and the 10th of August, and so that is the particular period of time to which we have referred as regards not issuing decisions and suspending time-limits.

6. The same approach was taken by Trial Chamber II in *Katanga*:⁵

We agree that the 21-day period will begin from Monday, 9th of August. So the Court recess period would not be included in the 21-day period. If during the 21-day period the Defence team finds it requires an extra amount of time, it will refer to the Court rules based -- Court regulations based on this and the Chamber will assess this when the time comes. So things are very clear, the Prosecutor's filing will be made tomorrow and the 21-day period will run from the 9th of August.

7. The *Katanga* Trial Chamber also explicitly acknowledged the importance of rest for the parties during the designated recess:⁶

We've also understood the Prosecutor's remarks. Even if we can't set this trial aside in our minds during the three weeks of vacation

⁴ ICC-01/04-01/06-T-203-Red2-ENG, pp. 64-65.

⁵ ICC-01/04-01/07-T-173-Red-ENG, p. 77.

⁶ ICC-01/04-01/07-T-286-Red-ENG, p. 5.

in light of the various concerns, the concerns regarding victims, but I would like to say that during the three weeks of judicial recess, only absolutely crucial applications shall be made that cannot wait until the 8th. So if you could, I think that would be the best approach, and think it would be in the best interest of everyone so that everyone can take their holidays and resume on the 15th of August.

8. Relevantly, the time period for preparation of closing briefs in the *Katanga & Ngudjolo* case also ran over the 2011 winter judicial recess. The time period allocated for the Prosecution appears to have been extended accordingly.⁷

C. SUBMISSIONS

9. The preparation of final closing briefs and oral submissions can be just as taxing, if not more, than attending court hearings. The Chamber has recognized the importance of the break afforded by the judicial recess for the parties and participants, the Chamber and its staff. Suspending the timeframes set in the Decision during the winter judicial recess will allow those involved in the case to observe religious or other holidays with their families, from whom many are separated for most of the year, and would be consistent with the practice of the Court in affording parties a break during these periods.

10. The Defence has consulted with the Senior Trial Attorney of the Prosecution team in the present proceedings, who has indicated that the Prosecution supports this Defence filing.

D. RELIEF REQUESTED

11. Based on the above submissions, and the position of support taken by the Prosecution, the Defence accordingly requests that the Chamber:

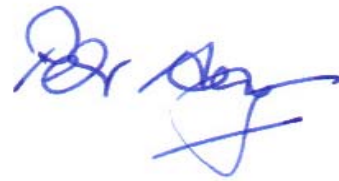
⁷ ICC-01/04-01/07-

CONFIRM that the timeframes as set out in the *Decision on the timeline for the completion of the defence's presentation of evidence and issues related to the closing of the case* will be suspended for the course of the 2013 – 2014 winter judicial recess.

The whole respectfully submitted.



Aimé Kilolo Musamba
Lead Counsel



Peter Haynes
Co- Counsel

Done on the 23rd of July 2013
At The Hague, The Netherlands