

**Cour
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**International
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Court**

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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 Document
with
Confidential Annex A**

**Prosecution's Response to "Registry's Report on Mr Jean-Pierre Bemba Gombo's
Solvency and Conduct while in Detention", (ICC-01/05-01/08-3375-Conf)**

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 Registry's report on Mr Bemba's conduct in detention omits crucial information about his misuse of telecommunications in breach of the regulations that are applicable to the Court's Detention Centre ("DC").¹ The Registry is cognisant of the allegations that Mr Bemba used the telecommunications system at the DC, in particular by abusing his right to a privileged telephone line, to commit offences against the administration of justice in contravention of article 70(1)(c) of the Rome Statute ("Statute"). In addition, Mr Bemba appears to have knowingly circumvented the DC's telecommunications system to speak to unauthorised persons without prior authorisation from the Registrar. Such information is noteworthy and germane for the purposes of sentencing. The absence of this pertinent information from the Registry's report hinders the Chamber's ability to fairly assess the totality of Mr Bemba's conduct in detention.

2. The Office of the Prosecutor ("Prosecution") files the present response pursuant to regulation 24(1) of the Regulations of the Court ("Regulations").

II. Request for Confidentiality

3. Pursuant to regulation 23(2) *bis* of the Regulations, the Prosecution requests that this document and Annex A be received by the Chamber as "Confidential" as they relate to the Registry's Report, which bears the same classification.

¹ ICC-01/05-01/08-3375-Conf-AnxIII, Registry's Report on Mr Jean-Pierre Bemba Gombo's Solvency and Conduct while in Detention, 22 April 2016.

III. Submissions

4. In accordance with the Chamber's order,² the Registry submitted two reports on Mr Bemba's: (i) Solvency; and (ii) Conduct while in detention ("Registry's Report").³ The Prosecution's observations relate only to the latter issue and address Mr Bemba's use of telecommunications at the DC.⁴

5. The telecommunications system at the DC is designed to ensure that a complete and accurate record is maintained of all telephone calls between an individual detainee and other persons.⁵ Regulation 173(4) of the Regulations of the Registry requires the Registrar's prior authorisation for all telecommunications, based on the available information as provided by the detained person in a duly completed form. It expressly includes information concerning the telephone contact,⁶ which necessarily implies identification of all persons that a detained person intends to communicate with to enable the Registrar to provide prior authorisation. If a detained person were to be authorised to provide only the details of the initial contact person, then such a system of prior authorisation and particularised record-keeping would be rendered meaningless.

6. The Registry's Report states that, in relation to telephone calls, there is "[n]othing of note to add" with regard to Mr Bemba's conduct at the DC.⁷ Yet, the Pre-Trial Chamber II ("PTC II") found "abundant evidence" to demonstrate that there were substantial grounds to believe that Mr Bemba's role in the witness

² Email sent by Trial Chamber III on 07 April 2016 at 13:45.

³ ICC-01/05-01/08-3375-Conf-Anxs II and III respectively, Registry's Report on Mr Jean-Pierre Bemba Gombo's Solvency and Conduct while in Detention, 22 April 2016.

⁴ ICC-01/05-01/08-3375-Conf-Anxs II and III, Registry's Report on Mr Jean-Pierre Bemba Gombo's Solvency and Conduct while in Detention, 22 April 2016.

⁵ See, regulation 173(1) of the Regulations of the Registry.

⁶ See, for example, regulation 173(4) of the Regulations of the Registry: "All telephone calls by a detained person shall require the prior authorisation of the Registrar, who shall have regard to information available and the information concerning the telephone contact provided by the detained person in a duly complete form."

⁷ ICC-01/05-01/08-3375-Conf-AnxIII, page 3.

interference scheme in this case, while in detention, “is one of overall planning and coordination of Witnesses and their ensuing false testimonies.”⁸ In particular, the PTC II found that “in three instances, Mr Bemba, through Mr Kilolo, *used the privileged line set up at the Court’s detention centre to communicate with three of the Witnesses (D-55, D-51 and D-19).*”⁹

7. Mr Bemba’s access to a privileged telephone line at the DC is limited to specified persons, such as his counsel on record.¹⁰ By using his communication with counsel to speak to other unauthorised persons, Mr Bemba clearly abused his access to privileged communications. This is supported by the evidence of call logs from Mr Bemba’s telephone extension at the DC.¹¹ The Registry is aware of this noteworthy information, which is directly relevant to the assessment of Mr Bemba’s use of telephone calls at the DC. It is sufficiently significant to warrant mention in the Registry’s Report.

8. Furthermore, the Registry is also aware of at least one other incident in which Mr Bemba appears to have circumvented the regulations that are applicable to the telecommunications system at the DC. On 11 February 2013, the Prosecution provided the Registry with information demonstrating that Mr Bemba had used the telephone at the DC to speak to a number of seemingly unauthorised persons – namely the *Mouvement de Libération du Congo* representatives who were at a meeting in Brussels.¹² In the relevant video recording,¹³ a man can be heard speaking to a group of persons including Mrs Liliane Bemba:

⁸ ICC-01/05-01/13-749, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute, 11 November 2014, paras. 97, 102 and 106.

⁹ ICC-01/05-01/13-749, para. 98. [Emphasis added]

¹⁰ See, for example, rule 73(3) of the Rules of Procedure and Evidence.

¹¹ ICC-01/05-01/13-749, paras. 99-101.

¹² Annex A contains the email exchange between the Prosecution and Registry on this issue.

¹³ CAR-OTP-0070-0096. This video and its corresponding transcript and translation were disclosed to the Defence as rule 77 materials on 8 March 2013 in Batch 69.

“... It’s true that we are very happy today, because the president telephoned us here. He talked to all the representatives of our party who were present; he gave us messages. However, not everyone had the opportunity to talk to him; those who had to talk to him did so. In any case, it’s a good thing for us. Then, 2013 will be for us a year of victory ...”¹⁴

9. This information demonstrates that, in spite of the applicable regulations and record-keeping of telecommunications at the DC,¹⁵ Mr Bemba could effectively misuse his telephone access to communicate with other unauthorised persons. Following its notification to the Registry, the Prosecution is not privy to further investigations by the Registry (if any) that could suggest that the aforesaid communication was indeed proper and authorised. In the absence of such a finding, the Prosecution is of the view that this information too is noteworthy and ought to have been brought to the attention of the Chamber.

10. The above information regarding allegations that Mr Bemba abused or circumvented the DC telecommunications system in breach of the applicable regulations is directly relevant to his conduct in detention and thus to the issue of sentencing. The absence of such noteworthy information prevents the Chamber from properly assessing the totality of Mr Bemba’s conduct in detention.

¹⁴ CAR-OTP-0071-0003 at 0006 (English transcript); and CAR-OTP-0071-0007 at 0010 (French transcript).

¹⁵ See, for example, regulation 173(1) of the Regulations of the Registry: “The Chief Custody Officer shall maintain a log of all telephone calls. The log shall clearly show the name and telephone number of the caller, the time, date and duration of the call.” See also regulation 173(4) of the Regulations of the Registry: “All telephone calls by a detained person shall require the prior authorisation of the Registrar, who shall have regard to information available and the information concerning the telephone contact provided by the detained person in a duly completed form.”

IV. Relief Sought

11. The Prosecution respectfully requests the Chamber to consider the above information in its assessment of Mr Bemba's conduct in detention.



Fatou Bensouda, Prosecutor

Dated this 4th Day of May 2016
At The Hague, The Netherlands