

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 20 January 2015

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 "Urgent Defence Request for Partial Reconsideration of the
Decision on 'Defence Request for a Hearing and for Leave to Reply to the
Prosecution Response to Defence Request for Relief for Abuse of Process',
ICC-01/05-01/08-3233"**

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-Edith Douzima Lawson

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber III (“Trial Chamber” or “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 “Urgent Defence Request for Partial Reconsideration of the Decision on ‘Defence Request for a Hearing and for Leave to Reply to the Prosecution Response to Defence Request for Relief for Abuse of Process’, ICC-01/05-01/08-3233” (“Decision”).

I. Background and Submissions

1. On 15 December 2014, the defence filed its “Defence Request for Relief for Abuse of Process” (“Abuse of Process Request”).¹ On 7 January 2015, the prosecution filed its “Response to the Re-filed Defence Request for Relief for Abuse of Process (ICC-01/05-01/08-3217-Conf-Exp)” (“Abuse of Process Response”).²
2. On 14 January 2015, the defence filed the “Defence Request for a Hearing and for Leave to Reply to the Prosecution Response to Defence Request for Relief for Abuse of Process” (“Leave to Reply Request”). The defence requested leave to reply to nine discrete issues and that the Chamber hold an oral hearing concerning the issues raised in the Abuse of Process Request.³
3. On 19 January 2015, the Chamber issued the “Decision on ‘Defence Request for a Hearing and for Leave to Reply to the Prosecution Response to Defence Request for Relief for Abuse of Process’”, granting the defence leave to reply to the Abuse of Process Response, ordering the defence to file any reply by 20 January 2015 and rejecting the request for an oral

¹ Defence Request for Relief for Abuse of Process, 15 December 2014, ICC-01/05-01/08-3217-Conf-Exp. The Defence also filed a confidential version of its Refined Request: ICC-01/05-01/08-3217-Conf-Red.

² Prosecution Response to Refined Defence Request for Relief for Abuse of Process (ICC-01/05-01/08-3217-Conf-Exp), 7 January 2015, ICC-01/05-01/08-3229-Conf-Exp. The prosecution filed a confidential redacted version of its Abuse of Process Response on 16 January 2015: ICC-01/05-01/08-3229-Conf-Red.

³ Defence Request for a Hearing and for Leave to Reply to the Prosecution Response to Defence Request for Relief for Abuse of Process, 14 January 2015, ICC-01/05-01/08-3231-Conf-Exp.

hearing.⁴

4. The same day, the defence filed its “Urgent Defence Request for Partial Reconsideration of the Decision on ‘Defence Request for a Hearing and for Leave to Reply to the Prosecution Response to Defence Request for Relief for Abuse of Process’, ICC-01/05-01/08-3233” (“Defence Request”).⁵ The defence highlights the significance, length, complexity and novel nature of the issues raised in the Abuse of Process Request and Abuse of Process Response.⁶ The defence therefore requests that the Chamber reconsider the deadline for the reply to the Abuse of Process Response and extend the deadline to 26 January 2015. It submits that the additional time would enable the defence to conduct research, seek instructions from Mr Bemba and tailor its arguments to comply with the 20-page page limit.⁷

II. Analysis and Conclusion

5. In accordance with Article 21(1) of the Rome Statute (“Statute”), the Chamber has considered Articles 64 and 67 of the Statute and Regulations 34 and 35 of the Regulations of the Court (“Regulations”).
6. The Chamber notes that the defence filed its Leave to Reply Request on 14 January 2015, seven days after the Abuse of Process Response was filed and notified. The Chamber considers that the defence, mindful of the preparatory work it would have to undertake and the deadline for replies

⁴ Decision on “Defence Request for a Hearing and for Leave to Reply to the Prosecution Response to Defence Request for Relief for Abuse of Process”, 19 January 2015, ICC-01/05-01/08-3233.

⁵ Urgent Defence Request for Partial Reconsideration of the Decision on ‘Defence Request for a Hearing and for Leave to Reply to the Prosecution Response to Defence Request for Relief for Abuse of Process’, ICC-01/05-01/08-3233, 19 January 2015, ICC-01/05-01/08-3234-Conf. The Chamber notes that the Defence Request is classified as confidential and the Leave to Reply Request is classified as confidential *ex parte*. The Chamber further notes that the defence and prosecution have filed confidential redacted and confidential *ex parte*, but not public, versions of the Abuse of Process Request and Abuse of Process Response. However, the Chamber considers that its reference to these submissions does not warrant confidential classification of this Decision. Accordingly, in light of the principle of publicity enshrined in Articles 64(7) and 67(1) of the Rome Statute and Regulations 20 and 23*bis* of the Regulations of the Court, the present Decision is classified as public.

⁶ ICC-01/05-01/08-3234-Conf, paragraph 2.

⁷ ICC-01/05-01/08-3234-Conf, paragraph 3.

set out in Regulation 34(c) of the Regulations, should have raised its Leave to Reply Request in a more timely manner or, at minimum, should have requested an extension of the deadline for its reply in its Leave to Reply Request.

7. Nevertheless, the Chamber recalls its prior finding that it may benefit from the defence's reply to the nine identified issues arising from the Abuse of Process Response.⁸ The Chamber further notes defence submissions concerning the preparatory work it must undertake before it files its reply, such as seeking instructions from Mr Bemba.⁹ The Chamber therefore considers, pursuant to Regulation 35(2) of the Regulations, that the defence has shown good cause to extend the 20 January 2015 deadline ordered in Decision 3233.

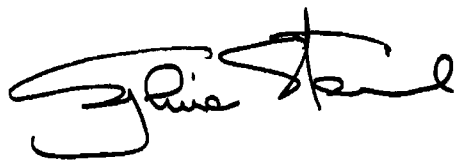
8. In view of the above, the Chamber hereby:

- a. GRANTS the Defence Request and ORDERS that the defence file its reply by 26 January 2015;
- b. REMINDS the defence, should it file its reply as confidential *ex parte*, to simultaneously file a confidential redacted version and thereafter file a public redacted version by 30 January 2015; and
- c. ORDERS the defence to file a public redacted version of the Defence Request or inform the Chamber that it may be reclassified as public without redactions by 30 January 2015.

⁸ ICC-01/05-01/08-3233, paragraph 10.

⁹ ICC-01/05-01/08-3234-Conf, paragraph 3.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 20 January 2015

At The Hague, the Netherlands