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

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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

**Defence Response to the Prosecution 'Request to Obtain Financial Information
from the Registry'**

Source: Defence 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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Victims Participation and Reparations Section Other

INTRODUCTION

1. The Prosecution has requested the Court to order the Registry to disclose:¹

information as relates to: (1) the costs associated with the trial of the Main Case generally; and (2) those costs specifically incurred by the Court in relation to the Main Case Defence witnesses who are the subject of the charged offences in this case (“Requested Information”).

2. The Defence for Mr. Jean-Pierre Bemba Gombo supports the Request, subject to the following caveats:

- i. The Defence requests the Trial Chamber to defer ruling on issues, which touch on the specific legal regime which applies to sentencing;
- ii. The Defence disputes the arguments adduced by the Prosecution in relation to the relevance of the Requested Information to sentencing; and
- iii. The Defence submits that the Requested Information is relevant to all parties, and should therefore be transmitted to all parties.

SUBMISSIONS

3. The Prosecution has averred that the Requested Information is relevant to the determination of sentence, and in so doing, has cited Article 78(1) of the Statute, and the criteria delineated under Rule 145 of the Rules of Procedure and Evidence.

¹ ‘Request to Obtain Financial Information from the Registry’ (the Request), ICC-01/05-01/13-1966, para. 1.

4. The Defence notes that the specific sentencing regime, which applies to Article 70 offences, has yet to be determined by the Trial Chamber.
5. There are, however, indicia in the Statute and Rules, which suggest that it would be inappropriate to import the procedures and criteria, which apply to Article 5 crimes, without consideration of the specific nature of Article 70 offences.
6. As an example, Rule 166 refers to 'sanctions' rather than 'penalties', and further specifies that the rule will govern such sanctions. The Appeals Chamber has also emphasised that,²

offences under article 70 of the Statute, while certainly serious in nature, are by no means considered to be as grave as the core crimes under article 5 of the Statute, being genocide, crimes against humanity, war crimes, and the crime of aggression, which are described in that provision to be "the most serious crimes of concern to the international community as a whole".

7. Given the confined objective of the Request, the Defence respectfully submits that it is unnecessary to issue a ruling as to the potential applicability of Article 78(1) and Rule 145. In order to preserve the ability of affected parties to adduce full submissions concerning the precise scope and content of the regime for Article 70 sentencing and penalties, during the sentencing phase, the Defence respectfully requests the Trial Chamber to defer its ruling concerning the potential applicability of the articles and rules, relied upon by the Prosecution.

² ICC-01/05-01/13-558, para. 64.

8. Otherwise, in terms of the merits of the Request, the Defence concurs that the costs incurred by the Court in connection with the testimony of the 14 witnesses might be relevant to future proceedings in this case.

9. As underlined by the Prosecution:³

The Bemba Defence's demurral to rely on these 14 Defence witnesses in its Closing Submissions starkly illustrates the wastage of valuable Court resources and time attendant to their appearance and testimony.

10. The Defence agrees with the assumption underpinning this assertion: that had this issue been addressed in a timely manner (i.e. before the witnesses testified, as opposed to when the Defence ultimately renounced its reliance on them), the overall damage and waste of resources would have been mitigated.

11. The issue as to whether any members of the Defence were aware that these witnesses would testify falsely, and if so, which members were aware of this possibility, is currently pending before the Trial Chamber. The Defence nonetheless strongly contests the assumption that the delay in taking steps to preserve the integrity (and related costs stemming from such delay) is attributable to the Defence itself, or any members of the Defence.

12. Rather, by acknowledging the "Bemba Defence's demurral to rely on these 14 Defence witnesses", the Prosecution has itself conceded that with the benefit of information concerning the 14 witnesses, the Defence made an informed decision to renounce its reliance on them.

³ ICC-01/05-01/13-1966, para. 6.

13. If – after having received disclosure regarding the 14 witnesses in 2014, the Defence and Mr. Bemba made an informed decision not to rely on them – then there is no reason to believe that they would not have made the same decision if they had been apprised of all relevant matters concerning these witnesses, at an earliest stage of the proceedings.

14. Thus, had the Prosecution timeously disclosed all information in its possession concerning the credibility of the 14 witnesses - as required by Rule 77 – the integrity of the proceedings could have been addressed, and protected back in 2012, and “Court resources and time” would not have been expended on these witnesses, unnecessarily.

15. Folded within these wasted “Court resources and time” were of course the limited and over-stretched resources and time of the Defence team as a whole. The “Bemba Defence’s demurral to rely on these 14 Defence witnesses” not only illustrates the overarching cost of their testimony to the Court, but the specific damage suffered by the Defence as a result of the fact that they were not informed timeously of the fact that they had been misled by certain witnesses and third parties. The sum disbursed in relation to these witnesses is also reflective of lost opportunities insofar as – if there had been timely Rule 77 disclosure - the same amount of time and resources could have been expended on identifying, interviewing, and calling witnesses, who had not been subjected to improper influences by third persons.

16. The Requested Information is therefore reflective of harm suffered by the Defence, which is likely to be of relevance to future proceedings.

Relief sought

17. For the reasons set out above, the Defence for Mr. Bemba respectfully requests the Trial Chamber to order the Registry to disclose the Requested Information to all of the parties in this case.

1.



Melinda Taylor
Counsel of Mr. Jean-Pierre Bemba

Dated this 17^h day of August 2016

The Hague, The Netherlands