



Original: English

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

Date: 22/04/2014

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

Public Redacted Version of Defence Submissions pursuant to the “Decision on closure of evidence and other procedural matters, ICC-01/05-01/08-3035”

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

Fatou Bensouda

Jean-Jacques Badibanga

Counsel for the Defence

Peter Haynes QC

Kate Gibson

Melinda Taylor

Legal Representatives of the Victims

Marie-Edith Douzima-Lawson

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

(Participation/Reparation)

Applicants

The Office of Public Counsel for the Victims

Paolina Massida

The Office of Public Counsel for the Defence

Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Patrick Craig

Detention Section

Victims Participation and Reparations Section Other

A. SUBMISSIONS

1. In its “Decision on closure of evidence and other procedural matters” of 7 April 2014, Trial Chamber III ordered:¹

...the parties and participants, pursuant to Article 64(3)(a) of the Statute, to file submissions on the issue of whether the Chamber should (a) take its decisions pursuant to Article 74 of the 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.

2. The trial against Mr. Jean-Pierre Bemba commenced on 22 November 2010, namely 3 years and 5 months ago. At the time of filing, Mr. Bemba has been incarcerated for nearly 6 years, since 24 May 2008.

3. In such circumstances, Mr. Bemba waives his right to a bifurcated trial, and requests that the Chamber render a single decision pursuant to Article 74 and, in the event of a conviction, Article 76 of the Statute. The Defence respectfully submits that this is the only option consistent with Mr. Bemba’s statutory right to an expeditious trial.² To this end, the Defence notes previous submissions from the Office of the Prosecutor that the proffering of evidence relevant to sentence during the trial proper would alleviate financial burdens on the Court and contribute to expeditious proceedings.³

4. After a trial of this length, and given the wealth of evidence presented by the parties and participants, no need exists for a separate procedure through which the parties could present evidence relevant to sentence, and any issues in this regard

¹ ICC-01/05-01/08-3035.

² Article 67(1)(c).

³ Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, “Prosecution’s submissions on the interpretation and application of Article 76 of the Statute”, ICC-01/04-01/06-1256, 02 April 2008, para. 4.

could be properly dealt with in the context of written closing submissions and/or closing arguments.

5. Justifications for bifurcated proceedings in international criminal trials have previously hinged on the protection of the rights of the accused, in particular his right to silence as concerns mitigating factors which might arise only in the context of a conviction. Former President of the Special Tribunal for Lebanon, His Honour Judge Cassese, for example, explained that the rationale behind the introduction of a separate sentencing phase at that tribunal was that “the accused and his counsel are often put in a difficult position in that they have to argue as to the accused’s lack of responsibility for the crime, while at the same time putting forward evidence and arguments relevant to any sentence which may be imposed”.⁴ The Defence accordingly submits that Mr. Bemba’s decision to waive his right to a bifurcated trial erases any potential justification for a separate and additional phase to the present proceedings.

6. The Defence further notes that any additional hearing to present evidence of mitigating circumstances could potentially involve oral testimony from (a) Defence witnesses already heard by the Chamber, (b) family members of the accused; or (c) new witnesses. Although the Defence will make further submissions in this regard in a different context, the Prosecution’s Article 70 investigation, and the manner in which Defence witnesses were contacted and interviewed, raises real concerns as regards the ability of the Defence to re-establish contact with a number of its witnesses. [REDACTED].⁵ Given the Prosecution’s approach to disclosure of material arising from this investigation, [REDACTED] and expose them to a public examination on the basis of conversations held in the understanding of a reasonable right to privacy, of which the Defence may not even have received prior disclosure.

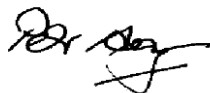
⁴ Cassese Antonio, *Rules of Procedure and Evidence: Explanatory Memorandum by the Tribunal’s President*, President of The Special Tribunal for Lebanon, 25 November 2010, para. 45.

⁵ [REDACTED].

7. As for new witnesses, the lack of an investigative budget, the current security situation in the Democratic Republic of Congo, and the experience thus far in securing cooperation from the DRC authorities to present Defence witnesses, render the presentation of any additional Defence witnesses completely untenable. As such, a separate sentencing phase would give rise to significant and objective concerns regarding equality of arms as between the Prosecution and Defence.

8. The Defence finally notes that the Chamber's order requires both the Prosecution and the Defence to make contemporaneous submissions on whether the present proceedings should include a separate sentencing phase. In the event that the Prosecution makes a request for a bifurcated trial, the Defence submits that it would be consistent with Mr. Bemba's right to be heard, that he be given an opportunity to submit observations on the particular reasons for the Prosecution submissions, particularly given that he is not in a position to predict any potential justifications in a vacuum.

The whole respectfully submitted.



Peter Haynes QC
Counsel for Mr. Jean-Pierre Bemba

The Hague, The Netherlands

22 April 2014