

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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

**Decision on “Prosecution Request for a corrected version of the Defence
Closing Brief and extension of time to file a response”**

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

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Defence**

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States Representatives

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REGISTRY

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Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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 Request for a corrected version of the Defence Closing Brief and extension of time to file a response” (“Decision”).

I. Background and submissions

1. On 16 July 2013, the Chamber issued its “Decision on the timeline for the completion of the defence’s presentation of evidence and issues related to the closing of the case”,¹ in which it, *inter alia*, established the schedule and gave directions for the filing of closing briefs by the parties and participants. In this context, the Chamber (i) decided that “the prosecution’s and defence’s briefs may not exceed 400 pages each”; and (ii) ordered “the parties and participants to strictly comply with the format requirements for documents as set out in Regulation 36 of the Regulations”.²
2. On 2 June 2014, in line with the Chamber’s order,³ the Office of the Prosecutor (“prosecution”) filed the “Prosecution’s closing brief” (“Prosecution Closing Brief”).⁴
3. On 4 June 2014, the defence of Mr Jean-Pierre Bemba Gombo (“defence”) filed its “Defence Request to Strike out the ‘Prosecution’s closing brief’,”

¹ 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.

² ICC-01/05-01/08-2731, paragraph 38(j) and (l).

³ Decision on closure of evidence and other procedural matters, 7 April 2014, ICC-01/05-01/08-3035, paragraph 7 (ii).

⁴ Prosecution’s closing brief, 2 June 2014, ICC-01/05-01/08-3079-Conf.

dated 2 June 2014, as inadmissible" ("Request 3082").⁵ The defence requested that the Chamber (i) "[s]trike out the Prosecution's Closing Brief as inadmissible";⁶ (ii) "[o]rder the Prosecution to re-file its Closing Brief in accordance with Regulation 36[(3)]";⁷ and (iii) "[s]uspend all time limits for the filing of the Defence's Final Trial Brief pending receipt of an admissible brief from the Prosecution."⁸ On 6 June 2014, on the Chamber's instruction,⁹ the prosecution responded to the Defence Request,¹⁰ urging that the Chamber reject it.¹¹

4. On 17 June 2014, the Chamber issued its Decision on "Defence Request to Strike out the 'Prosecution's closing brief', dated 2 June 2014, as inadmissible" ("Decision 3091"),¹² in which it rejected Request 3082 and ordered the prosecution to file a corrigendum and a table of contents to the Prosecution Closing Brief.¹³ Further, the Chamber noted that the Prosecution Closing Brief's citations departed from the usual format adopted in the course of the trial proceedings.¹⁴ Thus, in light of the principle of equality of arms and in order to avoid any prejudice to the defence, the Chamber decided that for the purpose of its closing brief, the defence may either (i) follow the same format for footnote references as

⁵ Defence Request to Strike out the "Prosecution's closing brief", dated 2 June 2014, as inadmissible, 4 June 2014, ICC-01/05-01/08-3082.

⁶ ICC-01/05-01/08-3082, paragraph 15.

⁷ The defence refers to Regulation 36(4) of the Regulations. However, the Chamber notes that further to an amendment adopted on 14 June 2007, entered into force on 18 December 2007, former sub-regulation 3 was deleted, and former sub-regulation 4 was renumbered as sub-regulation 3.

⁸ ICC-01/05-01/08-3082, paragraph 15.

⁹ Email from the Chamber to the prosecution on 5 June 2014 at 11.46.

¹⁰ Prosecution's Response to "Defence Request to Strike out the 'Prosecution's closing brief', dated 2 June 2014, as inadmissible", 6 June 2014, ICC-01/05-01/08-3083.

¹¹ ICC-01/05-01/08-3083, paragraph 9.

¹² Decision on "Defence Request to Strike out the 'Prosecution's closing brief', dated 2 June 2014, as inadmissible", 17 June 2014, ICC-01/05-01/08-3091.

¹³ ICC-01/05-01/08-3091, paragraph 17.

