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TRIAL CHAMBER III

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
THE PROSECUTOR
v. Jean-Pierre Bemba Gombo**

Public

**Public Redacted Version of Defence Response to the Prosecution and LRV
Requests to present additional evidence on sentence, ICC-01/05-01/08-3379-Conf**

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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I. BACKGROUND

1. In May 2015, Trial Chamber III (“the Chamber”) decided to hold a further hearing to hear additional evidence or submissions relevant to sentence pursuant to Article 76(2) of the Statute. The Trial Chamber ordered the parties and legal representatives, in the event of a conviction, to file written requests to submit further evidence or call witnesses, including any requests for protective measures.¹

2. On 21 March 2016, the Chamber rendered its Judgment under Article 74 of the Statute (“the Judgment”) against Mr. Jean-Pierre Bemba, in which it convicted him of the crimes with which he was charged.²

3. On 5 April 2016 the Defence requested the Trial Chamber to order the Prosecution to disclose all materials on which it may rely for the purpose of sentencing, in particular any witness statements that were not already part of the trial record.³

4. On 11 April 2016, the Prosecution filed its “Application to Submit Additional Evidence and Present Final Oral Submissions on Sentencing” (“Prosecution Request”).⁴ The application contained two requests. Firstly, the Prosecution sought leave to call a witness (hereinafter the “Proposed Expert”) to provide “additional evidence” 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.”⁵ Secondly, the Prosecution sought leave to present “final oral arguments, including its response to the Defence sentencing evidence and submissions.”⁶

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

² ICC-01/05-01/08-3343.

³ ICC-01/05-01/08-3352, paras. 5 to 10, and 15.

⁴ ICC-01/05-01/08-3362.

⁵ ICC-01/05-01/08-3362, paras. 3-4.

⁶ ICC-01/05-01/08-3362, para. 12.

5. On the same day, the Legal Representative of Victims (“LRV”) filed her “Requête de la Représentante légale des victimes aux fins d’être autorisée à faire comparaître des victimes supplémentaires à l’audience de fixation de la peine” (“LRV Request”).⁷ The LRV [REDACTED].

6. On 13 April 2016, the Trial Chamber noted that “contrary to the Chamber’s established practice, the Prosecution has not provided any information concerning the Proposed Expert’s identity and qualifications, which are pre-requisites for the Chamber’s decision on whether to call an expert witness.”⁸ The Prosecution was ordered to disclose the proposed expert’s identity, CV and any statements and summary of the key elements that he is expected to address by 15 April 2016.⁹

7. The Prosecution subsequently disclosed [REDACTED],¹⁰ [REDACTED].

8. On 19 April 2016, the Trial Chamber ordered that any responses to the parties and LRVs requests to present additional evidence on sentence “be filed by 29 April 2016”.¹¹ Accordingly, the Defence files the instant response.

II. APPLICABLE LAW

9. Among the accused’s statutory rights is the right “[t]o be tried without undue delay”,¹² the importance of which is demonstrated by the fact that the

⁷ ICC-01/05-01/08-3364-Conf.

⁸ ICC-01/05-01/08-3365, para. 6.

⁹ ICC-01/05-01/08-3365, para. 10(i).

¹⁰ CAR-OTP-0094-0493.

¹¹ Email Chambers to the parties and participants, 19 April 2016, 9:10 AM.

¹² Article 67(1)(a).

Chamber has a statutory duty to ensure that the trial proceedings are expeditious.”¹³

10. Article 68(3) of the ICC Statute provides that the participation of victims in the proceedings must not be in a manner which is “prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.”

