

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 13 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**

**Decision on “Defence request for disclosure and/or clarification of the  
timeline for Sentencing Requests”**

**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**

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**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, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”), issues the following Decision on “Defence request for disclosure and/or clarification of the timeline for Sentencing Requests” (“Decision”).

1. On 21 March 2016, the Chamber ordered:<sup>1</sup>

- (i) the Office of the Prosecutor (“Prosecution”) to request to submit any further evidence or to call witnesses, including any requests for protective measures (“Sentencing Request”), and to make any submissions concerning the applicable principles and appropriate sentence (“Sentencing Submissions”) by 11 April 2016;<sup>2</sup>
- (ii) the Legal Representative of Victims (“Legal Representative”) to file her Sentencing Request by 11 April 2016 and her Sentencing Submissions by 18 April 2016;<sup>3</sup> and
- (iii) the Defence for Mr Jean-Pierre Bemba Gombo (“Defence”) to file its Sentencing Request by 18 April 2016 and its Sentencing Submissions by 25 April 2016.<sup>4</sup>

2. On 5 April 2016, the Defence requested that the Chamber order the Prosecution to disclose all material upon which it may rely for purposes of sentencing, in particular any witness statements that are not part of the trial record, as well as all material in its custody or possession which may undermine its position on, or be relevant to mitigation of, sentence

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<sup>1</sup> Decision on “Defence Request for clarification of the Decision on the timetable and on the sentencing procedure” and related issues, 21 March 2016, ICC-01/05-01/08-3344.

<sup>2</sup> ICC-01/05-01/08-3344, para. 11(i).

<sup>3</sup> ICC-01/05-01/08-3344, para. 11(ii).

<sup>4</sup> ICC-01/05-01/08-3344, para. 11(iii).

("Primary Request").<sup>5</sup> In the alternative, the Defence requests that the Chamber permit the Defence to file its Sentencing Request seven days from receipt of such disclosure, following a decision from the Chamber on the Prosecution's Sentencing Request ("Alternative Request").<sup>6</sup>

3. On 8 April 2016,<sup>7</sup> the Prosecution responded ("Prosecution Response") that it has fulfilled and continues to fulfil its disclosure obligations under Article 67(2) of the Rome Statute ("Statute") and Rule 77 of the Rules of Procedure and Evidence ("Rules").<sup>8</sup> It submits that it is not obliged to disclose material relating to the evidence and witnesses proposed in its Sentencing Request until the Chamber's decision thereupon.<sup>9</sup> The Prosecution claims that, until the Chamber rules on its Sentencing Request, it is unable to determine what material must be disclosed.<sup>10</sup>
4. On 11 April 2016, the Prosecution filed its Sentencing Request,<sup>11</sup> proposing to call one, unidentified expert witness ("Proposed Expert") to 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".<sup>12</sup>
5. For purposes of the present Decision, the Chamber has considered Articles 64(2), 67(1)(b), and 67(2) of the Statute, Rules 76, 77, and 81 of the Rules, and Regulation 44 of the Regulations of the Court.

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<sup>5</sup> Defence request for disclosure and/or clarification of the timeline for Sentencing Requests, 5 April 2016, ICC-01/05-01/08-3352, paras 5 to 10, and 15.

<sup>6</sup> ICC-01/05-01/08-3352, paras 11 to 14, and 15.

<sup>7</sup> On 5 April 2016, the Chamber shortened the deadline for responses to the Defence Request to 8 April 2016. *See* Email from the Chamber to the parties and participants on 5 April 2016, at 18.39.

<sup>8</sup> Prosecution's Response to the Defence request for disclosure and/or clarification of the timeline for Sentencing Requests, 8 April 2016, ICC-01/05-01/08-3359.

<sup>9</sup> ICC-01/05-01/08-3359, para. 9.

<sup>10</sup> ICC-01/05-01/08-3359, para. 10.

<sup>11</sup> Prosecution's Application to Submit Additional Evidence and Present Final Oral Submissions on Sentencing, 11 April 2016, ICC-01/05-01/08-3362.

<sup>12</sup> ICC-01/05-01/08-3362, para. 4.

6. In its Sentencing Request, the Prosecution has indicated its intention to call the Proposed Expert for purposes of the Chamber's determination of sentence under Article 76 of the Statute and Rule 145 of the Rules. The Chamber notes 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.<sup>13</sup>
7. Further, in light of the Prosecution's obligations under, *inter alia*, Rule 76(2) of the Rules and this Chamber's prior jurisprudence,<sup>14</sup> the Prosecution is obliged to disclose to the Defence the Proposed Expert's identity, *curriculum vitae* ("CV"), and any statements or a summary of the key elements that the Proposed Expert is expected to address. Pursuant to its obligations under Article 67(2) of the Statute, the Prosecution is also obliged to disclose to the Defence, in a timely manner, any information that could affect the Proposed Expert's credibility.
8. Concerning all material other than that relating to the Proposed Expert addressed above, the Chamber understands the Prosecution Response to indicate that the Prosecution has fulfilled and continues to fulfil its disclosure obligations under Article 67(2) of the Statute and Rule 77 of the Rules. The Chamber has no reason to doubt this assertion.

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<sup>13</sup> T-14, page 18, line 18 to page 19 line 8, referring the parties and participants to the relevant prior jurisprudence of the Court on the issue, and requesting the parties to indicate whether there were any proposals for departing from that prior jurisprudence; and T-21, page 3, lines 2 to 5, and page 4, lines 4 to 7, noting that both parties agreed on the applicability of the procedures set out in the *Lubanga* case for the *Bemba* case. See *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the procedures to be adopted for instructing expert witnesses, 10 December 2007, ICC-01/04-01/06-1069, paras 17, 19, 23, and disposition sub-paragraphs vi) and viii), instructing the parties and participants that when they intend to instruct an expert, they should make an application to the Chamber for leave, including the identities of the proposed experts, in a public filing, when possible.

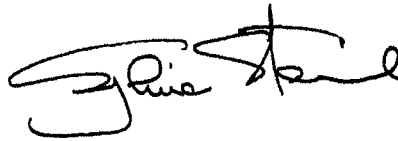
<sup>14</sup> Decision on the procedures to be adopted for instructing expert witnesses, 12 February 2010, ICC-01/05-01/08-695, para. 13(i); Decision on defence disclosure and related issues, 24 February 2012, ICC-01/05-01/08-2141, paras 27 to 30; and Decision on the starting date of the defence presentation of evidence and related issues, 24 May 2012, ICC-01/05-01/08-2221, para. 12(c) and (e).

9. Finally, in light of the Chamber's considerations relating to the Primary Request, it need not consider the Alternative Request.

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

- (i) **ORDERS** the Prosecution to, no later than 15 April 2016, provide the Chamber, Defence, and Legal Representative with the Proposed Expert's identity, CV, and any statements or a summary of the key elements that the Proposed Expert is expected to address;
- (ii) **ORDERS** the Prosecution to, as soon as practicable, disclose to the Defence any information that could affect the credibility of the Proposed Expert; and
- (iii) **REJECTS** the Alternative Request.

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



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**Judge Sylvia Steiner**



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**Judge Joyce Aluoch**



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**Judge Kuniko Ozaki**

Dated this 13 April 2016

At The Hague, the Netherlands