¹⁴ ICC-01/05-01/08-3091, paragraph 8.

the prosecution or (ii) follow the usual format adopted in the course of the trial proceedings.¹⁵ In the event that the defence chose the latter option, the Chamber granted the defence an extension of page limit of up to 12 pages for the filing of its final brief.¹⁶

5. On 25 August 2014, the defence filed the "Closing Brief of Mr. Jean-Pierre Bemba Gombo" ("Defence Closing Brief").¹⁷
6. On 29 August 2014, after failing to resolve the matter on an *inter partes* basis,¹⁸ the prosecution filed its "Prosecution Request for a corrected version of the Defence Closing Brief and extension of time to file a response" ("Prosecution Request"),¹⁹ in which it requests that the Chamber: (i) order the defence to file a corrected version of the Defence Closing Brief, with complete transcript references, including line numbers ("First Request"); and (ii) grant an extension of time pursuant to Regulation 35(2) of the Regulations of the Court ("Regulations") for the prosecution to file its responses to the Defence Closing Brief ("Second Request").²⁰ In support of its request, the prosecution argues that although the defence availed itself of the page extension the Chamber granted, it failed to provide complete references in accordance with the usual practice and would have exceeded the page limit had such information been included.²¹ Specifically, the prosecution argues that the defence

¹⁵ ICC-01/05-01/08-3091, paragraph 14.

¹⁶ ICC-01/05-01/08-3091, paragraph 14.

¹⁷ Closing Brief of Mr. Jean-Pierre Bemba Gombo, 25 August 2014, ICC-01/05-01/08-3121-Conf.

¹⁸ See email of 27 August 2014 at 15.38, from the prosecution to the defence and related response of 28 August 2014 at 12.06.

¹⁹ Prosecution Request for a corrected version of the Defence Closing Brief and extension of time to file a response, 29 August 2014, ICC-01/05-01/08-3126-Conf. A public redacted version of the Prosecution Request was filed on 1 September 2014: ICC-01/05-01/08-3126-Red.

²⁰ ICC-01/05-01/08-3126-Red, paragraph 1.

²¹ ICC-01/05-01/08-3126-Red, paragraphs 2 and 3.

omitted (i) the language of the transcript cited, (ii) the revision version of each transcript cited, and (iii) the relevant line numbers referenced.²²

7. The prosecution submits that the defence's failure to provide complete references forces the prosecution to expend considerable time to find the relevant evidence cited by the defence.²³ The prosecution argues that its ability to review the evidence cited and draft a response in the allotted two week period²⁴ is "adversely affected by the incomplete references and real page count".²⁵
8. On 2 September 2014, the legal representative of victims, Maître Douzima-Lawson ("Me Douzima") filed her "Réponse de la Représentante légale des victimes Me. Douzima-Lawson à 'Prosecution Request for a corrected version of the Defense Closing Brief and exten[s]ion of time to file a response' ICC-01/05-01/08-3126", ("Legal Representative's Response")²⁶ in which she submits that the Chamber has always required the parties and participants to provide the transcript numbers, language, version, and the relevant pages and lines.²⁷ She submits that the inexact and incomplete references in the defence closing brief will require much time on the part of the prosecution and legal representative, and submits that these

²² ICC-01/05-01/08-3126-Red, paragraph 3.

²³ ICC-01/05-01/08-3126-Red, paragraph 2.

²⁴ The prosecution notes the requirement that it simultaneously file a translated French version of its response. ICC-01/05-01/08-3126-Red, paragraph 2.

²⁵ ICC-01/05-01/08-3126-Red, paragraph 2.

²⁶ Réponse de la Représentante légale des victimes Me. Douzima-Lawson à "Prosecution Request for a corrected version of the Defense Closing Brief and extension of time to file a response" ICC-01/05-01/08-3126, 2 September 2014, ICC-01/05-01/08-3129-Conf. The Chamber notes that the present Decision refers to filing currently classified as confidential. In light of the principle of publicity of the proceedings enshrined in Article 67(1) of the Rome Statute ("Statute") and Regulation 20 of the Regulation of the Court ("Regulations"), the Chamber is of the view that its reference to the documents in this instance does not require confidential treatment at this time.

²⁷ ICC-01/05-01/08-3129-Conf, paragraph 8.

deficiencies constitute good cause for an extension of time pursuant to Regulation 35(2) of the Regulations.²⁸

9. On 2 September 2014,²⁹ the defence filed its “Defence Response to Prosecution Request for a corrected version of the Defence Closing Brief and extension of time to file a response” (“Defence Response”),³⁰ in which it requests that the Chamber reject the Prosecution Request.³¹

10. The defence submits that the Prosecution Request is nothing more than an attempt to extend the allotted timeframe the Chamber afforded the prosecution to respond to the Defence Closing Brief.³² The defence submits that the prosecution’s failure to file its request until four days after the filing of the Defence Closing Brief evidenced a lack of diligence that warrants the dismissal of the Prosecution Request.³³ The defence further submits that no rule, practice, direction, or decision of the Chamber mandates the provision of line references.³⁴ The defence supports its contention by citing its own practice as well as two citations from decisions issued by the Chamber.³⁵ The defence also argues that references to specific lines of transcripts are unnecessary and often unhelpful.³⁶ Thus, the defence submits, the prosecution’s claim about

²⁸ ICC-01/05-01/08-3129-Conf, paragraphs 9 and 10.

