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

Date: 17 April 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 “Prosecution’s Request for Extension of Time pursuant to
Regulation 35(2) of the Regulations of the Court”**

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

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 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 “Prosecution’s Request for Extension of Time pursuant to Regulation 35(2) of the Regulations of the Court” (“Decision”).

I. Background and submissions

1. On 7 April 2014, the Chamber issued its “Decision on closure of evidence and other procedural matters” (“Decision 3035”),¹ in which it, *inter alia*, ordered the Office of the Prosecutor (“prosecution”) and the legal representative of victims, Maître Marie-Edith Douzima-Lawson (“Me Douzima”) to submit their final closing briefs by 2 June 2014, in line with the schedule established 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” (“Decision 2731”).²
2. On 11 April 2014, the prosecution filed its “Prosecution’s Request for Extension of Time pursuant to Regulation 35(2) of the Regulations of the Court” (“Prosecution Request”),³ in which it requests that the Chamber “[s]uspend the 21 day timeframe for responses to Defence motions submitted during the eight week drafting period until after submission of the final brief on 2 June 2014”; or “[a]lternatively, suspend the eight week drafting period until after the last Defence motion on the current matters has been exhausted”.⁴ In support of its request, the prosecution submits that since 16 January 2014, the parties have exchanged approximately 25 communications regarding disclosure or information on investigations that resulted in the Article 70 investigations and submitted approximately 17 corresponding

¹ Decision on closure of evidence and other procedural matters, 7 April 2014, ICC-01/05-01/08-3035.

² 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.

³ Prosecution’s Request for Extension of Time pursuant to Regulation 35(2) of the Regulations of the Court, 11 April 2014, ICC-01/05-01/08-3040.

⁴ ICC-01/05-01/08-3040, paragraph 6.

filings on requests submitted by the defence for Mr Jean-Pierre Bemba Gombo (“defence”). The prosecution stresses that the “Defence motions of 20 pages on average continue unabated on the same issues”.⁵ Considering the constraints associated with the preparation of its final closing brief, the prosecution submits that “[t]he scope of material to be reviewed and presented, as well as the importance of the final brief and the Prosecution’s burden of proof provide ‘good cause’, within the meaning of Regulation 35(2) of the Regulations of the Court, to request an extension of time to respond to Defence Requests submitted during the eight week drafting period.”⁶

3. On 14 April 2014, pursuant to the Chamber’s instruction,⁷ the defence filed its response to the Prosecution Request (“Defence Response”).⁸ The defence submits that “[n]otwithstanding the fact that the current state of the case is entirely of the Prosecution’s making, and notwithstanding either the Prosecution’s abundant resources, the defence takes no position on the Prosecution’s request.”⁹
4. However, the defence also informs the Chamber “as a matter of courtesy, that the Defence request of 9 April 2014¹⁰ [...] is far from the last major procedural submission that the defence anticipates filing.”¹¹ In this respect, the defence submits that (i) since the arrest of the accused’s former lead counsel and case manager in November 2013, the defence has received and continues to receive “information and materials which raise real and significant concerns regarding the impact of the Article 70 investigation on the main case [...]

⁵ ICC-01/05-01/08-3040, paragraph 2.

⁶ ICC-01/05-01/08-3040, paragraph 5.

⁷ Email sent by the Chamber to the defence and the legal representative of victims on 11 April 2014.

⁸ Defence Response to the Prosecution’s Request for Extension of Time pursuant to Regulation 35(2) of the Regulations of the Court, 14 April 2014, ICC-01/05-01/08-3042-Conf. A public redacted version was filed on the same day: Public Redacted version of Defence Response to the Prosecution’s Request for Extension of Time pursuant to Regulation 35(2) of the Regulations of the Court, 14 April 2014, ICC-01/05-01/08-3042-Red.

⁹ ICC-01/05-01/08-3042-Red, paragraph 3.

¹⁰ Referring to Defence urgent request for disclosure and injunctive relief concerning privileged Defence communications, 9 April 2014, ICC-01/05-01/08-3036+Annexes.

