

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/13
Date: 22 December 2014

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Cuno Tarfusser
Judge Christine Van den Wyngaert

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

***THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

Public Document with Public Annex A

**Corrected version of "Prosecution's Request to obtain Records from the Victims
and Witnesses Unit", 18 December 2014, ICC-01/05-01/13-784**

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. The Office of the Prosecutor ("Prosecution") requests the Pre-Trial Chamber II, pursuant to Articles 54(1)(a), and 57(3)(a) of the Rome Statute ("Statute"), to order the Victims and Witnesses Unit ("VWU") to provide to the Prosecution records of payments concerning 21 defence witnesses in the case of *The Prosecutor v. Jean Pierre Bemba Gombo* ("*Bemba Case*")¹ that are within VWU's possession.

2. As explained below, the information sought is limited, targeted and relevant to this case; it will assist the Trial Chamber to be constituted in "establishing the truth" pursuant to Article 54(1)(a) of the Statute.

II. Submissions

i) General

3. On 13 November 2014, the Prosecution requested information from the VWU concerning payments made to defence witnesses in the *Bemba Case*. The VWU did not oppose the request. However, it informed the Prosecution that an order from the Pre-Trial Chamber was required to disclose the information.

4. Accordingly, the Prosecution seeks an order from the Pre-Trial Chamber requiring the VWU to provide: (i) records and dates of money provided, either directly or indirectly, by the Registry to the *Bemba* Defence in relation to the testimonies of 21 defence witnesses, and (ii) receipts, invoices and documents submitted by the *Bemba* Defence to VWU relating to the use of the said money (together "the Records").

5. Although the Prosecution has not alleged any violations of Article 70 of the Statute in relation to witnesses D-7, D-9, D-36, D-52, D-53 and D-59, the Records

¹ Witnesses D-2, D-3, D-4, D-6, D-7, D-9, D-11, D-13, D-15, D-23, D-25, D-26, D-29, D-36, D-52, D-53, D-54, D-55, D-57, D-59 and D-64.

sought for these witnesses and for D-11 (Arido) are relevant to providing additional information on the *Bemba* defence's recording of witness payments in support of their requests for advance funds from the Registry. Moreover, Kilolo and Arido make submissions regarding payments to certain of these witnesses to legitimise the *Bemba* defence's system of reimbursements to witnesses.

ii) *The Records will assist the Court in "establishing the truth"*

6. The information sought is highly relevant to the charges as confirmed.

7. In relation to the confirmation proceedings, Kilolo disclosed email communications between the *Bemba* defence and the Registry about witness payments.² These emails suggest that money requested by the *Bemba* defence and granted by the Registry was contingent on the provision by the *Bemba* defence of receipts and other documents signed by defence witnesses upon receipt of the money.³ Kilolo confirmed that such receipts were provided to the Registry to justify the Defence team's expenditure in relation to witnesses' testimonies.⁴

8. The Records are relevant and material to this case; they will allow the Prosecution and the Trial Chamber to be constituted to identify whether payments to defence witnesses - which the Kilolo claims were made to them in relation to their testimony were legitimate.

9. This Chamber has previously granted the Prosecution a similar relief and held that "obtaining [...] information from a neutral organ such as the Victims and Witnesses Unit might indeed assist the Prosecutor and the Court in "establishing the truth" pursuant to article 54(1)(a) of the Statute".⁵

² See e.g., CAR-D21-0003-0048-R01; CAR-D21-0003-0050; CAR-D21-0003-0187.

³ CAR-D21-0003-0048-R01, at 0048; CAR-D21-0003-0050, at 0050; CAR-D21-0003-0187, at 0187-0188.

⁴ ICC-01/05-01/13-600-conf-corr2, paras. 206, 280, 300. See also CAR-OTP-0080-0278 at 0283, ln. 132-0284, ln. 146.

⁵ ICC-01/05-01/13-182, p. 4.

10. Furthermore, providing the requested information will not prejudice any rights or interests of the Defence. It is routine Registry practice to cover expenses incurred by witnesses in relation to their testimony before the Court. Accordingly, there is no reason why this information cannot be provided to the parties in this case, particularly since it goes to the matter placed at issue by the Accused, namely, the legitimacy of the payments made by the Defence to its witnesses in the *Bemba* case.

iii) The information sought is material to these proceedings since the matter was placed at issue by the Accused

11. First, the Prosecution seeks to obtain the Records relating to 21 defence witnesses in the *Bemba* Case. Of these witnesses, 14 (D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57 and D-64) have been involved in the charged and confirmed instances of giving false testimony, knowingly presenting false evidence and corruptly influencing witnesses.⁶

12. Second, payments made by the Registry in relation to the remaining seven *Bemba* defence witnesses (D-7, D-9, D-11, D-36, D-52, D-53 and D-59) are also highly relevant because Kilolo submits that: (i) payments made by the *Bemba* defence to expert witnesses D-53 and D-59 were to partially pay their fees with the balance to be covered by the Registry;⁷ (ii) payments to D-9⁸ and D-7⁹ were made to reimburse transportation and accommodation expenses; (iii) money to D-52 was to cover communication, accommodation and transportation, or other expenses ostensibly related to D-52's alleged role as a Defence intermediary;¹⁰ (iv) from the email communication between the Defence in the *Bemba* Case and the Registry, D-36 was included in the Defence's calculation in support of its request for advance

⁶ ICC-01/05-01/13-749.

⁷ ICC-01/05-01/13-600-Conf-Corr2, para. 134. A breakdown of payments to these two expert witnesses is detailed in footnotes 218 (D-53) and 220 (D-59).

⁸ ICC-01/05-01/13-674-Conf, para. 387.

⁹ ICC-01/05-01/13-674-Conf, para. 388.

¹⁰ ICC-01/05-01/13-600-Conf-Corr2, para. 441.

payments.¹¹ Likewise, the Records sought are relevant to Arido's (D-11) claim that the sums paid to him by the Defence in the *Bemba* case were related to his expert report.¹² Therefore, detailed information concerning payments made by the Registry to D-7, D-9, D-11, D-36, D-52, D-53 and D-59 bear directly on these submissions and is thus material to the case.

13. The Prosecution notes that similar information requested by the Prosecution¹³ in this case before Trial Chamber III was previously provided by the Registry.¹⁴

III. Requested Relief

14. For the foregoing reasons, the Prosecution respectfully requests the Pre-Trial Chamber to order the VWU to provide the parties with the records and the dates of payments made to, as well as the receipts, invoices and documents obtained by the Registry in relation to 21 defence witnesses in the *Bemba* Case referred to above.



Fatou Bensouda, Prosecutor

Dated this 22nd Day of December 2014
At The Hague, The Netherlands

¹¹ See CAR-D21-0003-0048-R01, at 0049; CAR-D21-0003-0050, at 0051.

¹² ICC-01/05-01/13-598-Conf. para. 123.

¹³ ICC-01/05-01/08-2412.

¹⁴ ICC-01/05-01/08-2441.