²⁹ Pursuant to Regulation 35 of the Regulations, and upon the defence’s request, the Chamber granted the defence an extension of time to respond to the Prosecution Request, extending the deadline from 1 September 2014 to 2 September 2014 at 16.00. Email from the Chamber to parties and participants, 29 August 2014, 17.22.

³⁰ Defence Response to Prosecution Request for a corrected version of the Defence Closing Brief and extension of time to file a response, 2 September 2014, ICC-01/05-01/08-3130-Conf. A Second Public Redacted Version was filed on 3 September 2014, ICC-01/05-01/08-3130-Red2.

³¹ ICC-01/05-01/08-3130-Red2, paragraph 23.

³² ICC-01/05-01/08-3130-Red2, paragraph 1.

³³ ICC-01/05-01/08-3130-Red2, paragraph 2.

³⁴ ICC-01/05-01/08-3130-Red2, paragraph 3.

³⁵ ICC-01/05-01/08-3130-Red2, paragraph 3.

³⁶ ICC-01/05-01/08-3130-Red2, paragraphs 9 and 13.

expending “considerable time” as a result of the defence’s incomplete citations is misplaced.³⁷

11. The defence further notes that although the Chamber, in Decision 3091, ordered the prosecution to file a corrigendum and a table of contents to the Prosecution Closing Brief, the defence did not receive a corresponding extension of time to file its closing brief.³⁸

12. Lastly, the defence submits that the prosecution has failed to demonstrate any prejudice and that there is no justification, legal or factual, for the relief the prosecution seeks.³⁹

II. Analysis

13. For the purpose of the present Decision and in accordance with Article 21(1) of the Rome Statute (“Statute”) the Chamber has considered Article 64(6)(f) of the Statute and Regulations 35(2) and 36 of the Regulations of the Court (“Regulations”).

14. As a preliminary matter, the Chamber notes that the defence urges the Chamber to dismiss the Prosecution Request for a “lack of diligence” on the part of the prosecution.⁴⁰ Specifically, the defence criticises the prosecution for filing its Prosecution Request four days after the filing of the Defence Closing Brief.⁴¹ This argument ignores the fact that the

³⁷ ICC-01/05-01/08-3130-Red2, paragraph 13.

³⁸ ICC-01/05-01/08-3130-Red2, paragraph 12.

³⁹ ICC-01/05-01/08-3130-Red2, paragraphs 21 and 22.

⁴⁰ ICC-01/05-01/08-3130-Red2, paragraph 2.

⁴¹ ICC-01/05-01/08-3130-Red2, paragraph 2.

prosecution initially communicated its request to the defence by way of email on 27 August 2014, two days after the notification of the Defence Closing Brief.⁴² It also stands in stark contrast with the defence's later support for the resolution of such disputes on an *inter partes* basis.⁴³ Accordingly, the Chamber finds the defence's arguments in this respect misleading and without merit.

15. Turning to the merits of the Prosecution Request, the Chamber granted the defence an extension of its page-limit on the condition that it follow the "usual format adopted in the course of the trial proceedings".⁴⁴ The footnoting practice of the Chamber has been clear throughout the proceedings and has consistently included specific line references.⁴⁵ In support of its assertion otherwise, the defence cites two footnotes from decisions of the Chamber which lack specific line references; the Chamber notes that other references to transcripts in the cited decisions included specific line references.⁴⁶ Therefore, the defence's assertion that this is the "usual format" for footnotes in this Chamber is misleading and does not merit serious consideration. The Chamber considers that the practice for the citation of transcripts in this Chamber has been clear throughout the proceedings. This is further evidenced by the fact that the Prosecution Closing Brief included specific line references.

⁴² Email from the prosecution to the defence, 27 August 2014, 15:38.

⁴³ ICC-01/05-01/08-3130-Red2, paragraph 17.

⁴⁴ ICC-01/05-01/08-3091, paragraph 14.

