

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 25 March 2014

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 Document

Prosecution's Request for Leave to Reply to "Defence Addendum to Response for admission of new Article 70 evidence"

Source: The Office of the Prosecutor

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

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I. Introduction

1. On 14 March 2014, the Defence filed the “Defence Addendum to Response for admission of new Article 70 evidence” (“Defence Addendum”).¹ Pursuant to Regulation 24(5) of the Regulations of the Court (“Regulations”), the Office of the Prosecutor (“Prosecution”) requests authorisation from the Trial Chamber III (“Chamber”) to reply to the Defence Addendum. The Chamber “will benefit from receiving additional observations”² from the Prosecution in light of the new argument advanced by the Defence and whether this is relevant to the determination of the Prosecution request for extension of time to adduce additional evidence in accordance with Regulation 35(2) of the Regulations.³

II. Submissions

2. The Prosecution requests leave to reply to the Defence Addendum, which argues that “the Prosecution clearly acted in a manner which is inimical to its duties as an independent Minister of Justice by failing to alert the Trial Chamber of key developments in the Article 70 case, which undermined the reliability of its Article 70 evidence.”⁴ The Defence allegation is based on information from the Article 70 proceedings before Pre-Trial Chamber II. This information shows that the Prosecution’s suspicion that Mr Mangenda may have corruptly influenced witnesses by paying them with funds he received via Western Union may be properly explained by his transfer of

¹ ICC-01/05-01/08-3016, Defence Addendum to Response for admission of new Article 70 evidence, 14 March 2014.

² ICC-01/05-01/08-2014, Order granting leave to reply, 15 December 2011, para. 4; ICC-01/05-01/08-2985, Decision on defence request for leave to reply to “Prosecution’s response to ‘Defence request for interim relief’”, 19 February 2014, para. 6.

³ ICC-01/05-01/08-2910, Prosecution’s Application to Submit Additional Evidence, 29 November 2013.

⁴ ICC-01/05-01/08-3016, para. 20.

those funds to Mr Bemba's ICC Detention Unit account.⁵ This suspicion is but one aspect of the Prosecution's case against Mr Mangenda.

3. The Defence concludes that the information above, which touches upon the discrete issue of payments received by one of the Article 70 suspects and therefore possibly bears on his culpability in relation to the broader Prosecution case against him, "leads to an irresistible inference that the Article 70 case as a whole is flawed by other key omissions, and/or failures to investigate obvious and potentially innocent or exculpatory explanations."⁶ This speculation is the basis of the Defence Addendum seeking to exclude the Article 70 evidence underlying the Prosecution's request for extension of time to submit additional evidence.⁷ However, the Prosecution's additional evidence relates to witness payment and coaching, which is directly relevant to the credibility of specific Defence witnesses who testified under oath before this Chamber. In contrast, the new information referred to by the Defence concerns Mr Mangenda's culpability in the Article 70 proceedings.

4. The Prosecution request for leave to reply is justified and well-founded as the novel argument raised in the Defence Addendum could not have been anticipated. This argument may have a significant bearing on the Chamber's determination of the Prosecution's request for extension of time to submit additional evidence. These issues are:

- i. Whether the "new information" provided by the Defence regarding the case against Mr Mangenda has any bearing on the Prosecution's request for a time extension to submit additional material on the credibility of specific

⁵ ICC-01/05-01/08-3016, para. 24.

⁶ ICC-01/05-01/08-3016, paras. 24 and 25.

⁷ ICC-01/05-01/08-2910, Prosecution's Application to Submit Additional Evidence, 29 November 2013.

Defence witnesses, or on the present proceedings in general;

- ii. Whether the “new information” has the ability to cast doubt on the reliability of the evidence the Prosecution seeks to admit if the application for extension of time is granted.

III. Relief Sought

5. The Prosecution requests the Chamber to grant leave to reply to the Defence Addendum. The Prosecution can file a reply in accordance with Regulation 34(c) of the Regulations or as directed by the Chamber if leave is granted.



Fatou Bensouda, Prosecutor

Dated this 25th Day of March 2014

At The Hague, The Netherlands