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

Date: 11/05/2017

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**

Public

**Public Redacted Version of Urgent Defence Request for Authorisation to Contact
P-15**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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A. INTRODUCTION

1. The Defence seeks the authorisation of Trial Chamber III ('the Chamber') to contact and interview P-15 for the purpose of bringing additional evidence during the sentencing hearing.

2. In its "Decision on Defence Motion on Prosecution contact with its witnesses", the Chamber held that "[...] although not regulated in the Protocol or in the Chamber's Decisions 813 and 2293, for a party or participant in the Bemba case to be allowed to contact the witnesses called by the other party or participant after the conclusion of their testimony, they should obtain authorisation by the competent judicial authority and act in coordination with the VWU".¹

3. The proceedings have now entered the sentencing phase, during which the Trial Chamber has anticipated the calling of additional evidence.² Over the past months, [REDACTED]. [REDACTED], the Defence requests an opportunity to speak to the witness on behalf of Mr. Bemba to explore whether he would be in a position to assist the Trial Chamber in its deliberations in this next phase of the case.

B. LEVEL OF CONFIDENTIALITY

4. Pursuant to Rule 23*bis* (2) of the Rules of Procedure and Evidence, the Defence files this request confidentially as it contains information that would reveal the identity of a protected witness.³

C. PROCEDURAL BACKGROUND

¹ ICC-01/05-01/08-3070, para. 16.

² ICC-01/05-01/08-3071.

³ P-15, T-207-CONF-ENG CT, p.5, line 16 – p.6, line 6.

5. On 26 May 2014, the Chamber rendered its Decision on the sentencing procedure for the present proceedings, in which it held:⁴

In the event of a conviction, the parties and participants are thus to file any requests to submit further evidence or to call witnesses, including any requests for protective measures, within two weeks of the issuance of the judgment on the merits. A decision on any evidentiary or procedural matters, including a hearing, will be taken thereafter as required, in accordance with Rule 143 of the Rules and the precedents of the Court.

6. On 2 February 2016, the Chamber delivered its order scheduling the delivery of the Judgment pursuant to Article 74 of the Rome Statute for the 21st of March 2016.⁵

7. On 21 March 2016, the Chamber rendered its judgement finding Mr. Bemba guilty of all charges.⁶

D. APPLICABLE LAW

8. Rule 145 of the Rules of Procedure and Evidence provides that in determining a sentence, the Chamber may give weight to mitigating circumstances.

9. The *ad hoc* tribunals found that mitigating factors need not necessarily be related to the offence⁷ and that additional evidence may be heard at the sentencing hearing which deals with the character of the convicted person.⁸

10. In both the *Lubanga* and *Katanga* cases, the Trial Chambers held that an accused's contribution to establishing peace and stability should be taken into

⁴ ICC-01/05-01/08-3071, para. 17.

⁵ ICC-01/05-01/08-3329.

⁶ ICC-01/05-01/08-3343.

⁷ *Prosecutor v Bisengimana*, ICTR-00-60-T, Judgement and Sentence, 13 April 2006, para. 125.

⁸ *Prosecutor v Dražen Erdemović*, IT-96-22-T, Order for protective measures for witness X, 18 October 1996.

account as a mitigating factor.⁹ This reflects the practice of the *ad hoc* tribunals, where sentences of convicted persons were reduced on the basis of activities which contributed to the peace and stability in the relevant region, such as “work in de-mining activities”¹⁰ or “negotiation and signing of anti-sniping agreement”,¹¹ or removing obstructive officials in order to promote peace.¹²

E. SUBMISSIONS

11. This is not the first time that a party has been authorised to contact another party’s witness following the completion of their testimony. Indeed, the Chamber has previously noted that “the Single Judge of Pre-Trial Chamber II, specifically authorised the prosecution to contact witnesses called by the defence in the Bemba case, after ‘having found good reasons supporting the Prosecutor’s requests’, and instructing the VWU to provide the prosecution with the contact details of the witnesses and with the necessary and appropriate assistance to facilitate such contact”.¹³

a. Relevance of P-15’s evidence to the sentencing phase

12. P-15’s testimony in February 2012 demonstrates his relevance to the Trial Chamber’s deliberations on sentence. As [REDACTED],¹⁴ he was presented by the Prosecution as [REDACTED] witness [REDACTED] to give the Trial Chamber insight as to the operation, functioning, culture and practices of the MLC. For the Prosecution, he was a “key witness” [REDACTED].¹⁵

⁹ ICC-01/04-01/06-2901, para.15, citing SCSL, *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A, Trial Chamber, Sentencing Judgment, 9 October 2007, para. 94; ICC-01/04-01/07-3484, para. 91.