⁴⁵ See, for example, all decisions on the admission of items into evidence issued by the Chamber, *inter alia*, Public Redacted Version of "Decision on the admission into evidence of items deferred in the Chamber's previous decisions, items related to the testimony of Witness CHM-01 and written statements of witnesses who provided testimony before the Chamber" of 17 March 2014 (ICC-01/05-01/08-3019-Conf, 26 August 2014, ICC-01/05-01/08-3019-Red, footnotes 100, 141, 143, 144, 146, 177, 191 to 202, 217, 227, and 231.

⁴⁶ Decision on the Prosecution's Request for Approval of a Proposed Expert and for Extension of Time for the Submission of the Expert Report, 7 October 2010, ICC-01/05-01/08-928, footnotes 2, and 21 to 23, and Decision on the prosecution's and defence's requests regarding Witness 219's testimony, 1 December 2011, ICC-01/05-01/08-1974, footnotes 14 to 18, and 25.

16. The Chamber notes the references provided by the defence to examples of previous defence filings which lack specific line references.⁴⁷ However, the Chamber considers that the burden caused by this practice when limited to a very small number of references in short filings is of a magnitude lower than in a brief containing 2590 footnotes, a very large proportion of which are transcript references. While the references provided by the defence to citations in its own filings may support its argument that it believed the usual format in this Chamber not to include line references, they do not represent the usual practice in this Chamber, as noted in the paragraph above.

17. With regard to the defence's reference to the practice of other chambers and courts,⁴⁸ the Chamber merely recalls that the defence was granted an extension of its page-limit on condition that it follow the "usual format adopted in the course of the trial proceedings".⁴⁹ No reference was made to the practice in other chambers or courts.

18. The Chamber considers that the omission of specific line references from the footnotes of the Defence Closing Brief, while still allowing identification of the referenced material, will entail an increased workload for both the prosecution and the legal representative. This is exacerbated in the case of the legal representative who must not only locate the specific lines cited by the defence in the English transcript, but then also locate the corresponding lines in the French version as well.

⁴⁷ ICC-01/05-01/08-3130-Red2, paragraph 3.

⁴⁸ ICC-01/05-01/08-3130-Red2, paragraphs 4 to 7.

⁴⁹ ICC-01/05-01/08-3091, paragraph 14.

19. In light of the above, the Chamber considers that good cause has been shown for an extension of the time limit for the prosecution and legal representative's to file their responses to the Defence Closing Brief. Regarding the prosecution's First Request, the Chamber finds that ordering the defence to file a corrected version of the Defence Closing Brief, with complete transcript references including line numbers, would be disproportionate to the hindrance caused and result in unnecessary further delay to the proceedings.

20. The Chamber also notes the defence's argument that the fact that the Chamber granted no extension of time to the defence when the prosecution filed the corrected version of its closing brief militates against granting the Prosecution Request.⁵⁰ The Chamber notes that the corrections it ordered the prosecution to make to the Prosecution Closing Brief were restricted to errors of a typographical nature.⁵¹ As such, the Chamber found that the filing of the corrected version would "not delay or otherwise prejudice the defence's preparation of its own closing brief".⁵² In the present case, however, the systematic absence of line references throughout the Defence Closing Brief has a significant impact on the ability of the prosecution and legal representative to prepare their responses to the Defence Closing Brief within the time limit set by the Chamber. This was not the case with respect to, for example, limited and isolated alterations to incorrect page-numbers or the alteration of the numbering or style of headings in the Prosecution Closing Brief.⁵³

⁵⁰ ICC-01/05-01/08-3130-Red2, paragraph 12.

⁵¹ ICC-01/05-01/08-3091-Conf, paragraph 16.

⁵² ICC-01/05-01/08-3091-Conf, paragraph 16.

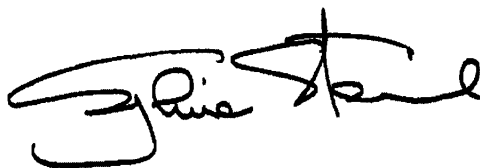
⁵³ Annex: Corrected version of "Prosecution's Closing Brief", 2 June 2014, ICC-01/05-01/08-3079-Conf-Corr-Anx.

III. Conclusions

21. In view of the foregoing the Chamber hereby:

- (i) REJECTS the prosecution's First Request;
- (ii) GRANTS the prosecution's Second Request;
- (iii) ORDERS the prosecution and Me Douzima to file their respective responses to the Defence Closing Brief by 15 September 2014;
- (iv) ORDERS the defence to file its reply to the responses by 29 September 2014; and
- (v) ORDERS the parties and participants to include specific line references, and specify the language and revision version, when citing transcripts in all future documents in the *Bemba* case.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 3 September 2014

At The Hague, the Netherlands