



Original: English

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

Date: 23/03/2016

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

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*

Public

**Public Redacted Version of Defence Request for Leave to Reply to Prosecution's
Response to Bemba's "Application for Admission of Prior Recorded Testimony of
D20-0002 Pursuant to Rule 68(2)(b) (ICC-01/05-01/13-1737-Conf)**

Source: Counsel for Jean-Pierre Bemba Gombo

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

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Introduction

1. The Defence for Mr. Jean Pierre Bemba respectfully requests the leave of the Honourable Trial Chamber to file a reply to the ‘Prosecution’s Response to Bemba’s “Application for Admission of Prior Recorded Testimony of D20-0002 Pursuant to Rule 68(2)(b)” (the Response).¹

2. The Defence submits that there is a good cause to grant leave to reply in order to allow the Defence to:

- i. Provides its views on the record concerning the Prosecution’s alternative request to admit the transcript of D20-0002’s interview *via* Article 69(4) or Rule 68(2)(b);² and
- ii. Correct misstatements of fact set out on the Response, such as
 - a. The assertion that the Bemba Defence claimed that it provided the list of documents set out in the letter of to D20-0002, whereas the text of the letter³ and D20-0002’s own response⁴ make very clear that the Defence was listing the documents which had been provided to the Defence and not D20-0002;⁵
 - b. The assertion that the Defence did not communicate D20-0002’s position regarding contact with the Prosecution in a timely manner;⁶

¹ ICC-01/05-01/13-1737-Conf.

² The Defence fully supports the admission of this transcript and related recording, although it disputes the inflection that the Prosecution has placed on its contents.

³ “The documents provided to the Defence also included the following”[...]: CAR-D20-0006-1503.

⁴ “The documents provided to the Defence”[...] CAR-D20-0006-1316.

⁵ The Defence delineated these documents in order to identify the scope of confidential information, which had already been disclosed to the Defence.

⁶ The [Redacted] transmitted D20-0002’s letter to Counsel at 4.13pm on the 11th February (which was a Thursday). It was disclosed by the Defence directly to the Prosecution on Monday the 15th (i.e. approximately one working day afterwards). This stands in stark contrast to the Prosecution’s conduct regarding P-214.

- c. The assertion that “Bemba’s [by which it is assumed that the Prosecution is referring to the Defence for Mr. Bemba] English translations of his two letters were incorrect;⁷
- d. The assertions concerning the timing of the meeting between the Prosecution and D20-0002,⁸ and the complete irrelevance of any temporal inaccuracies in the Request, as concerns the question as to whether the Prosecution had an effective opportunity to examine D20-0002.

3. The above issues are directly relevant to the Prosecution’s avowal that the “accuracy, reliability, and relevance of [Redacted]’s evidence are also material in dispute and require examination”.⁹

4. Put simply, the Prosecution has attempted to engineer a dispute on the basis of irrelevant or non-existent issues. There is therefore good cause for such issues to be addressed or clarified *via* the Defence reply.

⁷ As reflected in both the chain of custody metadata for the translations, and a chain of custody email which was disclosed to the Prosecution on 9 February 2016 (CAR-D20-0006-1349 – and re-disclosed on 12 February in order to correct technical metadata), the letters were translated by the Registry (STIC). If the Prosecution assert that STIC incorrectly translated aspects of these letters, the Defence has no objection to STIC being requested to revise its translation a further time.

⁸ The Defence filed the very same email relied upon by the Prosecution as Annex C, as Annex B to the Defence Request: ICC-01/05-01/13-1721-Conf-AnxB.

⁹ Response, para. 6.

Relief sought

5. For the reasons set out above, the Defence for Mr. Bemba respectfully requests the Trial Chamber to grant the Defence leave to file a reply.



Melinda Taylor
Counsel of Mr. Jean-Pierre Bemba

Dated this 23rd day of March 2016

The Hague, The Netherlands