

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 August 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 "Defence Request for Leave to Reply to the 'Prosecution's
Response to "Further Defence Request for Disclosure"""**

No. ICC-01/05-01/08

1/6

6 August 2015

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

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on “Defence Request for Leave to Reply to the ‘Prosecution’s Response to ‘Further Defence Request for Disclosure’””.

1. On 6 July 2015, the Defence for Mr Jean-Pierre Bemba Gombo (“Defence”) filed its “Further Defence Request for Disclosure” (“Further Disclosure Request”),¹ in which it requests that the Chamber issue a number of orders relating to disclosure and remain “seized of the present issue in terms of further Defence requests for relief from prejudice arising out of the Prosecution’s breach of its disclosure obligations”.²
2. On 28 July 2015, the Prosecution filed its “Prosecution’s Response to ‘Further Defence Request for Disclosure’” (“Prosecution Response”),³ in which it requests that the Chamber reject the Further Disclosure Request.⁴
3. On 31 July 2015, the Defence filed its “Defence Request for Leave to Reply to the ‘Prosecution’s Response to ‘Further Defence Request Disclosure’””

¹ Further Defence Request for Disclosure, 6 July 2015, ICC-01/05-01/08-3264-Conf-Exp with confidential *ex parte* Annexes A, B, and C. The filing was notified on 7 July 2015. A public redacted version, also notified on 7 July 2015, was filed on the same day: ICC-01/05-01/08-3264-Red2. A confidential redacted version was filed on 7 July 2015: ICC-01/05-01/08-3264-Conf-Red.

² ICC-01/05-01/08-3264-Conf-Exp, para. 25.

³ Prosecution’s Response to “Further Defence Request for Disclosure”, 28 July 2015 (notified on 3 August 2015), ICC-01/05-01/08-3275-Conf-Exp. The Chamber notes that the Prosecution’s Response to “Further Defence Request for Disclosure” is currently classified as confidential *ex parte*. However, the Chamber considers that its reference to the Prosecution’s Response to “Further Defence Request for Disclosure” Request and other confidential or confidential *ex parte* filings 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.

⁴ ICC-01/05-01/08-3275-Conf-Exp, para. 25.

(“Request for Leave to Reply”),⁵ in which it “seeks leave to present a focused and limited reply [to] the arguments contained in the Prosecution Response”, “in particular”, on four issues.⁶

4. On 31 July 2015, the Prosecution filed its “Prosecution’s Response to Defence Request for Leave to Reply to ‘Prosecution Response to “Further Defence Request for Disclosure””⁷, in which it requests that the Chamber reject the Request for Leave to Reply.⁸ The Prosecution contends that the Request for Leave to Reply impermissibly contains substantive submissions on the merits of the issues on which the Defence seeks leave to reply,⁹ which it submits runs counter to Appeals Chamber jurisprudence that “an application for leave to reply may not in fact constitute a substantive reply to issues raised in a response”.¹⁰ It submits that the Request for Leave to Reply “should be dismissed on this ground alone”.¹¹
5. As a preliminary matter, the Chamber informs the participants that, in its pending decision on the Further Disclosure Request, it will not take into account any substantive submissions made in the Request for Leave to Reply that relate to the merits of the issues detailed in that request. In

⁵ Defence Request for Leave to Reply to the “Prosecution’s Response to ‘Further Defence Request Disclosure’”, 31 July 2015, ICC-01/05-01/08-3276-Conf-Exp with confidential *ex parte* Annexes A and B. A public redacted version was filed on the same day: ICC-01/05-01/08-3276-Red.

⁶ ICC-01/05-01/08-3276-Red, para 9.

⁷ Prosecution’s Response to Defence Request for Leave to Reply to “Prosecution Response to ‘Further Defence Request for Disclosure’”, 31 July 2015, ICC-01/05-01/08-3277-Conf-Exp. This filing was notified on 3 August 2015.

⁸ ICC-01/05-01/08-3277-Conf-Exp, para. 7.

⁹ ICC-01/05-01/08-3277-Conf-Exp, paras 3 and 4.

¹⁰ ICC-01/05-01/08-3277-Conf-Exp, para. 5.

¹¹ ICC-01/05-01/08-3277-Conf-Exp, para. 6.

addition, the Chamber cautions the Defence against making submissions on the merits of a judicial cause in a request for leave to reply, other than as is strictly necessary to substantiate said request.

6. Nevertheless, the Chamber is of the view that it may benefit from the Defence's views on the issues set out in its Request for Leave to Reply. The Chamber stresses that the Defence's reply must be narrowly tailored to only address new issues raised in the Prosecution Response and avoid repetitious submissions on matters already addressed in its Further Disclosure Request. In this respect, the Chamber notes the Defence's submission that it seeks to present "a focused and limited reply".¹² With the above in mind and taking into account (i) the specific issues on which the Defence seeks leave to reply and (ii) that the Further Disclosure Request numbered only 12 pages while the Prosecution Response numbered only 13 pages, the Chamber considers, pursuant to Regulation 37(1) of the Regulations of the Court ("Regulations"), that it is appropriate that the Defence's reply be limited to no more than eight pages.

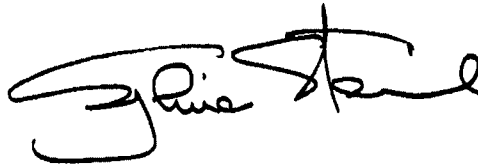
7. In view of the above, the Chamber hereby:

- a. GRANTS the Request for Leave to Reply, pursuant to Regulation 24(5) of the Regulations;
- b. ORDERS that the Defence's reply be filed no later than 10 August 2015, pursuant to Regulation 34(c) of the Regulations; and

¹² ICC-01/05-01/08-3276-Red, paras 9 and 10.

- c. ORDERS that the Defence's reply not exceed eight pages, pursuant to Regulation 37(1) of the Regulations.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 6 August 2015

At The Hague, the Netherlands