11. This Trial Chamber has repeatedly dissuaded the parties and participants from calling evidence which is repetitive of that already in the record.¹⁴ This has been particularly emphasised in relation to the calling of evidence by the LRVs. In February 2002, the Trial Chamber adopted the criteria established by Trial Chamber II in *Katanga* in determining whether LRVs should be permitted to present additional evidence. The first criterion for consideration was “whether the proposed testimony relates to matters that were already addressed by the Prosecution in the presentation of its case or would be unnecessarily repetitive of evidence already tendered by the parties.”¹⁵

III. RESPONSE

A. PROSECUTION REQUEST

12. The Defence raises several concerns with the additional evidence proposed by the Prosecution, the primary being its repetition of evidence already in the record. Should the Trial Chamber decide to hear this additional evidence, the Defence seeks adequate time and resources to instruct a counter-expert to respond to the Expert Report and testimony.

(i) The author(s) of the proposed Expert Report cannot be reliably established

¹³ Article 64(2).

¹⁴ ICC-01/05-01/08-2225, para. 12.

¹⁵ ICC-01/05-01/08-2138, para. 24.

13. An expert is a person who, by virtue of some specialized knowledge, skill or training can assist the Chamber in understanding or determining an issue of a technical nature that is in dispute.¹⁶

14. Under Regulation 44 of the Regulations of the Court, the Registrar is responsible for compiling and maintaining a list of experts accessible to the parties and participants. While experts can be “natural persons” or “expert organisations”, they must be able to demonstrate, for example, a minimum of seven years of experience (with an advanced university degree) or of nine years experience to be accepted on the list.

15. Significantly, an expert witness can only testify as to a report if he or she qualifies as the author of that report.¹⁷ As stated in its introductory paragraphs, the Prosecution’s Expert Report was:¹⁸

[REDACTED].

16. From the methodology as described, [REDACTED].¹⁹ Put simply, neither the Defence nor the Trial Chamber have any basis for assessing the qualifications or experience of those individuals responsible for the analysis and alleged “expertise” contained in the Report, particularly given the emphasis on “keyword searches” and “compilation” of material. It is unclear whether [REDACTED].²⁰

¹⁶ ICC-01/04-02/06-1159, para. 7; ICC-01/09-01/11-844, para. 11; *Prosecutor v. Popović et al*, IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning Status of Richard Butler as an Expert Witness, 30 January 2008, para. 27; *Prosecutor v. Mladić*, IT-09-92-T, Decision on Defence Request to Disqualify Richard Butler as an Expert and Bar the Prosecution from Presenting his Reports, 19 October 2012, para. 8.

¹⁷ ICTY, *Prosecutor v. Perišić*, IT-04-81-T, Decision on Expert Reports of EWA Tabeu, 23 April 2009, para. 12.

¹⁸ CAR-OTP-0094-0493 (emphasis added).

¹⁹ CAR-OTP-0094-0493 at 0495.

²⁰ CAR-OTP-0094-0485 at 0487.

17. The requirement that an expert witness can only testify as to a report if he or she qualifies as its author²¹ exists to ensure the integrity of the proceedings, and to ensure that the Trial Chamber is only invited to consider material which is truly “expert”, and as such can provide specialised knowledge in a particular area relevant to the proceedings.

18. The Defence accepts that, during the trial phase, issues surrounding the authorship of an expert report, its methodology, sources and structure are matters that could be addressed during cross-examination and taken into consideration in evaluating the weight of the report, should it be admitted into evidence. However, given the extremely limited scope of the sentencing hearing (as opposed to a four-year trial proceeding), and the repetitive nature of the evidence in question, the uncertainty surrounding the authorship of the substance of the proposed Expert Report litigate strongly against granting the Prosecution Request.

(ii) The proposed evidence is repetitive of that already in the record

19. The Prosecution asserts that the proposed Expert will provide the Trial Chamber with evidence concerning “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.”²²

20. This evidence is already before the Trial Chamber. Dr. André Tabo and Dr. Adeyinka Akinsulure-Smith were presented by the Prosecution as experts on the impact of sexual violence on victims in the Central African Republic. They testified over a period of five (5) days, giving detailed testimony which was relied upon extensively by the Prosecution,²³ and accepted by the Trial Chamber.²⁴ As the

²¹ *Prosecutor v. Perišić*, IT-04-81-T, Decision on Expert Reports of EWA Tabeu, 23 April 2009, para. 12.

