

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 8 April 2016

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 the Defence request for disclosure and/or clarification
of the timeline for Sentencing Requests**

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. The Defence request should be dismissed as premature, unnecessary and inappropriate in this specific situation. The Defence requests Trial Chamber III (“Chamber”) to “**ORDER** the Prosecution to disclose all material upon which it may rely, in particular any witness statements or documents that have not been hitherto disclosed and/or are not part of the trial record; and **ORDER** the Prosecution to disclose all material in its custody or possession which may undermine its position on sentence or be relevant to mitigation of sentence in the present case; or, in the alternative, **ORDER** that the Defence be required to file its Sentencing Request seven days from receipt of disclosure of the above, following a decision from the Trial Chamber on the Prosecution Sentencing Request”¹.

2. The Office of the Prosecutor (“Prosecution”) cannot anticipate the Chamber’s decision on the witnesses to be called by the Parties. Therefore, contrary to Defence’s assertion, the Prosecution is not obliged to disclose material upon which it may, or may not rely, ahead of the Chamber’s decision, except for potentially exculpatory evidence and rule 77 material. The Prosecution has no obligation to inform the Defence of its strategy at this point in time

II. Submissions

A. The Prosecution complied with its disclosure obligations

3. The Prosecution is fully aware of its disclosure obligation and will always comply with it. All potentially exculpatory evidence, including evidence that may mitigate the guilt, and rule 77 material for Defence preparation in possession of the

¹ ICC-01/05-01/08-3352, Defence request for disclosure and/or clarification of the timeline for Sentencing Requests, 5 April 2016, para. 15.

Prosecution has been disclosed to the Defence. The Prosecution is in compliance with its obligation.

4. In regard to the Sentencing submissions, the Prosecution will base its arguments on the findings of the judgement and evidence admitted in the record of the case. The Defence is in possession of both.

5. The Defence is confusing the Sentencing Submissions and the Sentencing Requests. In its "Decision on Defence Request for clarification of the Decision on the timetable and on the sentencing procedure and related issues"², the Chamber ordered that

In addition to their Sentencing Requests, the parties and the Legal Representative shall make submissions on (i) the principles to be applied by the Chamber when considering the appropriate sentence to be imposed; and (ii) their views on the appropriate sentence, taking into consideration, inter alia, any aggravating and mitigating factors in accordance with Rule 145 of the Rules ("Sentencing Submissions"). For the preparation of their Sentencing Submissions, the Chamber considers that the Legal Representative and the Defence should be provided with a draft translation of Section VI of the Judgment on "Legal Findings".

6. It is the understanding of the Prosecution that the Parties have to submit to the Chamber their propositions for an appropriate sentence through the Sentencing Submissions. The arguments set forth in the Submissions will rely on the findings of the judgement and the material admitted in the record of the case. This is what the Chamber had in mind while referring to the draft translation of Section VI of the judgement to support Defence's and Legal Representatives' Submissions.

² ICC-01/05-01/08-3344, Decision on "Defence Request for clarification of the Decision on the timetable and on the sentencing procedure" and related issues, 21 March 2016, para. 8.

7. The Sentencing Requests as defined by the Chamber in its “Decision on the timetable and on the sentencing procedure”³ are “written **requests to submit** (emphasis added) further evidence or to call witnesses, including any request for protective measures”. The Chamber is yet to decide on these requests and may reject Parties’ requests.

8. In its “Defence Request for clarification of the Decision on the timetable and on the sentencing procedure” filed on 17 August 2015⁴, the Defence requested for successive filings and, in support of its submissions, did not raise the argument of disclosure by the Prosecution. To the contrary, it indicated that successive filings would [...]; (ii) “encourages efficiency and expeditiousness of the proceedings” by ensuring that the Defence does not make “unnecessary submissions responding to evidence ‘that is no longer relied upon’”. In the Prosecution’s view, it is in light of these arguments that the Chamber granted the Defence request to file its Sentencing Requests within a week of receipt of the Prosecution’s and the Legal Representative’s Sentencing Requests.

9. By requesting the Prosecution to disclose evidence which it may not rely upon, the Defence is contradicting its own position. The Defence does not provide any explanation as to how evidence not admitted and by consequence not relied upon by the Prosecution may have any relevance for the preparation of its case. Contrary to Defence’s assertion, and with the exception of potentially exculpatory evidence and rule 77 material, the Prosecution is not obliged at this stage to disclose evidence upon which it may, or may not rely, depending on the Chamber’s decision.

³ICC-01/05-01/08-3071, Decision on the timetable and on the sentencing procedure, 26 May 2016, para. 18.

⁴ICC-01/05-01/08-3285, Defence Request for clarification of the Decision on the timetable and on the sentencing procedure, 17 August 2015, para. 9.

10. The Prosecution is not in a position to know which rule 77 evidence it may rely upon for sentencing before the Chamber's ruling on its request. Only the Chamber's decision on the Prosecution Sentencing Request will allow the Prosecution to determine whether disclosure of additional information for sentencing is necessary. The Prosecution cannot anticipate the decision of the Chamber and has therefore no obligation, prior to it, to inform the Defence of its strategy or provide the Defence with evidence, which may not be relevant for the Prosecution case.

B. The Trial Chamber Decision on the timetable for Sentencing Requests is clear

11. With the time table set up by the Chamber, the Defence benefits of two additional weeks to implement any response or counter argument to the Prosecution's Sentencing Submissions, and one additional week to adjust its Sentencing Requests to the Prosecution's Requests. Should the Chamber grant the Requests by the Parties in its entirety or partially, the Prosecution will then, under the Chamber's supervision, disclose well in advance any evidence it intends to use to allow the Defence to prepare its case.

12. The Prosecution is confident that in case the Chamber grants the Prosecution Requests, it will ensure that the rights of Mr Bemba are protected, as it did throughout this case. If granted, calling the witnesses to testify will require some time during which the Parties will disclose the supporting evidence.

III. Relief Sought

13. The Prosecution requests that the Chamber dismiss the Defence Request.



Fatou Bensouda, Prosecutor

Dated this 8th Day of April 2016

At The Hague, The Netherlands