

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 06/05/2016

TRIAL CHAMBER III

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
THE PROSECUTOR
v. Jean-Pierre Bemba Gombo**

Confidential

**Defence Request to Dismiss *in limine* the “Prosecution's Response to "Registry's
Report on Mr Jean-Pierre Bemba Gombo's Solvency and Conduct while in
Detention”**

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

Fatou Bensouda

Jean-Jacques Badibanga

Counsel for the Defence

Peter Haynes QC

Kate Gibson

Melinda Taylor

Legal Representatives of the Victims

Marie-Edith Douzima Lawson

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

Applicants

(Participation/Reparation)

The Office of Public Counsel for the Victims

Paolina Massidda

The Office of Public Counsel for the Defence

Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations Other
Section**

I. SUBMISSIONS

1. The “Prosecution's Response to ‘Registry's Report on Mr Jean-Pierre Bemba Gombo's Solvency and Conduct while in Detention’” (“Response”)¹ should be struck out *in limine* for the following reasons:

- i. The Response does not respond to the Registrar's report;
- ii. The contents of the Response have no evidential effect;
- iii. The so-called “information” in the Response emanates from Prosecuting counsel in part, rather than a legitimate evidential source;
- iv. The averments in the Response are false and misleading;
- v. The contents of the Response breach the Trial Chamber's injunction on the introduction of evidence in this case from the Article 70 case; and
- vi. The Response breaches the Chamber's order to the parties to submit timely requests for the admission of further evidence on sentencing and to file written submissions on the issue within certain time limits.

2. The Prosecution's “Response” does not, in fact, respond to the contents of the Registrar's report. Rather, it is being used as a vehicle to raise issues which are wholly extraneous to the report's content. The Prosecution moreover, relies on material not in evidence in the case, in a deliberate attempt to circumvent the Trial Chamber's injunction concerning material arising from the Article 70 proceedings.² The Response has no evidential effect, and no procedural validity, and should accordingly be struck out.

¹ ICC-01/05-01/08-3383-Conf.

² ICC-01/05-01/08-3029.

3. Further, since 26 May 2014, the Prosecution has been aware of the Trial Chamber's order requiring them to file "any requests to submit further evidence or call witnesses" following the issuance of the judgment in this case.³ Had the Prosecution wished to elicit evidence concerning Mr. Bemba's conduct in detention, it could have sought to introduce the material as part of its "Application to Submit Additional Evidence" of 11 April 2016, and in compliance with the Trial Chamber's order.⁴ Certainly, by the time of its Application the Prosecution was on notice that the Registry would file a report on Mr. Bemba's "conduct while in detention".⁵ The Trial Chamber has now rendered a reasoned decision on the parties' requests to present additional evidence.⁶ The Response is nothing more than an attempt to introduce evidence into the sentencing process in a manner outside of the regime created by the Trial Chamber's order.

4. The Prosecution was granted 30 pages (increased to 40)⁷ to make submissions on all matters relevant to the sentence to be imposed. Conduct of an accused in detention is a factor considered by Trial Chambers as a matter of course during the sentencing phase. The Prosecution chose not to include these arguments in its 40 pages of submissions,⁸ and as such is undermining the Trial Chamber's order on consecutive briefing⁹ by adducing additional sentencing submissions after the filing of the Defence brief.

5. More alarmingly, the Prosecution's submissions are based on unproven allegations, and are wholly disingenuous. As an impartial minister of justice, the Prosecution should not present the Trial Chamber with information that is wilfully misleading. The Prosecution's own expert witness in the Article 70 Case testified

³ ICC-01/05-01/08-3071, para. 18(vii); ICC-01/05-01/08-3344, para. 11.

⁴ ICC-01/05-01/08-3362.

⁵ Email sent by Trial Chamber III on 7 April 2016 at 13:45.

⁶ ICC-01/05-01/08-3384.

⁷ ICC-01/05-01/08-3357.

⁸ ICC-01/05-01/08-3363-Conf.

⁹ ICC-01/05-01/08-3344.

that the call logs in question do not prove the existence of multiparty calls, and do not prove the existence of any violations of Mr. Bemba's privileged line.¹⁰ Given the scheduled sentencing hearing on 16 to 18 May 2016, were the Trial Chamber to consider the Response on its merits, given the prejudicial nature of the allegations, the Defence should have a right not only to respond, but to adduce further evidence to counter the allegations which would undoubtedly further delay the proceedings.

6. Moreover, the further assertions in the Response about the contents of an alleged video clip on YouTube depend entirely on the "evidence" of Mr. Jean-Jacques Badibanga as to the contents of same in emails to Mr. Marc Dubuisson. This likewise is of no evidential effect, and should accordingly, form no part of the record of the case. Significantly, having been appraised of the video clip and its alleged significance, Mr. Dubuisson apparently took no further action and filed his report on behalf of the Registrar in the terms that he did.

IV. RELIEF REQUESTED

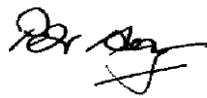
7. For all of the above reasons, the Defence requests that the Trial Chamber:

DISMISS *IN LIMINE* the "Prosecution's Response to 'Registry's Report on Mr Jean-Pierre Bemba Gombo's Solvency and Conduct while in Detention'";
or, in the alternative

ORDER that the Defence be permitted to file an additional request to submit further evidence and supplementary submissions to address the allegations contained therein.

The whole respectfully submitted.

¹⁰ See, for example, ICC-01/05-01/13-T-17-Red2, p. 24, lines 6-9; ICC-01/05-01/13-T-17-Red2, p. 24, line 15 – p. 25, line 8; ICC-01/05-01/13-T-17-Red2, p. 42, line 17 – p. 43, line 4.



Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands

6 May 2016