

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 22/12/2014

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

Confidential

Defence Response to “Requête de la Représentante légale des victimes sollicitant l'accès à la requête non expurgée de « Defence Request for Relief for Abuse of Process » Conf-Exp + Conf-Exp-Anxs I, II, III & X + Conf-Anxs IV, V, VI, VII, VIII & IX ainsi qu'aux annexes I, II III et X”

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

Court to:

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Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

(Participation/Reparation)

Applicants

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States' Representatives

Amicus Curiae

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Victims and Witnesses Unit

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Detention Section

**Victims Participation and Reparations Other
Section**

A. BACKGROUND

1. On 11 November 2014, the Defence for Mr. Jean-Pierre Bemba filed the “Defence Request for Relief for Abuse of Process with Confidential ex parte Annexes I, II, III, and Confidential Annexes IV, V, VI, VII, VIII and IX” (“First Request”).¹ This filing was 87 pages in length, and contained a request for an extension of the page limit.²

2. On 21 November 2014, the Prosecution filed a response to this request for an extension of the page limit, asking Trial Chamber III (“the Chamber”) to reject the First Request in its entirety, and order the Defence to submit a new request within the 20-page limit.³

3. On 25 November 2014, the Defence informed the Chamber that it intended to exercise Mr. Bemba’s right to file a request for leave to reply to the Prosecution response.⁴ The following day, without waiting for the Defence to do so,⁵ the Chamber rejected the First Request as non-compliant with Regulation 37(1) of the Regulations of the Court, and ordered the Defence to re-file the First Request condensed into 40 pages.⁶

4. On 15 December 2014, the Defence filed its second “Request for Relief for Abuse of Process with Confidential ex parte Annexes I, II, III, X and Confidential Annexes IV, V, VI, VII, VIII and IX” (“Defence Request”), in which it argued in 40 pages that the constituent elements of Mr. Jean Pierre Bemba’s right to a fair, impartial and independent trial have been ruptured, irreparably.⁷

¹ ICC-01/05-01/08-3203-Red.

² ICC-01/05-01/08-3203-Red.

³ ICC-01/05-01/08-3209-Conf, para. 7.

⁴ Email from the Defence to the Chamber on 25 November 2014, at 15:29.

⁵ Email from the Chamber to the Defence on 27 November 2014, at 12:33.

⁶ ICC-01/05-01/08-3210.

⁷ ICC-01/05-01/08-3217-Conf-Exp.

5. On Thursday 18 December 2014, the Legal Representative of Victims (“LRV”) filed her “Requête de la Représentante légale des victimes sollicitant l’accès à la requête non expurgée de « Defence Request for Relief for Abuse of Process » Conf-Exp + Conf-Exp-Anxs I, II, III & X + Conf-Anxs IV, V, VI, VII, VIII & IX ainsi qu’aux annexes I, II III et X” (“LRV Request”).⁸ By way of this filing, the LRV asks for access to the *ex parte* version of the Defence Request, and to Annexes I, II, III and X to the Defence Request, which were also filed *ex parte* Prosecution and Defence (“the Redacted Material”).

6. The same day, the Chamber sent an email reducing the 21-day response period prescribed by Regulation 34 of the Regulations of the Court, and ordering the parties to respond by the following Monday 22 December 2014.⁹ No reason was given by the Chamber for the abridgement of the timeframe, nor was any urgency identified by either the Chamber or the LRV.

7. On Friday 19 December 2014, the Defence informed the Chamber that the TRIM link to the LRV Request was not working, and that it was unable to access the filing. The Defence accordingly asked for a limited extension of time, requiring its response to be filed 48 hours from the restoration of the TRIM link, or alternatively that the Registry be directed to transmit a PDF version of the filing.¹⁰ The Chamber ordered that the Defence be provided with a PDF version of the document, and granted no extension of time. The Defence was finally given access to the document at 17.27 on Friday 19 December,¹¹ its response being due on Monday 22 December 2014.

