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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 Request to Strike out the "Prosecution's closing brief", dated 2 June 2014, as inadmissible'

Source: The Office of the Prosecutor

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 James Stewart

Mr Jean-Jacques Badibanga

Counsel for the Defence of Jean-Pierre Bemba Gombo

Mr Peter Haynes

Ms Kate Gibson

Ms Melinda Taylor

Legal Representatives of Victims

Ms Marie-Edith Douzima-Lawson

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keita

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

I. Introduction

1. The Office of the Prosecutor ("Prosecution") opposes the "Defence Request to Strike out the "Prosecution's closing brief", dated 2 June 2014, as inadmissible" ("Defence Motion").¹ The Trial Chamber III ("Chamber") should reject the Defence Motion as the Prosecution: (i) is 79 pages under the 400 page limit ordered by the Chamber; (ii) has not exceeded the average limit of 300 words per page, regardless of the spacing in between transcript references and evidence numbers; (iii) applied the *Katanga/Ngudjolo* practice and was therefore not engaged in "unfair and unlawful practices";² and (iv) is the only party obliged to submit both English and French references, which would therefore result in a lower word limit than the Defence were the Chamber to adopt the Defence position. Therefore, striking out the Prosecution's closing brief would be unfair and disproportionate in the present circumstances.

II. Submissions

2. On 2 June 2014, the "Prosecution's closing brief" ("Closing Brief") with a total of 321 pages was filed into the case record.³ This document, which summarised the Prosecution's entire case against Jean-Pierre Bemba Gombo ("Accused"), was 79 pages below the 400 page limit ordered by the Chamber.⁴ The Defence incorrectly alleges that "[t]he true word count of the Prosecution's Closing Brief is thus approximately 123,585 words as opposed to the 120,000 allowed, which in a proper format would exceed the page limit by 12 pages."⁵ The current format of the Closing

¹ ICC-01/05-01/08-3082, Defence Request to Strike out the "Prosecution's closing brief", dated 2 June 2014, as inadmissible, 5 June 2014.

² ICC-01/05-01/08-3082, para. 14.

³ ICC-01/05-01/08-3079-Conf, Prosecution's closing brief, 2 June 2014.

⁴ ICC-01/05-01/08-2731, Decision on the timeline for the completion of the defence's presentation of evidence and issues related to the closing brief, 16 July 2013, para. 33.

⁵ ICC-01/05-01/08-3082, para. 12.

Brief has a total 81,348 words for 321 pages, which is an average of about 253,42 words per page. This falls squarely within the average of 300 words per page as required by Regulation 36(3) of the Regulations of the Court ("Regulations").

3. If the Prosecution were to replace all dashes (-) throughout the document, regardless of whether it refers to a hyphenated word or accepted format of transcript references and evidence numbers, the total number of words replaced would be 41,537 words. Based on that misleading calculation, the closing brief of 321 pages would amount to an overall total of 122,766 words.⁶ This is an average of about 382 words per page and about nine pages above the required page limit. However this is not reflective of the reality that the Prosecution has not exceeded the average word count. For example, transcript references that include "T205-ENG-ET" and evidence numbers of "EVD-T-OTP-00702"⁷ and "CAR-D04-0002-1514" would automatically be counted as three or four words rather than one word despite following the regular and accepted format.

4. The Prosecution has a total of 2,383 footnotes. Therefore, since the format employed relates only to transcript references and evidence numbers - the other texts in the footnotes were not hyphenated -, the overwhelming majority of the 2,766 words by which the Prosecution could be said to purportedly exceed the closing brief page limit, is for 2,383 footnotes. The fictitious addition of two to three extra words for each reference cited in a footnote, which contain a minimum of two citations to either English and French transcripts or EVD and corresponding ERN numbers, would place the Prosecution within the average of 300 words per page. Thus, although the Prosecution adopted a different format to the one adopted thus

⁶ Rather than the 123,585 word limit that amounts to 12 additional pages as the Defence claims.

