



Original: English

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

Date: 18/04/2016

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
With Confidential Annex A

**Public Redacted Version of Defence request to submit evidence on sentence and
for leave to present additional written submissions**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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A. INTRODUCTION

1. The present request is filed in compliance with the Trial Chamber's decisions of 25 May 2015 and 21 March 2016, in which the Defence was ordered to file "any request to submit further evidence or to call witnesses"¹ by 18 April 2016.²

2. Noting the Trial Chamber's ruling that a separate sentencing procedure will allow the parties to make "meaningful submissions on sentence for the purposes of Article 78 of the Statute", including submissions on mitigating circumstances,³ the Defence seeks leave to submit further documentary evidence, and call three (3) witnesses. This evidence, as expanded below, concerns matters directly relevant to mitigating circumstances, and will assist the Trial Chamber in its deliberations in the sentencing phase of the case.

3. Should the Trial Chamber grant the present application, in whole or in part, the Defence seeks leave to present additional and limited written submissions on the impact of this new evidence on the mitigation of sentence, following the hearing of any oral evidence or the admission into evidence of the requested documents.

B. REQUEST

(a) Request to present oral evidence

(i) [REDACTED]

4. [REDACTED].⁴ For extraneous reasons, the Trial Chamber did not accept [REDACTED],⁵ however no question was raised over [REDACTED].

¹ ICC-01/05-01/08-3071, para. 17.

² ICC-01/05-01/08-3344, para. 11(iii).

³ ICC-01/05-01/08-3071, para. 13.

⁴ [REDACTED].

⁵ [REDACTED].

5. It is submitted that, on a theoretical basis, [REDACTED] can provide expert evidence which will be of assistance to the Trial Chamber in assessing matters directly relevant to mitigating circumstances, namely: (i) the command levels within a military structure in general, and within the MLC in particular, to illustrate Mr. Bemba's remoteness from the crime base; and (ii) the efficacy ordinarily to be expected in general terms of the measures the Trial Chamber accepted Mr. Bemba did take.

6. [REDACTED] is admitted to the list of experts maintained by the Registry in compliance with Regulation 44(1) of the Regulations of the Court. [REDACTED] will not be requesting protective measures, and will testify under his own name and in his capacity as an expert.

(ii) [REDACTED]

7. Again, this witness gave evidence in the main trial as Prosecution witness P-15. His evidence centered mainly on Mr. Bemba's control over the MLC contingent in the Central African Republic in 2002 and 2003, and Mr. Bemba's level of knowledge of criminal activity on the part of these troops. However, he was not questioned (because it was not relevant to Mr. Bemba's guilt) about the matters in relation to which the Defence wishes to call him in the sentencing phase of the case.

8. [REDACTED] will predominantly offer character evidence, and can also assist the Trial Chamber in relation to (i) the aims and ambitions of the MLC; and (ii) Mr. Bemba's contribution to the development of peace in the DRC and the wider Central African region.

9. P-15 was a protected witness in the main case and wishes for the same measures of protection to be afforded for him in the event that he gives evidence on sentence. [REDACTED].

(iii) [REDACTED]

10. [REDACTED]. [REDACTED]. It was in this context that he was present in Equateur, in the area controlled at that time by the MLC.

11. [REDACTED] is accordingly in a position to give evidence on matters directly related to mitigating circumstances in the present case, namely: (i) the comportment of Mr. Bemba prior and subsequent to the events in question; and (ii) the role of both Mr. Bemba and the MLC in bringing peace and stability to the region during the relevant events.

12. [REDACTED] is willing to testify in open session and is not seeking an order for protective measures from the Trial Chamber.

(b) Request to submit documentary evidence

13. The Defence also seeks authorisation to rely on and/or submit the documents set out in Annex A.

14. Each of these documents exhibits sufficient probative value, being either (i) already admitted into evidence during the trial phase; (ii) publicly available material and reports; or (iii) documents relating to Mr. Bemba's finances prepared by the Registry and/or Mr. Bemba's counsel in the Article 70 proceedings. There is no prejudice to the admission of, or reliance on, these documents (the vast majority of which are known to the Prosecution or publicly available), and they will not unfairly prejudice any party in the presentation of their evidence.

15. Each of these documents is relevant to the sentencing phase, for the reasons set out in the attached Annex A.

(c) Request to present additional written submissions

16. In the event that the Trial Chamber authorises the calling of additional oral evidence, or the admission of the documents contained in Annex A, the Defence requests leave to present limited further written submissions on the relevance of this evidence to the sentencing phase.

17. Much in the same manner as the Final Trial Briefs, the Defence submits that limited written submissions will afford Mr. Bemba the opportunity to present this evidence to the Trial Chamber in a manner which demonstrates its relevance to the mitigation of sentence, and will ensure that the Defence can make “meaningful submissions on sentence for the purposes of Article 78 of the Statute”.⁶

D. RELIEF REQUESTED

18. For the reasons set out above, the Defence respectfully requests that the Trial Chamber:

AUTHORISE the Defence to present the evidence of the following witnesses in the sentencing phase:

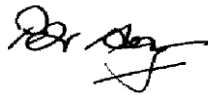
- (i) [REDACTED];
- (ii) [REDACTED];
- (iii) [REDACTED]; and

AUTHORISE the Defence to rely on and/or submit the documents set out in Annex A to the present application; and

⁶ ICC-01/05-01/08-3071, para. 13.

ORDER that the Defence may present further limited written submissions in the event that the Trial Chamber grants the above request in whole or in part.

The whole respectfully submitted.



Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

Done at The Hague, the Netherlands

18 April 2016