⁸ ICC-01/05-01/08-3219-Conf.

⁹ Email Chamber to the parties, 18 December 2014, at 15:46.

¹⁰ Email Defence to the Chamber, 19 December 2014, at 17:06.

¹¹ Email CMS to the Defence, 19 December 2014, at 17:27.

B. SUBMISSIONS

(i) The LRV has erroneously seized the Trial Chamber in the Main Case, and has no standing to request access to the material in question

8. The Redacted Material was classified as *ex parte* Prosecution and Defence in the Main Case to limit access to information which is protected in the Article 70 case (ICC-01/05-01/13). The question of access to, and distribution of the Redacted Material falls within the mandate of Pre-Trial Chamber II. As such, Trial Chamber III has no competence to adjudicate the LRV Request, which should accordingly be dismissed in its entirety.

(ii) The timing of the LRV Request undermines its substance

9. Apart from Annex X, the Legal Representative first became aware of the redactions to the Defence Request and the existence of the *ex parte* annexes on 11 November 2014, five weeks prior to the filing of the LRV Request.

10. The LRV's failure to file its Request in a timely manner undermines the substance of its request. If indeed it were the case that the existence of Redacted Material was detrimental or "porte préjudice aux intérêts personnels des victimes,"¹² the LRV would have had a professional obligation to file a request for reclassification on 11 November 2014 or during the days immediately following.

11. The untimely filing of the LRV Request thereby undermines the assertions that the Redacted Material is essential for the LRV's representation of the victims in the Main Case, and warrants the dismissal of the Request.

¹² ICC-01/05-01/08-3219-Conf, para. 19.

(iii) The Redacted Material does not affect the interests of victims in the Main Case

12. In any event, notwithstanding the obstacles posed by lack of standing and timing, the Redacted Material is not relevant to the interests of victims in the Main Case.

13. The *ex parte* redactions and the annexes in question were filed as part of the First Request in early November. Had the Trial Chamber deemed that the Redacted Material should, in fact, properly have been disclosed to the LRVs, it would have made such an order under Regulation 23bis(3) of the Regulations of the Court. The Chamber ordered the Defence to file a confidential redacted version of its 40 pages at the same time as its confidential *ex parte* version.¹³ No indication was given to the Defence that it should alter the classification of any of the annexes or information contained in the First Request, or give access to the *ex parte* material to the LRV. This reflects the reality: the Redacted Material is not relevant to the personal interests of the victims participating in the Main Case.

14. The LRV asserts that Annex IX, to which she has access, suggests that dual status victim/witnesses were in receipt of payments from the Prosecution, and as such contains information which is directly relevant to the interests of victims. She therefore reasons that even if the Redacted Material does not contain items specifically related to the direct personal interests of victims, it most likely has an indirect link with the allegations of payments to victim/witnesses, and on this basis it is essential that she be given access.¹⁴

15. This assumption is incorrect. The material redacted from the *ex parte* Defence Request, and Annexes I, II, III and X have no link to the interests of victims in the

¹³ ICC-01/05-01/08-3210, p.12.

¹⁴ ICC-01/05-01/08-3219-Conf, paras. 14-15.

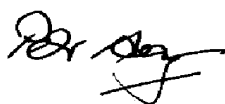
Main Case, and the LRV's representation of these individuals is in no way compromised by the Pre-Trial Chamber's classification of the material contained therein.

C. RELIEF REQUESTED

Based on the above submissions, the Defence accordingly requests that the Chamber:

DISMISS the "Requête de la Représentante légale des victimes sollicitant l'accès à la requête non expurgée de « Defence Request for Relief for Abuse of Process » Conf-Exp + Conf-Exp-Anxs I, II, III & X + Conf-Anxs IV, V, VI, VII, VIII & IX ainsi qu'aux annexes I, II, III et X", in its entirety.

The whole respectfully submitted



Peter Haynes Q.C.

Lead Counsel of Mr. Jean-Pierre Bemba

Done at The Hague, the Netherlands

22 December 2014