



Original: English

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

Date: 02/12/2016

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

**Response to the 'Prosecution Motion pursuant to Regulation 35 to Add one
Document to the "Additional Evidence" Submitted regarding the Sentencing
Proceedings'**

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

James Stewart

Kweku Vanderpuye

Counsel for the Defence of Mr Jean-Pierre Bemba Gombo

Melinda Taylor

Counsel for the Defence of Mr Aimé Kilolo Musamba

Paul Djunga Mudimbi

Steve Powles

Counsel for the Defence of Jean-Jacques Mangenda Kabongo

Christopher Gosnell

Counsel for the Defence of Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Roland Azama Shalie Rodoma

Counsel for the Defence of Mr Narcisse Arido

Charles Achaleke Taku

Beth Lyons

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section Other

Introduction

1. The Prosecution's request to include an un-authored, unreferenced, undated Open Society "Briefing Paper" should be rejected due to:
 - a. The absence of a cogent explanation for their omission to include the report on their list of evidence;
 - b. The absence of probative value of the "Briefing Paper";
 - c. The prejudice to the Defence of including a Paper, for the purpose of advancing conclusions that fall within the judicial remit of the Chamber.

Submissions

Failure to demonstrate exceptional circumstances for the omission to include the Paper on the Prosecution list of evidence

2. The Briefing Paper appears to have been prepared for the purposes of an intervention at the Assembly of State Parties on 23 November 2016, which was attended by both members of Open Society and the Chief of Prosecutions of the ICC (*inter alia*).¹
3. It is therefore difficult to understand how the Prosecution only became aware of a Paper (which it acknowledges was prepared for the purpose of an event that the Prosecution participated in), five days later.
4. The Paper itself was "tweeted" several times, including on 16 and 18 November 2016, as part of the advance publicity for the meeting.² These

¹ <https://twitter.com/ijmonitor/status/801396605534486528>

² <https://twitter.com/ijmonitor/status/798936904674721792>
<https://twitter.com/DanyaChaikel/status/799732817487953920>

tweets link to the OSF website, thus confirming that the Paper was available on the website from at least 16th November 2016 onwards.

5. Given that the Prosecution participated in this event, it is hard to understand why there was such a lengthy delay in the submission of their request.
6. The request was thus fails to meet the requisite standard of diligence.

The Report has insufficient probative value to be admitted

7. The report, as disclosed by the Prosecution, does not list its authors or their qualifications.
8. The “research” appears to have been conducted by reading public ICC filings (which are not identified, either by category or legal effects i.e. submission versus preliminary decision versus final decision, or separate opinion *versus* majority opinion). None of these filings are cited or referenced.
9. The Paper also notes that its research encompasses “all such types of accusations” (thus, accusations that might not be established by credible evidence).

The admission of Paper would be unduly prejudicial to the Defence, and the fairness and impartiality of the proceedings

10. The Paper specifically refers to the Bemba Article 70 case (which is before this Chamber), and provides an *opinion* as concerns the impact of conduct on the administration of justice. This is not an expert opinion, and it is not founded on empirical research of anything beyond the authors own views, which in turn, were formulated on the basis of undisclosed filings.

11. Finally, both the ASP event (in which the Prosecution participated) and the Paper itself appear to be geared towards advocacy; to convince States to cooperate in relation to the areas delineated at the bottom of the report. As a result, it would appear to have been drafted in a more sensationalised manner, at the cost of objective, and impartial analysis. Whereas such as Paper obviously plays a valuable role during discussions at the ASP, it is clearly inappropriate to import such lobbying into the courtroom via the admission of this Paper.

Relief Sought

12. For the reasons set out above, the Defence for Mr. Bemba requests the Honourable Trial Chamber to reject the Prosecution request.



Melinda Taylor
Counsel for Mr. Jean-Pierre Bemba

Dated this 2nd day of December 2016

The Hague, The Netherlands