

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/05-01/13**
Date: **7 September 2016**

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Single Judge

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

**Decision on Prosecution's Request to Obtain Financial Information from the
Registry**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

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Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

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Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

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The Office of Public Counsel for Victims **The Office of Public Counsel for the Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Others

Judge Bertram Schmitt, Single Judge of Trial Chamber VII ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido* ('Case'), having regard to Article 64(6)(f) of the Rome Statute ('Statute') and Regulation 24(5) of the Regulations of the Court, issues the following 'Decision on Prosecution's Request to Obtain Financial Information from the Registry'.

I. Procedural History

1. On 10 August 2016, the Office of the Prosecutor ('Prosecution') requested the Chamber to direct the Registry to provide the Prosecution with financial information ('Request') concerning the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ('Main Case').¹ The Prosecution requested: '(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 [C]ase' ('Requested Information').²
2. On 17 August 2016, the defence teams for Mr Babala, Mr Bemba and Mr Arido filed their responses to the Request ('Babala Response',³ 'Bemba Response',⁴ and 'Arido Response',⁵ respectively).
3. On 18 August 2016, the defence teams for Mr Mangenda and Mr Kilolo filed their responses ('Mangenda Response'⁶ and 'Kilolo Response',⁷ respectively).

¹ Prosecution's Request to Obtain Financial Information from the Registry, ICC-01/05-01/13-1966.

² Request, ICC-01/05-01/13-1966, para. 1.

³ Réponse de la Défense de M. Babala à la 'Prosecution's Request to Obtain Financial Information from the Registry' (ICC-01/05-01/13-1966), ICC-01/05-01/13-1969-Conf.

⁴ Defence Response to the Prosecution 'Request to Obtain Financial Information from the Registry', ICC-01/05-01/13-1970.

⁵ Narcisse Arido's Response to 'Prosecution's Request to Obtain Financial Information from the Registry' (ICC-01/05-01/13-1966), ICC-01/05-01/13-1971.

⁶ Response to Prosecution's Request to Obtain Financial Information from the Registry (ICC-01/05-01/13-1966), ICC-01/05-01/13-1972.

4. Also on 18 August 2016, the Registry filed its observations in response to the Request ('Registry's Observations').⁸
5. On 23 August 2016, the Prosecution filed a request to reply to the Registry's Observations pursuant to Regulation 24(5) of the Regulations of the Court ('Request to Reply').⁹

II. Submissions

6. The Prosecution submits that the Requested Information is relevant to any sentencing determination in the Case, pointing to Article 78(1) of the Statute (which stipulates that the Court should take into consideration the gravity of the crime when determining a sentence) and Rule 145(1)(c) of the Rules of Procedure and Evidence ('Rules') (which directs the Court to consider the 'extent of the damage caused').¹⁰ The Prosecution avers that 'the Requested Information will clearly assist the Chamber in assessing both the actual and potential pecuniary damage to the Court attributable to the Accused's criminal acts'.¹¹
7. To support its argument that the Requested Information is presumptively available, limited, and of no prejudice to the Defence, the Prosecution submits that: the Registry is responsible for collecting and preserving the Court's financial records;¹² the Request is targeted at a single case and a single issue (the cost of the Main Case);¹³ no confidentiality issues arise with respect to disclosing the Requested Information;¹⁴ and the timing of the Request is not

⁷ Réponse de la défense de monsieur Aimé Kilolo Musamba à 'Prosecution Request to Obtain Financial Information from the Registry' (ICC-01/05-01/13-1966), ICC-01/05-01/13-1974.

⁸ Registry's Observations to 'Prosecution's request to Obtain Financial Information from the Registry', ICC-01/05-01/13-1973.

⁹ Prosecution's Request to Reply to Registry's Observations to 'Prosecution's Request to Obtain Financial Information from the Registry (ICC-01/05-01/13-1973)', ICC-01/05-01/13-1976.

¹⁰ Request, ICC-01/05-01/13-1966, para. 4.

¹¹ Request, ICC-01/05-01/13-1966, para. 4.