²² ICC-01/05-01/08-3362, para. 4.

²³ ICC-01/05-01/08-3079-Conf, paras. 335-347.

²⁴ ICC-01/05-01/08-3343, paras. 563, 564, 567.

Prosecution submitted in its Closing Brief, Dr. Akinsulure-Smith “described the severe impact of rape from a physical and psychological perspective, as well as social impact for the individual, their family and their communities.”²⁵ In particular, the Prosecution’s Closing Brief emphasised Dr. Tabo’s evidence **on the length** for which symptoms are exhibited by victims in the Central African Republic, namely “months or remain continuous depending on the type of support system and treatment available.”²⁶

21. In general terms, the extent to which the authors of the Expert Report – who appear to have carried out no clinical or field research of their own – rely on the findings and testimony of Dr. Tabo and Dr. Akinsulure-Smith betrays the repetitive nature of the proposed evidence.²⁷

22. In specific terms, the Expert Report’s discussion concerning PTSD²⁸ directly overlaps with the testimony of the two prior experts. The Prosecution Closing Brief notes that: “[t]he two gender experts that testified in this case come to similar findings and conclusions with regard to both the **impact of rape and PTSD**.”²⁹ Moreover, the Report’s observations on PTSD are linked, only on a very tenuous basis, to the situation in the Central African Republic. The Expert Report’s discussion on anxiety disorders³⁰ is already before the Chamber.³¹ The arguments concerning mood disorders and feelings of shame related to victimisation,³² directly overlap with both the expert report and testimony of Dr. Akinsulure-Smith.³³ As noted in the Prosecution Closing Brief:³⁴

²⁵ ICC-01/05-01/08-3079-Conf, para. 337.

²⁶ ICC-01/05-01/08-3079-Conf, para. 345.

²⁷ See, for example, CAR-OTP-0094-0493, at 0498-0499.

²⁸ CAR-OTP-0094-0493, at 0500-0503.

²⁹ ICC-01/05-01/08-3079-Conf, para. 334.

³⁰ CAR-OTP-0094-0493, at 0503-0504.

³¹ P-221, T-38-ENG-ET, p. 25, line 3, T-39-ENG-ET p. 11, line 12, p. 15, line 7.

³² CAR-OTP-0094-0493, at 0504-0506.

³³ EVD-T-OTP-00003/CAR-OTP-0064-0560 at 0566, 0568 and 0570; P-221, T-38-ENG-ET, p. 25, line 16, T-39-ENG-ET, p. 14, line 2. See also ICC-01/05-01/08-3079-Conf, para. 337.

³⁴ ICC-01/05-01/08-3079-Conf, paras. 342, 343 (internal citations omitted).

Stigma associated with rape was further accentuated by social ostracism; spouses of rape victims were called names, while female rape victims were blamed for the crime they suffered and referred to as “women of the Banyamulengue”. Some victims exhibited various reactions following their rape, including disgust, particularly towards their spouses and that this in turn affected their family and sex life. [Dr. Akinsulure-Smith] explained that, in various African communities, psychological issues are stigmatised and often seen as resulting from something the person or their family has done and the victim is seen as the problem. In addition, [Dr. Akinsulure-Smith] explained that HIV/AIDS as a result of rape is associated with stigma. Victims are often rejected, laughed at and ostracised from their communities, and some victims are unwilling to get tested as a result of this fear and limited availability of medical assistance.

23. The long and short-term physical consequences of sexual violence³⁵ were directly addressed by both Dr. Akinsulure-Smith and Dr. Tabo.³⁶ Again, this discussion in the Expert Report is only in general terms, with no link to the situation in the Central African Republic.