¹¹ ICC-01/05-01/08-3042-Red, paragraph 4.

much of which [...] should have been provided or disclosed by the Prosecution at a much earlier stage”; (ii) “as a result of the extension in the timetable for disclosure in the Article 70 case [...] the Defence anticipates more and more material and information becoming available that will be directly relevant to the conduct of the current proceedings”; (iii) according to the defence’s reading of the “Decision on [...] ‘Prosecution’s Application for the Submission of Additional Evidence’”,¹² “there are real and objective challenges to moving forward with the Closing Brief phase before the matters concerning the Article 70 investigations and their impact on the main case are resolved”. The defence further submits that “[i]t is, moreover, wholly inappropriate for the Prosecution to attempt to hit pause on compliance with disclosure obligations to concentrate on what it openly characterises as its priority, its Closing Brief.” Finally, the defence asserts that “the filings and letters for which the Prosecution now seeks an extension of time to respond have been prompted, in the large part, by a wholesale and consistent failure of the Prosecution to comply with its statutory obligations in the main case.”¹³

5. On 15 April 2014, Me Douzima filed her response to the Prosecution Request, requesting that the Chamber (i) grant the Prosecution Request; and (ii) afford her the same variation of time limit pursuant to Regulation 35(2) of the Regulations (“Regulations”).¹⁴ In this respect, Me Douzima stresses the significant workload faced by the legal representative’s team in order to ensure the representation of all 5229 victims admitted to participate in the proceedings, following the passing of Maître Assingambi Zarambaud.¹⁵ She further asserts that the repeated submissions made by the defence prejudice the expeditious conduct of the proceedings, insofar as they unduly delay the

¹² ICC-01/05-01/08-3042-Red, paragraph 7; referring to Decision on “Prosecution’s Application to Submit Additional Evidence”, 2 April 2014, ICC-01/05-01/08- 3029.

¹³ ICC-01/05-01/08-3042-Red, paragraph 11.

¹⁴ Observations de la Représentante légale des victimes à «Prosecution’s Request for Extension of Time pursuant to Regulation 35(2) of the Regulations of the Court ICC[-]01/05-01/08-3040», 15 April 2014, ICC-01/05-01/08-3043, page 6.

¹⁵ ICC-01/05-01/08-3043, paragraph 8.

preparation of the legal representative's closing brief.¹⁶ According to Me Douzima, these "prejudicial consequences"¹⁷ on the proceedings as a whole and on the work of the prosecution and the legal representative constitute "good cause" or a "legally sufficient reason" for an extension of time to be granted.¹⁸

II. Analysis and conclusions

6. For the purpose of the present Decision and in accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber has considered Articles 64(7), 67(1) and 68(3) of the Statute and Regulations 20 and 35(2) of the Regulations.
7. Pursuant to Regulation 35(2) of the Regulations, "[t]he Chamber may extend or reduce a time limit if *good cause* is shown and, where appropriate, after having given the participants an opportunity to be heard" (emphasis added).
8. In relation to the Prosecution Request, the Chamber firstly underlines that the schedule for the submission of closing briefs and related documents by the parties and participants was established on 13 July 2013, by virtue of Decision 2731.¹⁹ By 13 July 2013, the presentation of evidence by the prosecution had been completed for more than 15 months²⁰ and 25 out of 34 witnesses called by the defence had already completed their testimony. Additionally, as previously emphasized, there were "long periods of suspension in the proceedings due to the non-availability of witnesses".²¹ In light of the above, the Chamber finds that the parties have had substantial time to advance their closing briefs. The Chamber further considers that if the parties disagreed

¹⁶ ICC-01/05-01/08-3043, paragraphs 7 to 12.

¹⁷ "[C]onséquences dommageables" in the French original.

¹⁸ ICC-01/05-01/08-3043, paragraphs 11 and 13.

¹⁹ 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.

²⁰ The last witness called by the prosecution completed his testimony on 20 March 2012.

