



Original: English

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 with Confidential Ex-parte (Defence only) Annexes A and B

Public Redacted Version of Defence 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: 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

(Participation/Reparation)

Applicants

The Office of Public Counsel for the Victims

Paolina Massidda

The Office of Public Counsel for the Defence

Xavier-Jean Keita

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 Section Other

A. INTRODUCTION

1. On 22 April 2016, the Registry filed its report on the solvency and conduct of Mr. Bemba (“the Report”).¹

2. For the most part, the Report provides a reasonable and accurate assessment of Mr. Bemba’s financial situation.

3. There are, however, discrete errors concerning the attribution of certain [REDACTED], the calculation of [REDACTED], and the calculation of his debt to the ICC for Defence costs.

4. The Report does not refer to Mr. Bemba’s financial obligations towards his dependents, and also suggests, incorrectly, that the current Defence for Mr. Bemba failed to provide the Registry with relevant documentation, when requested to do so.

5. In line with Regulation 24(1) of the Regulations of the Court, the Defence for Mr. Bemba has a right to be heard in relation to issues arising from the Report, which impact on his rights.²

6. The Defence therefore files the following response, although it would, at the same time, like to underscore its appreciation for the assistance and cooperation provided by the Registry to the Defence.

7. This response has been filed on a confidential basis due to the fact that it concerns confidential issues regarding Mr. Bemba’s assets and financial affairs. Annex A has been filed confidential *ex-parte* (Defence only) due to the fact that the documents in question concern third parties, who have a right to privacy. Annex B

¹ ICC-01/05-01/08-3375-Conf.

² ICC-01/05-01/08-321, paras. 27-28.

has also been filed confidential ex parte (Defence only) because it concerns [REDACTED] and an ex parte classification is consistent with under seal nature of the related documents

B. SUBMISSIONS

The attribution of incorrect properties to Mr. Bemba

8. The Registry has asserted that Mr. Bemba has an interest in [REDACTED].³

9. Although the Registry has acknowledged that the [REDACTED],⁴ the Registry has never adduced any evidence which would establish that Mr. Bemba has a controlling or a propriety interest in this company.

10. Rather, the Registry has relied on the fact that the property was included in a seizing order, in order to attribute it to Mr. Bemba.⁵ The seizing order in question was filed *ex parte*,⁶ and as such, the Defence does not have access to it.⁷

11. The Defence is not in a position to explain why the seizing order was not challenged, other than to note the possibility that this did not occur because the company had no immediate intention to make use of, or dispose of the property.

12. The Defence also attaches several documents concerning the ownership and interests [REDACTED].⁸

³ ICC-01/05-01/08-3375-Conf-AnxII.

⁴ ICC-RoC85-01/13-15-Conf-Exp, para. 4.

⁵ ICC-RoC85-01/13-15-Conf-Exp, para. 4.

⁶ ICC-01/05-01/08-1112-US-Exp-Anx6.

⁷ The Defence also does not have access to ICC-01/05- 01/08-581-US-Exp, and its annexes, which are apparently documents received from [REDACTED].

⁸ Annex A.

Incorrect calculation of Mr. Bemba's salary

13. The Registry has listed two sources of income for Mr. Bemba: [REDACTED].

14. Although Mr. Bemba [REDACTED].

15. As concerns [REDACTED].

Incorrect calculation of Mr. Bemba's Defence debt

16. The Registry's calculation of Mr. Bemba's debt to the ICC for Defence costs appears to be based exclusively on the Main Case, whereas Mr. Bemba has a financial obligation arising from the costs of his Defence in both cases.

17. As confirmed in Registry submissions to the Presidency, the Registry has assessed Mr. Bemba's Defence debt in the Article 70 case as being comprised of [REDACTED] per month, over a period of eight years,⁹ which equates to [REDACTED] euros in total.

18. The Defence for Mr. Bemba has in fact, utilised a significant amount less than this amount on a *pro rata* basis. During the entire course of 2014, the Presidency ordered that the Article 70 Defence should be allocated an advance of three months' worth of legal fees, with the caveat that such fees could be recovered from Mr. Bemba's assets.

19. The Defence were expected to recover the remaining 9 months' worth of fees directly from any unseized assets.

⁹ ICC-RoC85-01/13-21-Conf-Exp-Corr, para. 23.

20. Similarly, in 2015, the Registry assessed Mr. Bemba to be partially indigent. The Court provides the Defence with [REDACTED] a month as legal aid, with the expectation that the Defence should recover any remaining costs (up to the [REDACTED] a month, which is allocated to Article 70 teams) from the assets of Mr. Bemba.

21. These costs constitute a lien against Mr. Bemba's assets, which should be accounted for.

22. The current Defence for Mr. Bemba in the Article 70 case would be prepared to waive its right to recover past costs, if the amounts saved could be directed to reparations, and given full weight as a mitigating factor in Mr. Bemba's sentence.