24. The section of the Expert Report concerning the broader sociological and psychological consequences of sexual violence³⁷ repeats evidence already before the Chamber.³⁸ Again, this discussion has no link to the specific situation of victims in the Central African Republic. Dr. Akinsulure-Smith has already testified before the Chamber concerning both the incidence of suicide,³⁹ the impact of sexual violence

³⁵ CAR-OTP-0094-0493, at 0507-0508.

³⁶ EVD-T-OTP-00003/CAR-OTP-0064-0560 at 0565-0566; P-221, T-38-ENG-ET, p. 24, line 16 – p. 25, line 4, p. 27 lines 19-21; T-39-ENG-ET, p. 5, lines 6-7; EVD-T-OTP-00607/CAR-OTP-0065-0043 at 0047-0049; P-229, T-100-ENG-CT2, p. 24, line 8 – p. 25 line 3, p. 26 line 17 –p. 27 line 16, p. 48, lines 17-22.

³⁷ CAR-OTP-0094-0493, at 0512-0513.

³⁸ P-221, T-38-ENG-ET, p. 25, line 9 – p. 27, line 16, p. 27, lines 21-25; T-39-ENG-ET, p. 5, line 8 – p. 8, line 6, p. 9 line 16 – p. 14, line 11, p. 15, line 12 – p. 16, line 13; P-229, T-100-ENG-CT2, p. 30, line 13 – p. 35, line 23, p. 36, line 20 – p. 38, line 17, p. 41, line 20 – p. 42, line 13, p. 48, lines 11-17; T-101-ENG-CT, p. 5, line 5 – p. 6, line 5, p. 7, lines 5-24.

³⁹ P-221, T-39-ENG-ET, p. 11, line 13.

on children,⁴⁰ and the destruction of community.⁴¹ Both Dr. Tabo and Dr. Akinsulure-Smith testified as to the prevalence of unwanted pregnancies.⁴² Moreover, the discussion in the Expert Report on these topics is in again in general terms, with no concrete link to the incidence in the Central African Republic.⁴³ The Expert Report then summarises, in six pages, the testimonies of victim witnesses given at trial all of which are, self-evidently, known to the Trial Chamber.⁴⁴

25. The extent of the overlap outlined above renders the Expert Report unnecessary for the Trial Chamber's deliberations on sentence, and the proposed Expert evidence irreconcilable with Mr. Bemba's right to expeditious proceedings.

(iii) The Defence should be afforded sufficient time for preparation

26. The established practice in this case affords the parties and participants sufficient time to prepare for and respond to expert testimony. The Trial Chamber has previously held that the timing of the filing of an expert report on sexual violence "must not cause prejudice to the rights of the defence to receive the expert report well in advance of the expert's testimony."⁴⁵ On that occasion, the Prosecution was required to ensure that "the expert's report is communicated to the defence at least 30 days prior to the testimony of the expert witness."⁴⁶

27. The Expert Report, on its face, raises a number of questions in terms of both its methodology and content. There appears to be no discussion of, for example, whether PTSD has a limited temporal impact, despite this appearing to be widely accepted in psychiatric practice. The Report acknowledges that the Central African

⁴⁰ P-221, T-39-ENG-ET, p. 11, line 20 – p. 12, line 5.

⁴¹ EVD-T-OTP-00003/CAR-OTP-0064-0560 at 0569.

⁴² P-221, T-38-ENG-ET, p. 24, lines 18-22; EVD-T-OTP-00003/CAR-OTP-0064-0560 at 0568-0569; EVD-T-OTP-00607/CAR-OTP-0065-0043 at 0048; T-100-ENG-CT2, p. 27, line 17 – p. 30, line 12.

⁴³ CAR-OTP-0094-0493, at 0512-0514.

⁴⁴ CAR-OTP-0094-0493, at 0519-0524.

⁴⁵ ICC-01/05-01/08-928, para. 14.

