

Cour
Pénale
Internationale



International
Criminal
Court

Original: English

No.: ICC-01/05-01/08
Date: 26 November 2012

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

URGENT

Confidential *ex parte* – Prosecution, Registry only –
With Confidential *ex parte* – VWU only – Annex 1 and
Confidential *ex parte* – Registry only – Annexes 2 to 6

Registry's Observations relating to the "Decision requesting the Registry's
observations on the prosecution's request relating to Article 70 investigations"

Source: Registry

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

The Office of the Prosecutor
Mrs. Fatou Bensouda
Ms. Petra Kneuer

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants
(Participation/Reparation)

The Office of Public Counsel for
Victims

The Office of Public Counsel for the
Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Mrs. Silvana Arbia
Deputy Registrar
Mr. Didier Preira

Counsel Support Section
Prof. Dr. Esteban Peralta Losilla
Mr. Sam Sasan Shoamanesh

Victims and Witnesses Unit
Mrs. Maria-Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations
Section

Other

THE REGISTRAR OF THE INTERNATIONAL CRIMINAL COURT ("the Court")

NOTING the "Prosecution's Request for Record of Payments made by the Registry to Witnesses called by the Defence of Mr. Jean-Pierre Bemba Gombo" submitted on 15 November 2012;¹

NOTING the "Decision requesting the Registry's observations on the prosecutions request relating to Article 70 investigation"² (the "Decision") dated 20 November 2012, Trial Chamber III ("the Chamber") instructed the Registrar to:

"(i) provide the Prosecution with the record of the payments effected by the Registry to defence witnesses who have testified or who are testifying in the future, including the three expert witnesses, on any ground related to their testimonies, either directly or through any intermediary person or persons; and (ii) provide the Prosecution with information as to the amount of professional fees that the three defence expert witnesses were granted and paid."

NOTING articles 43(6), 68(1), 68(4) and 70 of the Rome Statute, regulations 23*bis*, 24*bis* and 83 of the Regulations of the Court ("RoC") and regulations 79 to 96 of the Regulations of the Registry ("RoR"),

OBSERVES AS FOLLOWS:

(i) Information from the Victims and Witnesses Unit ("VWU") with respect to payment to defence witnesses:

1. In order to provide the Chamber with the explanation on the expenses made on Defence witnesses the VWU prepared a table containing the following information (Annex 1):

- Travel costs, regulation 81 of the Regulations of the Registry ("RoR")
- Accommodation costs, regulation 82 RoR;

¹ ICC-01/05-01/08-2412-Conf-Exp.

² ICC-01/05-01/08-2421-Conf-Exp.

Pursuant to Trial Chamber III's Decision ICC-01/05-01/08-3057, dated 01/05/2014, this document is reclassified as "PUBLIC"

- Incidental allowance, regulation 84 RoR;
 - Attendance allowance, regulation 85 RoR;
 - Extraordinary allowance for lost earnings, regulation 86 RoR;
 - Expenses on purchasing the clothes and toiletries, regulation 80 RoR;
 - Support programme activities, regulation 83 RoR;
 - Expenses on experts witnesses, regulation 87 RoR;
 - Health and well-being, regulation 89 RoR;
 - Dependent care, regulation 90 RoR;
 - Expenses on accompanying persons, regulation 91 RoR;
 - Protection related expenses (excluding expenses related to the ICC Protection Programme), regulations 92-93 RoR.
2. The VWU notes here that the expenses listed above are made in relation to all witnesses and irrespective of the calling party. The VWU does not consult, cooperate with, or report to any party with regard to witness expenses. The VWU's financial decisions are made independently and are approved by the Registrar. As a result, the VWU is structurally protected from improper influence by referring entities.
3. The VWU wishes to clarify that some expenses might have been made by the calling parties directly to the witnesses which the VWU is not made aware of. In this case, should the Chamber request the parties to provide such information, the VWU would like to receive it for its case management.
4. In terms of the expert witnesses, it is the calling party that decides whether and to what extent to remunerate the services provided by such witnesses. The VWU here draws the attention of the Chamber that the expert witnesses are only paid by the Unit their daily substance allowance in accordance with

regulation 87 of the Regulations of the Court in addition to their travel and accommodation arrangement.

5. In three occasions, money was paid through the Defence Counsel to the witnesses. Such payment was paid to the witnesses to facilitate their application for the travel documents.³ Money has also been paid through two *pro bono* Legal Assistants of the Defence team based in the field to the witnesses in order to facilitate their application for the travel documents and to cover the expenses of their accommodation in the field.⁴
6. The VWU submits the table on expenses on Defence witnesses as confidential, *ex parte*, VWU only Annex 1, for the reason that this table contains information on the expenses which was shared with the party referring the witnesses to the VWU, in this case the Defence, only in those instances referred to in paragraph 5. All other expenses have never been shared with the Defence.
7. Taking into consideration that the VWU is a neutral entity providing services equally to witnesses from all calling parties and participants and in order to provide the Chamber with the fullest information on the matter, the Unit has started preparing a table containing expenses on all Prosecution witnesses and intends to file it on case record on Monday, 3rd December 2012.

(ii) Payment from the Counsel Support Section ("CSS") with respect to the three defence expert witnesses:

8. On 21 June 2012, counsel for the Defence, Mr. Aimé Kilolo, submitted a request to the Registry's Counsel Support Section to acknowledge his appointment of an expert witness, CAR-D04-PPPP-0053, to be remunerated the amount of 10,000 Euros for his services (Annex 2). This appointment and the proposed remuneration were accepted by the accused, Mr. Jean-Pierre Bemba Gombo (Annex 3).

³ See Annex 1, witnesses D04-41, D04-13 and D04-12.

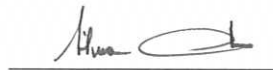
⁴ See Annex 1, witnesses D04-14, D04-66, D04-18, D04-17, D04-42 and D04-41.

9. On 2 August 2012, Mr. Kilolo deposited a further request to the Counsel Support Section to engage and remunerate two additional expert witnesses: CAR-D04-PPPP-0059 and CAR-D04-PPPP-0060 (Annex 4). Only the payment of the witness CAR-D04-PPPP-0059 was approved by Mr. Bemba (Annex 5).
10. By email dated 5 October 2012, Mr. Kilolo informed the Registry that expert witness CAR-D04-PPPP-0053 and CAR-D04-PPPP-0059 should be remunerated 5,000 Euros, 1,800 Euros respectively (Annex 6).
11. The Registry did not receive any request for remuneration of expert witness CAR-D04-PPPP-0060.
12. To date, no remuneration has been made to any of the abovementioned experts. The Counsel Support Section has requested from the Defence counsel to provide all the relevant documentation before payments can be processed. At this juncture, only part of the requisite documents is in possession of the Registry.
13. The Registry recalls that the remuneration for all teams members of the Defence of Mr. Jean-Pierre Bemba Gombo, including the proposed payment for the experts witnesses cited above are effected in accordance with the *"Decision on the Defence Application for Review of the Registrar's Decision of 15 October 2010 on the Application for Adjustment of the Expenses and Fees of the Defence"* dated 12 November 2010⁵ and are subject to the reimbursement of the funds by the accused.
14. Should the Chamber decide to provide the parties with the Annexes to the present observations, the Registry kindly requests to be granted sufficient time to propose redactions for the Chamber's consideration where necessary.

⁵ ICC-01/05-01/08-1007-Conf.

19. The Registrar remains at the disposal of the Honorable Judges of the Chamber

for any further information.



Silvana Arbia

Registrar

Dated this Monday, 26 November 2012

At The Hague, The Netherlands