23. This is consistent with the fact that it would have been entirely inappropriate for either Mr. Bemba or his Defence to pay compensation directly to victims (many of whom have given evidence) during an ongoing criminal trial. Mr. Bemba is therefore dependent on the Court to effect such compensation on his behalf.

Mr. Bemba's financial obligations towards family members/dependents

24. Although the Report lists Mr. Bemba's financial debts, it does not refer to [REDACTED].

25. In 2014, the Registry assessed these debts as [REDACTED], for the dependents [REDACTED].¹⁰

26. In light of Mr. Bemba's conviction and continued detention, he will not be in a position to earn income ([REDACTED]) for the duration of his sentence.

¹⁰ ICC-RoC85-01/13-15-Conf-Exp, para. 11.

27. Any financial calculation undertaken by the Court must therefore take into consideration the fact that Mr. Bemba will have continuing financial obligations to the dependents in his family, for the duration of any sentence imposed by the Court.

Provision of information to the Registry regarding the status of assets

28. In the Report, the Registry avers that it,

[REDACTED].¹¹

29. At the outset, it must be recognised that there have been significant disruptions as concerns the composition of the Defence for Mr. Bemba. In particular, Me. Nkwebe died in 2012, and Me. Kilolo and Mr. Mangenda were arrested at the end of 2013.

30. None of the current members of the team were part of the team prior to August 2010, which is when Ms. Gibson joined as a legal assistant. Mr. Haynes QC was then appointed as co-counsel in October 2010, and was immediately swept into the maelstrom of trial preparation.

31. Due to their late addition to the team and focus on trial preparation, Mr. Haynes QC and Ms. Gibson were not tasked with addressing financial matters with the Registry, until their position changed at the end of 2013.

32. From this point, although the Defence liaised with the Registry on several occasions throughout 2014, 2015 and 2016, the Registry did not request these details, or notify the Defence that it had failed to comply with an extant order to do so.

¹¹ ICC-01/05-01/08-3375-Conf-AnxII, p. 4.

33. Indeed, at the beginning of 2015, the Defence met with representatives of the Registry to discuss submissions which had implied that Mr. Bemba had not cooperated with the Registry concerning the release of these assets.

34. The Registry acknowledged subsequently that Mr. Bemba had in fact cooperated, and – through his Defence – facilitated the ability of the Registry to [REDACTED].¹² The issue of the location and registration of [REDACTED] was not, however, raised during these meetings.

35. Although, in 2014, the Registry wrote to Mr. Bemba within the context of the Article 70 case to remind him of his obligations as concerns the provision of certain information, these letters did not request the location or registration papers [REDACTED].¹³

36. Moreover, in June 2015, the current Defence for Mr. Bemba in the Article 70 case also supplied the Registry with photographs of [REDACTED] in question, which depict its current location.¹⁴ The Registry did not ask for further particulars within the context of that particular review process.

37. In light of the above, the Defence underscores respectfully that any omission on its part to provide this information was not intentional, and should not, in any case, operate to the detriment of the Trial Chamber's perception of Mr. Bemba.¹⁵

38. This is particularly the case as Mr. Bemba was, for the last three years, standing trial in two separate, concurrent proceedings, and cannot be expected to have turned his mind to the minutiae of orders issued in 2010.

¹² ICC-01/05-01/08-3232-Conf-Exp-Corr, para. 6

¹³ ICC-01/05-01/08-3232-Conf-Exp-AnxI, and AnxII.

¹⁴ Annex B.

¹⁵ *Prosecutor v. Taylor*, 'Decision on Defence Notice of Appeal and Submissions Regarding the Decision on Late Filing of Defence Final Trial Brief', 1 March 2011, SCSL-03-01-T-1223, paras. 58-59.

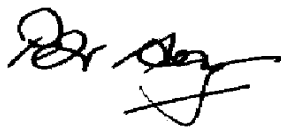
39. Mr. Bemba remains willing to cooperate with the Court fully in these matters, and to that end, specifies that the location of [REDACTED] is [REDACTED]. The photographs provided by the Defence should assist with identifying the specific location, but the Defence remains available to provide any further details, which might assist.

40. The Defence are currently in the process of attempting to locate and transmit the registration papers, although it is assumed that they are [REDACTED]. The registration papers will also no longer be valid as they have not been renewed since Mr. Bemba's arrest.

C. RELIEF SOUGHT

41. The Defence respectfully requests the Honourable Trial Chamber to take the above matters into consideration when issuing any orders concerning Mr. Bemba's financial situation.

The whole respectfully submitted.



Peter Haynes QC
Lead Counsel of Mr. Jean-Pierre Bemba

The Hague, The Netherlands

11 May 2017