

**Cour
Pénale
Internationale**



**International
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Court**

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Date: **11 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 Application to Submit Additional Evidence and Present Final Oral
Submissions on Sentencing**

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 Office of the Prosecutor ("Prosecution") hereby submits a request to the Trial Chamber III ("Chamber"), pursuant to article 76(2) of the Rome Statute ("Statute"), to submit additional evidence and make final oral submissions that are relevant to Jean-Pierre Bemba Gombo's sentence ("Sentencing Request"). The additional evidence is very limited in scope as it involves calling only one expert witness. The oral submissions will give Prosecution the opportunity to present final arguments, including its response to the Defence sentencing submissions.

II. Submissions

The proposed evidence is relevant to determine the appropriate sentence

2. In its Decision rendered on 26 May 2016,¹ the Chamber having decided to issue a separate article 76 decision in the event of a conviction in this case, ordered the Parties and the legal representatives to file written requests to submit further evidence or to call witnesses, including any request for protective measures (...).

3. The Prosecution therefore proposes to call one expert witness to provide additional evidence which is purely relevant to sentencing.

4. The Prosecution anticipates that the proposed expert will testify on the longitudinal and intergenerational impact of crimes such as (mass) rape and sexual violence, on the mental health of individual victims, their families, and the affected population. For instance, the lasting effects on the brain structure and functioning which results in cognitive, emotional, and behavioral difficulties results in various mental health disorders, as well as how the lasting changes in the nervous system

¹ ICC-01/05-01/08-3071, paras. 13 and 17.

affect human psychology and result in the long-term broader sociological consequences such as intergenerational trauma.

5. The additional evidence is significant in demonstrating the extent of damage caused, in particular the harm caused to the victims and their families, which is a relevant consideration in determining the appropriate sentence pursuant to article 78 of the Statute.²

6. The request to submit additional evidence is limited in scope and goes beyond the other evidence on record.³ During the trial, the Prosecution elicited evidence on the impact of the *Mouvement de Libération du Congo* (“MLC”) crimes on the Central African Republic (“CAR”) victims from Prosecution witnesses and two Gender expert witnesses.⁴ However, none of these experts or witnesses provided the unique evidence of longitudinal and intergenerational impact of such victimisation to individual victims, their families, and the affected population based on the interdisciplinary scientific expertise of human biology, psychology, psychiatry, and social sciences.⁵

7. To the extent that Prosecution witnesses testified about the impact of the MLC crimes, they mainly focused on the current effects of the crimes as opposed to future or long-term effects to the mental health of victims. For instance P-221 testified about Post Traumatic Stress Disorder (PTSD) in a general sense,⁶ but not on the

² Rule 145 (1)(c) of the Rules of Procedure and Evidence.

³ ICC-01/05-01/08-3186-Red, para. 18.

⁴ ICC-01/05-01/08-3343, paras. 492, 488, 510, 489, 494 and 551.

⁵ For instance, P-229, the Prosecution expert Witness who conducted interviews of sexual violence victims in CAR, explained that the medical consequences suffered by victims of rape may include: lesions to organs, HIV seroconversion, syphilis serology, lesions to vagina and unwanted pregnancies. – see P-229: ICC-01/05-01/08-T-100-ENG CT2, p. 23, ln. 23 to p.27 ln. 21.

⁶ P-221: ICC-01/05-01/08-T-38-ENG ET, p. 25, ln. 20 to p. 27, ln. 25. See also at ICC-01/05-01/08-T-39-ENG ET p.5, lns. 16-23, where P-221 states that “The survivors of these acts of sexual violence continue to experience the devastating negative physical, psychological and social outcomes of these experiences. Many reported an inability to seek medical attention due to limited financial resources. This population not only carries the burden of their distressing histories and stressful life circumstances, but the shame and humiliation of

neurobiological effects and transmission of intergenerational trauma. The proposed expert will use uncontested scientific data to project the long term expected grave mental outcomes that were neither addressed by P-221 or P-229 and that are associated with the crimes committed by the MLC troops in this case.

8. In addition, the two Prosecution experts, P-221 and P-229 also testified about other elements of crimes which were relevant at trial, such as the effect of trauma on memory and the use of rape as a weapon of war.⁷ In contrast, the additional evidence from the proposed expert is limited and focused on an issue that is only relevant for sentencing.⁸

9. The Defence will not be prejudiced by this expert's evidence since the Parties and participants will have the opportunity to explore and test the witness' evidence in person.

10. The expert is willing and available to testify in person and submit a report containing his findings to the Chamber. The Prosecution requires three hours to question the proposed expert. As the proposed expert is available and ready to testify in person at The Hague, calling him to testify in person will not cause undue delay to the proceedings.

11. The Prosecution further informs the Chamber that the proposed expert has already been admitted onto the list of experts maintained by the Registry in compliance with regulation 44(1) of the Regulations of the Court.⁹

sexual experiences that have devastated their lives, their families and their communities. "Doctor, you responded already to this question, to my question, is there anything you want to add ?".

⁷ P-229: ICC-01/05-01/08-T-99-ENG CT3, p. 44 lns. 19-25. For instance P-229 testified about the widespread rapes since they interviewed so many victims of rape (over 192 Victims of Sexual Violence from over eight localities).

⁸ The evidence is limited and focussed on the long term effects of the MLC crimes to mental health of the victims.

⁹ ICC-01/04-01/06-1069, paras. 24-25.

Oral Submissions

12. In the event that the Parties are permitted to submit further evidence or to call witnesses at this sentencing phase of the proceedings, the Prosecution requests the Chamber's Authorisation to present its final oral arguments, including its response to the Defence sentencing evidence and submissions.

III. Relief Sought

13. The Prosecution respectfully requests the Chamber to grant an order allowing it to submit additional evidence and make final oral submissions that are relevant to Jean-Pierre Bemba Gombo's sentence.



Fatou Bensouda, Prosecutor

Dated this 11th Day of April 2016
At The Hague, The Netherlands