²¹ Decision on the testimony of Witnesses D04-54, D04-14, D04-41 and D04-44, 23 October 2013, ICC-01/05-01/08-2842, paragraph 3.

with the schedule established in Decision 2731 or the deadline set in Decision 3035, they should have sought leave to appeal the relevant decision, rather than asking for an extension of time at this point.

9. In addition, although it is mindful of the defence's announcement of further filings, the Chamber notes that currently, there are only three defence filings pending observations by the prosecution, one of which is limited to the discrete issue of the defence's request for an extension of deadlines over the 2014 summer judicial recess.²²
10. As a result, the Chamber considers that the prosecution failed to show good cause for a general variation of the time limits for the submission of responses to any filing submitted or to be submitted by the defence during the eight weeks preceding the deadline for the submission of the prosecution's closing brief; or for the submission of the prosecution's closing brief.
11. That notwithstanding, in case an extension of time limit to respond to a particular document is considered to be strictly necessary, the prosecution may submit a specific application for that purpose on a case-by-case basis.
12. The Chamber also notes that the prosecution has previously resorted to the submission of a consolidated response to two separate defence filings.²³ The Chamber finds that this may be an efficient way of addressing defence requests, allegedly related to "the same issues",²⁴ and recommends that the prosecution continue with this practice. Finally, in cases where the

²² Defence Motion for Admission of Materials pursuant to Article 64(9) of the Rome Statute, 16 April 2014, ICC-01/05-01/08-3045-Conf, while mindful that this document is currently classified as confidential, the Chamber is of the view that the mere reference to this document does not undermine the confidentiality of any information mentioned therein; Submission of the Defence as to the Scheduling of its Final Brief, 10 April 2014, ICC-01/05-01/08-3037; and Defence urgent request for disclosure and injunctive relief concerning privileged Defence Communications, 9 April 2014, ICC-01/05-01/08-3036.

²³ Consolidated Prosecution Response in Opposition to "Defence Request for Disclosure" and "Defence Further Request for Disclosure", 10 April 2014, ICC-01/05-01/08-3039-Conf. The Chamber is of the view that the mere reference to this confidential document does not undermine the confidentiality of any information mentioned therein.

²⁴ ICC-01/05-01/08-3040, paragraph 2.

prosecution does not intend to respond to a defence submission, in the interest of expeditiousness of the proceedings, it should inform the Chamber accordingly, as soon as practicable.

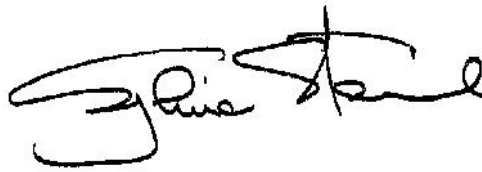
13. Turning to Me Douzima's submissions, the Chamber is mindful of the burden the legal representative's team faces in order to represent the totality of victims who have been authorised to participate in the *Bemba* case. Nevertheless, the Chamber also recalls that any responses by the legal representative are confined to questions which affect the personal interests of the victims she represents. Considering that not all documents submitted by the defence raise questions of that nature, the legal representative is not required to respond to every single document submitted by the defence. Accordingly, the Chamber finds that the legal representative did not demonstrate good cause to be granted a variation of time. However, in line with the approach adopted in relation to prosecution responses, the Chamber may consider specific requests for an extension of time submitted by the legal representative on a case-by-case basis, where the personal interests of the victims are affected.

14. Finally, in the interests of efficiency, the Chamber strongly encourages the defence, when filing requests on similar or related issues, to submit consolidated motions focused on the *Bemba* case, and to avoid repetitive submissions.

15. In view of the above, the Chamber hereby:

- (i) REJECTS the prosecution and Me Douzima's request for an extension of time; and
- (ii) DIRECTS the parties and Me Douzima to comply with the guidelines set out in the present Decision.

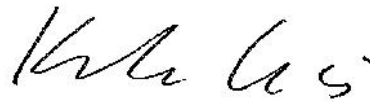
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 17 April 2014

At The Hague, the Netherlands