⁴⁶ *Ibid.*

Republic is [REDACTED],⁴⁷ [REDACTED],⁴⁸ [REDACTED].⁴⁹ The impact of these facts, however, appears missing from both the Report's assessment and conclusions.

28. While these basic omissions appear obvious even in the absence of any specialised knowledge, the Defence wishes to determine whether a practitioner with the relevant expertise is able to identify other inaccuracies or lacunae in the proposed Expert Report. Accordingly, the Defence requires sufficient time to instruct an expert to review the report in question. While 30 days was deemed sufficient to allow preparation for Dr. André Tabo's testimony, the Defence asks the Chamber to be guided by the five months taken by the Prosecution Expert to prepare the report in the present case,⁵⁰ and authorise a period of at least three months for the Defence to identify, instruct and consult with an expert qualified in the areas addressed therein.

(iv) Prosecution Request for Final Oral Arguments

29. The Prosecution also requests, in the event that the parties are permitted to submit further evidence or to call witnesses, the "Chamber's authorisation to present its final oral arguments, including its response to the Defence sentencing evidence and submissions."⁵¹

30. The Defence does not object to the parties being given an opportunity to make limited written submissions on any additional evidence called during the sentencing phase. The Prosecution does not, however, have a right of response to the Defence sentencing submissions during the sentencing hearing.⁵² It has already

⁴⁷ CAR-OTP-0094-0493, at 0503.

⁴⁸ CAR-OTP-0094-0493, at 0503.

⁴⁹ CAR-OTP-0094-0493, at 0503.

⁵⁰ The Prosecution instructed its expert on 17 November 2015, and the report is dated April 2016.

⁵¹ ICC-01/05-01/08-3362, para. 12.

⁵² ICC-01/05-01/08-3376-Red.

made extensive submissions on sentence and the briefing on the matter is now complete.⁵³

B. LRV SENTENCING REQUEST

(i) The role of victims in the sentencing phase should be strictly limited

31. The Majority of this Trial Chamber has previously held that victims “are not parties to the proceedings and are thus not vested with a self standing right to present evidence.”⁵⁴

32. To this end, the practice of victim participation in the sentencing phase remains unsettled in international criminal law. Self-evidently, victims played no role in the sentencing of convicted persons at the ICTY and ICTR.

33. Even at courts where bifurcation occurs, victims have been ascribed a minimal role. At the ECCC, sentencing falls within the exclusive mandate of the co-prosecutors. Civil parties have been directed not to make any submissions on the sentence to be imposed or submissions relevant to sentencing, on the basis that they do not enjoy the same right of equal participation, and have no role in relation to sentencing.⁵⁵ The ICC’s own practice mirrors this distinction. In the *Lubanga* and *Katanga* cases, while victim evidence was heard during the course of the trial, the LRVs were not authorised to present evidence at the sentencing hearing.

⁵³ ICC-01/05-01/08-3344.

⁵⁴ ICC-01/05-01/08-2138, p. 8.

⁵⁵ *Prosecutor v. Kaing Guek Eav*, Decision on civil party co-lawyers’ joint request for a ruling on the standing of civil party lawyers to make submissions on sentencing and directions concerning the questioning of the accused, experts, and witnesses testifying on character, 9 October 2009, paras. 25, 41-42.

34. The LRVs in the present proceedings have enjoyed full participatory rights during the trial phase,⁵⁶ and as such have made a complete contribution to the conviction rendered against the accused. In this context, the calling of additional evidence is difficult to reconcile with Mr. Bemba's right to expeditious proceedings, particularly given the repetitive or otherwise inappropriate nature of the evidence, as discussed below.