⁷ The Chamber instructed the Prosecution to provide both EVD and ERN numbers for each piece of evidence cited.

far in this case by following the *Katanga/Ngudjolo* practice,⁸ the Prosecution has not breached the Chamber's order to file a brief of 400 pages with an average of 300 words per page.⁹

5. The Defence refers to an Appeals Chamber's decision in *Lubanga* in support of its Motion.¹⁰ However, that decision was more concerned with whether or not the page limit would have been exceeded had the format of the footnotes been complied with. In this case, contrary to the situation in the decision cited by the Defence, the Prosecution's compliance with the regular format would not result in an excess of the page limit and therefore require an extension or necessitate an amendment of the closing brief in order to reduce the number of pages.¹¹

6. In the *Katanga/Ngudjolo* case, the Trial Chamber II allowed the parties and participants to submit their closing briefs using the format reference that resulted in one word for each reference: [witness-transcript-number-language-page.number-line.numbers].¹² The Prosecution applied the same practice in the format of its closing brief, whilst ensuring that it complied with this Chamber's order to provide both English and French references for each and every transcript cited in the footnotes.¹³ The Prosecution followed a practice that has been accepted by a Chamber of this Court and therefore in no way engaged in "unfair and unlawful practices" as alleged by the Defence.¹⁴

⁸ ICC-01/04-01/07-3238-Conf-AnxA-tENG, Decision amending the arrangements for the filing of the written submissions, 14 February 2012.

⁹ ICC-01/05-01/08-2731, para. 33.

¹⁰ ICC-01/04-01/06-2543, Decision on the "Observations de la Défense relatives à l'irrecevabilité du «Prosecution's Document in Support of Appeal against Trial Chamber I's decision of 8 July to stay the proceedings for abuse of process», daté du 26 juillet 2010", 30 July 2010, para. 10.

¹¹ ICC-01/04-01/06-2543, para. 10.

¹² ICC-01/04-01/07-3251-Corr-Red, *Memoire final*, 3 July 2012; ICC-01/04-01/07-3253-Corr2-Red, *Conclusions Finales*, 16 March 2012; ICC-01/04-01/07-3266-Corr2-Red, Second Corrigendum to the Defence Closing Brief, 29 June 2012.

¹³ ICC-01/05-01/08-2731, para. 34.

¹⁴ ICC-01/05-01/08-3082, para. 14.

7. It should be noted that the *Katanga/Ngudjolo* practice was applied by all the parties and participants as they were each required to provide both English and French references to transcripts of hearings.¹⁵ In this case, only the Prosecution is required to do so. As the Defence is not required to provide both transcript references, the Prosecution would have ended up with a lesser word limit than the Defence in spite of the Chamber's decision to give both parties 400 pages with an average of 300 words per page.¹⁶ The Prosecution submits that its reasons for following the *Katanga/Ngudjolo* footnote format are justifiable in the circumstances.¹⁷

8. The Prosecution notes that the parties and participants in the *Katanga/Ngudjolo* case were in the same position as the Defence in this case as they all made use of the same format for transcript references. Unlike the Defence in this case, however, it must be presumed that the parties and participants in that case were able to search, review, and analyse the footnote references.¹⁸

III. Conclusion

9. The Prosecution respectfully requests that the Chamber reject the Defence Motion.



Fatou Bensouda, Prosecutor

Dated this 6th Day of June 2014

At The Hague, The Netherlands

¹⁵ ICC-01/04-01/07-3218-t-ENG, Public redacted version of *Order on the arrangements for the submission of the written and oral closing statements (regulation 54 of the Regulations of the Court)* (ICC-01/04-01/07-3218-Conf), 4 January 2012, para. 9.

¹⁶ ICC-01/05-01/08-2731, para. 33.

¹⁷ ICC-01/04-01/06-2543, para 14.

¹⁸ ICC-01/05-01/08-3082, para. 13.