

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13

Date: 10/08/2015

TRIAL CHAMBER VII

**Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

THE PROSECUTOR

***v. JEAN-PIERRE BEMBA GOMBO, AIMÉ KILOLO MUSAMBA, JEAN-JACQUES
MANGENDA KABONGO, FIDÈLE BABALA WANDU AND NARCISSE ARIDO***

***Confidential Ex Parte Bemba Defence only with Confidential Ex parte Annexes A
and B, Bemba Defence only***

Defence Request for Discrete Variation of 10 August 2015 Deadline

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

The Office of the Prosecutor

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Pierre Bemba Gombo**
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Arido**

REGISTRY

Registrar
Herman von Hebel

Defence Support Section
Esteban Peralta Losilla

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

Introduction

1. On 22 May 2015, the Trial Chamber established 29 September 2015 as the date for the commencement of the trial.¹

2. The Trial Chamber further ruled that

[i]n order to ensure a fair and expeditious trial and enable issues to be addressed in a timely and efficient manner, the Chamber considers it appropriate to set a deadline for the filing of all motions that, in the view of the parties, require resolution prior to the commencement of trial and which are not already before the Chamber. Any such motion should be filed by 31 July 2015.²

3. On 30 July 2015, the Trial Chamber granted a Defence request to delay this deadline until 10 August 2015.

4. The Defence for Mr. Jean-Pierre Bemba hereby notifies the Trial Chamber that there is pending issue concerning the allocation of legal aid resources to the Article 70 Defence of Mr. Bemba, which needs to be resolved prior to the commencement of the trial.

5. Nonetheless, for reasons beyond the control of the Defence, this issue is not yet ripe for judicial consideration as the Registry has not issued its decision on the Defence request for a review of the indigency status of Mr. Bemba.

6. Indeed, the Defence sincerely hopes that an appropriate solution can be found, and that it will not be necessary either to seek review before the Presidency, or relief from the Trial Chamber.

7. Nonetheless, in order to preserve its right to raise issues before the Trial Chamber that could affect the fairness and expeditiousness of the proceedings, the

¹ ICC-01/05-01/13-960.

² ICC-01/05-01/13-960, para. 14.

Defence respectfully requests a discrete variation of the 10 August 2015 deadline as concerns future motions that are tied to the pending indigency application.

8. The present request has been filed *confidential ex parte* (Defence for Mr. Bemba only) due to the fact that it refers to information which is derived from *ex parte* consultations with the Registry.

Submissions

9. According to Registry documentation regarding the application of the legal aid scheme, the Registry is committed to reassessing the indigency status of defendants when their case progresses to the trial phase.³

10. When it became apparent that no such reassessment would be forthcoming, the Defence filed its own request for a review of the indigency status of Mr. Bemba.

11. This request was filed on 29 June 2015.⁴ According to Regulation 85 of the Regulations of the Court, decisions on indigency should be issued within one month of the submission of an application.⁵

12. Nonetheless, when the Defence inquired on 5 August 2015 as to when it could expect a response, it was informed that a decision would not be issued until 14 August 2015.⁶

13. The Defence has engaged in informal discussions with Counsel Support Section, and trusts that a fair and reasonable solution will be forthcoming.

³ "The calculation of the financial means of a person claiming indigence before the Court is assessed at each stage of the proceedings: pre-trial, trial and appeal. Thus, once a determination of indigence has been made, for example at the pre-trial phase, the Court will reassess that determination once the case proceeds to the trial phase and later to the appeal phase"; ICC-ASP/8/24, para. 7.

⁴ Confidential *ex parte* Annex A.

⁵ The same deadline is set out in Regulation 132(3) of the Regulations of the Registry.

⁶ Confidential *ex parte* Annex B.

14. The Defence cannot, however, exclude the possibility that there might be further delays, or that the Registry might decline the application in full.

15. This would have significant implications as concerns the ability of Mr. Bemba to exercise his rights under Article 67 of the Statute in an effective and expeditious manner.

16. At present, the Article 70 Defence for Mr. Bemba has access to no funds or resources. Counsel's consent to be appointed *pro bono* does not address the issue of support staff, investigations, expert witnesses or consultants.

17. It is self-evident that at least some funds are required in order to conduct investigations (for example, to cover travel costs). The Registry scheme for expert witnesses also specifies that their costs must be funded from the legal aid allocated to individual defence teams. The Defence for Mr. Bemba cannot engage an expert to review the various reports submitted by the Prosecution if the Defence has absolutely no funds from which such an expert could be paid.

18. Although the Presidency, and not the Trial Chamber, is vested with the competence for reviewing decisions of the Registrar on the indigency of the defendant, the Trial Chamber has a residual power to adjudicate issues that concern the trial process itself. This includes judicial determinations concerning the right to "legal assistance assigned by the Court in any case where the interests of justice so require".⁷

19. The Defence therefore submits that there is good cause to vary the 10 August 2015 deadline, in order to enable the Defence to raise issues concerning the indigency of Mr. Bemba, that have a direct impact of the fairness and

⁷ Article 67(1)(d) of the Statute.

expeditiousness of the proceedings, and which need to be resolved prior to the commencement of the trial.

Relief sought

20. Pursuant to Regulation 35(1) of the Regulations of the Court, the Defence for Mr. Bemba respectfully requests the Trial Chamber to vary the deadline of 10 August 2015, in relation to potential motions arising from the Registry's assessment of Mr. Bemba's indigency application.



Melinda Taylor
Counsel of Mr. Jean-Pierre Bemba

Date this 10th day of August 2015

The Hague, The Netherlands