(ii) The LRV Request does not meet the established threshold for the presentation of evidence by victims

35. A Majority of this Trial Chamber has held that the threshold to grant applications by victims to give evidence is "significantly higher" than the threshold applicable to applications by victims to express their views and concerns in person.⁵⁷ Any applications to give evidence must be assessed pursuant to the following criteria:⁵⁸

(i) The presentation of evidence needs to be consistent with the rights of the accused and a fair and impartial trial. This requirement includes the accused's right **to an expeditious trial**, as set out above, as well as the right to have adequate time and facilities to prepare his defence according to Article 67(l)(b) of the Statute.

(ii) The testimony of the victims authorised to present evidence needs to be considered to **"make a genuine contribution** to the ascertainment of the truth."

(iii) Victims are not allowed to testify anonymously.

36. None of the four victims proposed in the LRV Request meet these criteria. As a starting point, the trial record in this case is notable for the sheer wealth of victim evidence. The Prosecution was permitted to call 16 victim witnesses to give oral

⁵⁶ ICC-01/05-01/08-2733-Conf; ICC-01/05-01/08-2751-Conf.

⁵⁷ ICC-01/05-01/08-2138, para. 20.

⁵⁸ ICC-01/05-01/08-2138, para. 23, citing ICC-01/04-01/07-1665-Corr, paras. 20, 22, 30.

evidence, and two expert witnesses who testified on issues directly relevant to the impact of crimes victims. The LRV was then permitted to call two additional victim witnesses to give evidence, and two further victims to present their views and concerns.⁵⁹ The voice of victims has permeated all aspects of these proceedings. Additional evidence is unnecessary and inconsistent with the right of the accused to expeditious proceedings. Moreover, the testimony of each of the proposed victims suffers from the following anomalies which further militate against the granting of the LRV Request.

a/0555/08

37. The LRV sought to present the evidence of this victim in 2011.⁶⁰ The request was rejected by a Majority of the Trial Chamber on the basis that the victim:⁶¹

was intercepted by MLC soldiers while she was fleeing to the fields. She is a victim of rape, she was taken by MLC soldiers from Bossembélé to Bossangoa and she was forced to accompany MLC soldiers to the DRC ...the Majority notes that **the major part of the events related in the victim's written statement occurred after 15 March 2003 in the DRC**. To the extent that such information would not be relevant to the charges, the Majority concludes that the testimony that could be expected from this victim would likely make **no genuine contribution to the determination of the truth**. In addition, considering the specific nature of the harm suffered by this victim, namely her abduction to the DRC, the Majority is of the view that the account that could be provided by this victim is not representative of a larger number of victims. For these reasons, the Majority decides that Victim a/0555/08 should not be authorised to present evidence or to express her views and concerns in person.

38. By again including a/0555/08 in her Request, the LRV is impermissibly seeking reconsideration of the Trial Chamber's decision that this victim "should not

⁵⁹ ICC-01/05-01/08-2138.

⁶⁰ ICC-01/05-01/08-1990-Conf.

⁶¹ ICC-01/05-01/08-2138, paras. 34-36.

be authorised to present evidence or to express her views and concerns in person.”⁶² Moreover, the LRV is open in her intention to present the evidence of this victim in order to fill holes in the evidentiary record as she identifies them from the Judgment, noting that “[REDACTED]”⁶³ The sentencing hearing is not the forum for the LRV to attempt to supplement the evidential record and fill gaps, as she sees them, in the Trial Chamber’s findings.

a/1226/11

39. a/1226/11 claims to have been the victim of Banyamulenge [REDACTED].”⁶⁴ On no reading of the Judgment, or the evidence in the case, could subordinates of Mr. Bemba have been present in that vicinity on [REDACTED]. The LRV’s omission of this date from her summary of the witness’ testimony is telling. On this basis alone, the Trial Chamber should decline to hear her evidence.