¹⁰ *Prosecutor v. Jokić*, IT-01-42/1-S, Sentencing Judgment, 18 March 2004, para. 858.

¹¹ *Prosecutor v. Dragomir Milošević*, IT-98-29/1-T, Judgment, 12 December 2007, para. 1003. See also *Prosecutor v. Biljana Plavšić*, IT-00-39&40/1-S, Sentencing Judgment, 27 February 2003, para. 85.

¹² *Prosecutor v. Biljana Plavšić*, IT-00-39&40/1-S, Sentencing Judgment, 27 February 2003, para. 85.

¹³ ICC-01/05-01/08-3070, para. 17.

¹⁴ P-15, T-207-CONF-ENG CT, p.10, lines 15-16.

¹⁵ ICC-01/05-01/08-2106-Conf, para. 6: The Prosecution initially estimated that P-15 would give seven hours of testimony in chief. The Prosecution then applied for six additional hours on the basis of the witness’ importance to the case.

13. [REDACTED].¹⁶ [REDACTED].¹⁷ [REDACTED]¹⁸ [REDACTED],¹⁹
[REDACTED] Mr. Bemba's efforts and the means he put in place toward improving the life of DRC citizens, and the assistance Mr. Bemba gave to the population, not only in the territory controlled by the MLC, but also in other provinces, and to individuals from all ethnic groups.

14. As such, P-15 [REDACTED] relevant to the Trial Chamber's deliberations on sentence, and is uniquely placed to give evidence in this regard.

b. Willingness of P-15 to speak with the Defence

15. [REDACTED].

16. The Trial Chamber will be aware that [REDACTED].²⁰ [REDACTED].²¹

17. It appears from [REDACTED].²²

18. Since his dismissal, P-15 has [REDACTED].²³

c. Timely seizure of the Trial Chamber

19. [REDACTED],²⁴ [REDACTED].

¹⁶ P-15, T-207-CONF-ENG CT, p.17, lines 13-20, p.20, lines 6-10, p.20, line 22 – p.21, line 22.

¹⁷ P-15, T-207-CONF-ENG CT, p.10, lines 10-17, p.19, line 25 – p.20, line 10.

¹⁸ P-15, T-208-CONF-ENG CT, p.42, line 14 – p.43, line 4, p.44, lines 4-6.

¹⁹ P-15, T-207-CONF-ENG CT, p.10, lines 14-19.

²⁰ P-15, T-207-CONF-ENG CT, p.10, lines 18-23.

²¹ P-15, T-210-CONF-ENG CT, p.5, lines 6-20.

²² [REDACTED]; [REDACTED]; [REDACTED].

²³ See, for example, [REDACTED]; [REDACTED]; [REDACTED].

²⁴ See RFAs CAR-OTP-0090-1922, CAR-OTP-0090-1928, CAR-OTP-0090-1930, CAR-OTP-0090-1935, CAR-OTP-0090-1937, CAR-OTP-0091-0481-R01. See also ICC-01/05-01/08-3101, paras. 25-27, 32, 41-42.

20. However, the Chamber has now delivered its judgement.²⁵ The case is now entering its sentencing phase for which the parties and participants have been authorised to request to submit further evidence or to call additional witnesses in order to assist the Trial Chamber during its sentencing deliberations.²⁶

21. As such, the Defence now urgently seizes the Trial Chamber, to request that it be authorised to contact and interview P-15 in order to present evidence which is directly relevant to matters previously held to be appropriate considerations in sentencing a convicted person before the ICC.

d. An abridgement of time to file a response

22. Considering the two week timeframe given by the Trial Chamber for the parties and participants to file any request to submit further evidence or call witnesses,²⁷ and the time needed by the Defence to contact the witness and arrange an interview, the Defence respectfully requests that the Chamber abridge the response deadline for this application.

F. RELIEF REQUESTED

23. In light of the above, the Defence respectfully requests that the Chamber:

ORDER the Prosecution to disclose Witness P-15's contact details to the Defence;

ORDER the VWU to facilitate the contact between the Defence and Witness P-15; and

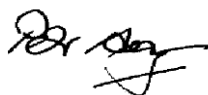
²⁵ ICC-01/05-01/08-3343.

²⁶ ICC-01/05-01/08-3071, para. 17.

²⁷ ICC-01/05-01/08-3071, para. 17.

ORDER an abridgment of time for the filing of any response to the Defence Request.

The whole respectfully submitted.

A handwritten signature in black ink, appearing to read 'Peter Haynes', with a stylized flourish at the end.

Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

Done at The Hague, the Netherlands, 11 May 2017