

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 14 May 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 Document

Prosecution's Response to "Defence Submissions pursuant to the "Decision on closure of evidence and other procedural matters, ICC-01/05-01/08-3035""

Source: The Office of the Prosecutor

Document to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

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I. Introduction

1. On 22 April 2014, the Office of the Prosecutor (“Prosecution”) filed submissions supporting the previous practice of Chambers of this Court whereby a decision on sentencing is rendered separately, if applicable, following the issuance of a judgment on the merits.¹ In opposition, the Defence filed submissions requesting the Trial Chamber III (“Chamber”) to render a single decision pursuant to Article 74 of the Rome Statute (“Statute”) and, if applicable, Article 76 of the Statute (“Defence Submissions”).²

2. The Prosecution elicited evidence relevant to sentencing during the trial. In accordance with previous practice, it intends to make targeted submissions regarding sentencing based on evidence adduced at trial and further evidence submitted pursuant to Article 76(2) in a separate sentencing phase. At present, the Prosecution’s intention is to call two to three witnesses over the course of two to three days, and to adduce very limited documentary evidence. However, any such submissions on sentencing would be more meaningful and better informed with the benefit of the Chamber’s Article 74 decision on the merits of the case.

3. In accordance with the Chamber’s order,³ the Prosecution hereby files this response.

¹ ICC-01/05-01/08-3053, Prosecution’s Submissions on issuing a single judgment or separate decisions on Articles 74 and 76 of the Rome Statute, 22 April 2014.

² ICC-01/05-01/08-3054-Red, Public Redacted Version of Defence Submissions pursuant to the “Decision on closure of evidence and other procedural matters, ICC-01/05-01/08-3035”, 22 April 2014, para. 3.

³ Email from Associate Legal Officer of Trial Chamber III sent on 9 May 2014 to the parties and participants.

II. Submissions

4. Article 76(2) of the Statute provides that the Chamber “shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence ...”⁴ A request by the Prosecution or the Accused settles the issue by automatically requiring this “separate sentencing phase”. Thus the Accused’s waiver is only one factor affecting the Chamber’s ruling on this issue.⁵ It is not determinative. The Prosecution’s right to a further hearing or additional submissions on sentencing is distinct from “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.”⁶ The Accused’s waiver cannot result in the exclusion of the Prosecution’s right to the same.

5. The Defence Submissions advance a number of factors affecting its ability to present additional evidence of mitigating circumstances, which further supports its position to waive the Accused’s right to a separate sentencing phase. This waiver does not allow the Defence to turn around and claim prejudice or argue “significant and objective concerns regarding equality of arms” when the Prosecution seeks to exercise the same right. A separate sentencing phase is not prejudicial to the right of the Accused to an expeditious trial. As a matter of course, should the Accused be found “not guilty”, a sentencing phase would be redundant. In the event of a conviction, a separate sentencing phase would be reasonable even in spite of a subsequent appeals phase.

6. To the contrary, at this stage, the Prosecution would be prejudiced if it were expected to address submissions on sentencing in its closing brief. The Chamber

⁴ Article 76(2) of the Rome Statute. [Emphasis added]

⁵ ICC-01/05-01/08-3054-red, paras. 3 and 5.

⁶ ICC-01/05-01/08-3054-Red, para. 5.

allocated eight weeks and 400 pages for the Prosecution to “set out their legal and factual submissions concerning the contextual and specific elements of the war crimes and crimes against humanity charged and the individual criminal responsibility of the accused, on the understanding that they should only focus on the aspects of the case which are in dispute.”⁷ The Prosecution was not put on notice that there may be a deviation from current practice requiring it to substantively address sentencing in its closing brief. The Prosecution notes that it is about two and a half weeks prior to the deadline for submission of its closing brief.

7. The importance of the proper determination of sentence in light of the nature and gravity of crimes in this case (particularly the extensive and intense sexual violence), the position of the Accused, and the impact on victims, necessitates a focused sentence-related discussion on these issues.

8. If the Chamber decides to issue a single judgment, this would inevitably mean that a separate sentencing phase would be held prior to the decision on the merits and sentencing. This would equally result in hearing further witnesses and presenting additional evidence on sentencing in the abstract without the benefit of the Chamber’s ruling on the merits pursuant to Article 74 of the Statute. In addition, the conduct of such additional proceedings may prove unnecessary in the event of an acquittal.

III. Relief Sought

9. The Prosecution respectfully requests the Chamber to issue a separate decision on sentencing, if applicable, following issuance of a judgment on the merits of the case

⁷ ICC-01/05-01/08-2731, Decision on the timeline for the completion of the defence’s presentation evidence and issues related to the closing of the case, 16 July 2013, para. 35.

pursuant to Article 74 of the Statute. Alternatively, should the Chamber disagree and adopt a single decision, the Prosecution requests a separate sentencing phase to present additional evidence and make submissions on sentencing. In addition, the Prosecution respectfully requests the Chamber to permit the submission of a sentencing brief following the oral hearing.



Fatou Bensouda, Prosecutor

Dated this 14th Day of May 2014

At The Hague, The Netherlands