40. Moreover, the LRV is impermissibly seeking to bolster the testimony of P47, whose evidence on certain instances of rape, the Trial Chamber found “confusing”.⁶⁵ Citing P47’s testimony concerning rapes at Port Beach, the LRV notes that no direct victims testified during the trial phase, and asserts that a/1226/11’s testimony is relevant ‘puisque’il apportera des éléments de preuve supplémentaires sur les circonstances de temps, de lieu et de manière et la cruauté particulière des viols’.⁶⁶ The sentencing hearing is not intended to allow the participants to seek to bolster the evidence about which the Trial Chamber expressed doubts, and should be strictly confined to material which can assist the Chamber in its formulation of an appropriate sentence.

⁶² ICC-01/05-01/08-2138, para. 35.

⁶³ ICC-01/05-01/08-3364-Conf, para. 28.

⁶⁴ ICC-01/05-01/08-1854-Conf-Anx198-Red, p. 4

⁶⁵ ICC-01/05-01/08-3343, para. 311.

⁶⁶ ICC-01/05-01/08-3364-Conf, para. 19.

41. The LRV also claims that a/1226/11 can testify as to the impact of losing a partner following a rape, and the impact of rape on the children of the victims. This evidence is both repetitive of that heard at trial, and unnecessary in light of the extensive evidence lead on the impact of crimes on victims during the trial phase.

a/0272/08

42. The date and location of the alleged attack on a/0272/08 have been redacted from the Defence,⁶⁷ with the LRV asserting only that the events occurred in [REDACTED].⁶⁸ These redactions preclude the Defence from making full submissions on the proposed testimony of this witness.

43. Regardless, the LRV seeks to call this victim to provide evidence that the Banyamulenge not only pillaged property, as found by the Trial Chamber,⁶⁹ but also allegedly destroyed belongings.⁷⁰ This evidence is neither relevant to the charges as confirmed, nor can it assist the Trial Chamber in determining a sentence which reflects Mr. Bemba's culpability as found in the Judgment.

a/0480/08

44. The LRV seeks to justify calling a/0408/08 to give evidence on the basis that "l'impact des meurtres sur les familles des victimes n'a presque pas été abordé durant le procès." The Trial Chamber heard extensive evidence from witnesses claiming that family members were the victims of MLC crimes: P69, P87, and P42 chief amongst them. The Trial Chamber also heard evidence from four members of the same family, P23, P80, P81 and P82 and so observed firsthand the impact of

⁶⁷ ICC-01/05-01/08-188-Conf-Anx2.

⁶⁸ ICC-01/05-01/08-3364-Conf, paras. 22-25.

⁶⁹ ICC-01/05-01/08-3343, para. 566.

⁷⁰ ICC-01/05-01/08-3364-Conf, paras. 23-25.

attacks on members of their family.⁷¹ The evidence of a/0480/08 is accordingly unnecessarily repetitive, and would impermissibly turn the sentencing hearing into an opportunity for the LRV to seek to prove further individual incidents which, regardless of their repetitive nature, fall outside the Document Containing the Charges.

(iii) Adequate time and facilities to prepare

45. At an absolute minimum, should the Trial Chamber decide to grant the LRV Request in whole or in part, the Defence must be given the ability (in terms of time and resources) to conduct investigations into the veracity of the proposed testimony of these additional witnesses. The assessment of this time period should take into account the concurrent running of the appeal from the Judgment and the reduced resources of the Defence team in the present phase.

IV. RELIEF REQUESTED

46. As such, based on the above submissions, the Defence requests that the Trial Chamber:

REJECT the Prosecution Request or, in the alternative;

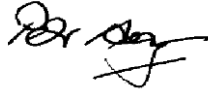
GRANT the Defence request for three (3) months in which to identify, consult and instruct its own expert to review the proposed Expert Report; and

REJECT the LRV Request or, in the alternative;

⁷¹ ICC-01/05-01/08-3343, paras. 487-495.

GRANT the Defence request adequate time to conduct investigations into the veracity of the proposed testimony of these additional victim witnesses.

The whole respectfully submitted.



Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

Done at The Hague, the Netherlands

2 May 2016