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

Date: 10/04/2014

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

Submissions of the Defence as to the Scheduling of its Final Brief

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

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Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

(Participation/Reparation)

Applicants

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States' Representatives

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Section**

A. SUBMISSIONS

1. On 16 July 2013, the Chamber issued its “Decision on the timeline of the completion of the Defence’s presentation of evidence and issues related to the closing of the case”.

2. On 23 November 2013, Lead Counsel for the Defence and the Defence Case Manager were arrested pursuant to warrants issued by the Single Judge of Pre-Trial Chamber II, at the request of the Office of the Prosecutor. Both had been involved in the conduct of the instant case for several years, had an unparalleled knowledge of the case file, the DRC and the language of the accused and several of the witnesses in the case, Lingala. In military terms, the lead counsel and case manager would be the equivalent of the commander and the operations officer of a unit. It is difficult to overemphasise the depleting effect that their removal had upon the efficacy of the Defence team. Just to cite one example, the case manager has virtual administrator rights over the case file and filing system, quite literally “the keys to the safe”, and it was impossible to function properly as a legal team in the immediate aftermath of his arrest.

3. On 28 November 2013 at a public status conference, moreover, the Prosecution voiced concerns about the ability of the 2 principal remaining members of the Defence team, Mr Haynes and Miss Gibson, being able to continue to act, on the grounds, inter alia, that they might either be subsequently subject to disciplinary proceedings, or witnesses in the Article 70 case.

4. Notwithstanding that, and not without substantial encouragement from the Prosecution and the Registry, a new legal team was formed and it set about concluding the case. The Defence sought no suspension or adjournment of the

proceedings, as it might well have done, to invite applications from and select Lingala speaking and/or appropriately qualified counsel and case managers. Instead it took the expedient step of deploying existing resources, including the employment of interns as Case Manager/Legal Assistants, despite their evident lack of qualification for the role, in terms of their years of experience.

5. Furthermore, the period of time immediately following the assignment of the new Defence team in January 2014 was a period of intense activity for 3 reasons:

- the need to train new staff members and reorganise the case file;
- the large number of outstanding evidential and procedural matters which remained to be litigated before the case could be closed; and
- the massive impact which the Article 70 case had on the main trial.

6. The Defence still does not seek any lengthy adjournment or suspension of time limits in the case. It does, however, submit that there is no justifiable reason for any foreshortening of the time limits for the filing of the Defence final brief.

7. Firstly, it submits that the mere fact that as a measure of expedience, the Defence has chosen to replace Lead Counsel with an Anglophone who happened to be the existing co-counsel is of no consequence. The logic behind the Chamber's original decision to allow a period of 12 weeks to include the translation of the Prosecution brief into French, had nothing to do with the composition of the Defence team, but rather to do with the principal language spoken by the accused.¹

On the issue of the languages of the closing briefs, the Chamber is aware that, although the defence team is able to work in English, French is the language that the accused fully understands and speaks...

¹ ICC-01/05-01/08-2731, paras. 28-29.

As to the language of the prosecution's closing brief, the Chamber notes that the prosecution will file its closing brief in English. The Chamber is of the view that, although the accused does not have an absolute right to have all documents translated into French, the prosecution's closing brief is a key document of the case for which at least a draft translation into French should be provided to the accused.

8. Secondly, if the language of counsel determines whether translation is necessary, then the accused's Anglophone Counsel will require the brief of the Legal Representative of Victims translated into English. Their incursions into the process have been very much prosecutorial and will require some response, without doubt.

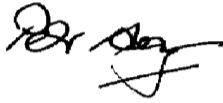
9. Thirdly, abbreviating the time for the Defence to file its brief by a few weeks can hardly amount to an effective "streamlining" of the process after a trial which has thus far lasted three and a half years, and has suffered many interruptions of considerable length.

10. Accordingly, in the submission of the Defence, the Prosecution brief should be available in the language of the accused (as the Chamber has already decided), before he is required to respond to it, and the period of 12 weeks for the Defence to respond should not be disturbed.

11. One further matter arises, namely the question of the summer judicial recess. In the submission of the Defence it would be unfair and oppressive to expect the Defence to spend the summer recess drafting its closing brief, and time periods should be suspended.

12. The submissions herein are without prejudice to any relief that the Defence might be seeking in relation to issues presently pending.

The whole respectfully submitted.

A handwritten signature in black ink, appearing to read 'Peter Haynes', with a stylized flourish at the end.

Peter Haynes, QC

Lead counsel for Mr. Jean-Pierre Bemba Gombo

The Hague, The Netherlands

10 April 2014