¹² Request, ICC-01/05-01/13-1966, para. 8.

¹³ Request, ICC-01/05-01/13-1966, para. 8.

¹⁴ Request, ICC-01/05-01/13-1966, para. 9.

premature, instead ensuring that the Requested Information will be available in a timely manner for any sentencing phase.¹⁵

8. The Bemba Response, whilst arguing that any costs in the Main Case are not attributable to the Defence,¹⁶ supports the Request subject to the caveat that the Chamber defer ruling on the potential applicability of Article 78(1) of the Statute and Rule 145 of the Rules to offences under Article 70 of the Statute, in order to allow the parties to make full submissions on the scope of the regime for Article 70 penalties at any sentencing stage.¹⁷
9. The remaining Accused oppose the Request and pray that it be denied.
10. The Arido Response asserts that the timing of the Request violates the presumption of innocence as there has yet to be a judgment rendered pursuant to Article 74 of the Statute.¹⁸ It maintains that the Request encroaches upon Defence privilege and confidentiality; violates the principle of trial fairness; opens issues in the Main Case to re-litigation; and is unconvincing given that the charges in this Case do not concern the substance of the testimony of the 14 witnesses in the Main Case.¹⁹ It lastly avers that the Request should be directed to Trial Chamber III which heard the Main Case and has authority over the Requested Information.²⁰
11. The Babala Response also considers the Request to be premature, further asserting that the Request is an affront to the principles of the administration of justice as it violates the presumption of innocence and risks violating this

¹⁵ Request, ICC-01/05-01/13-1966, para. 10.

¹⁶ Bemba Response, ICC-01/05-01/13-1970, paras 2, 5-7.

¹⁷ Bemba Response, ICC-01/05-01/13-1970, para 7.

¹⁸ Arido Response, ICC-01/05-01/13-1971, paras 3-5.

¹⁹ Arido Response, ICC-01/05-01/13-1971, paras 6-10.

²⁰ Arido Response, ICC-01/05-01/13-1971, paras 11.

Chamber's independence and impartiality, as well as that of the Appeals Chamber which is seised with appeals from the Main Case.²¹

12. The Kilolo Response similarly submits that the Request is premature and violates the presumption of innocence.²² It further argues that the Request is contradictory as the Prosecution seeks the Requested Information at this juncture so as not to delay proceedings, whilst incoherently submitting that the Registry should be able to produce it within a reasonable time.
13. Lastly, the Mangenda Response maintains that the request is premature and contradictory,²³ additionally stating that the Request is unfounded as '[t]he Prosecution has not established that the 14 witnesses would not have testified but for the alleged offences',²⁴ nor has it been demonstrated that any costs in the Main Case were caused by the alleged offences.²⁵
14. The Registry responds that the staff costs in the Main Case would have been incurred irrespective of any wrongdoing on the part of the Accused,²⁶ thus an assessment of the total costs would not assist the Chamber in making a decision under Article 78 of the Statute.²⁷ The Registry maintains that three days from any such order of the Chamber, it would be in a position to provide, *inter alia*: 1) the total costs incurred in the Main Case regarding the 14 witnesses, subject to an order from Trial Chamber III (as the calculation would entail some confidential information); and 2) the total costs incurred regarding the 14 witnesses who testified in the Case.²⁸

²¹ Babala Response, ICC-01/05-01/13-1969-Conf, pages 4-12.

²² Kilolo Response, ICC-01/05-01/13-1974, paras 4 and 6.

²³ Mangenda Response, ICC-01/05-01/13-1972, para. 2.

²⁴ Mangenda Response, ICC-01/05-01/13-1972, para. 3.

²⁵ Mangenda Response, ICC-01/05-01/13-1972, para. 4.

²⁶ Registrar's Observations, ICC-01/05-01/13-1973, paras 5-6.

²⁷ Registrar's Observations, ICC-01/05-01/13-1973, paras 5.

²⁸ Registrar's Observations, ICC-01/05-01/13-1973, paras 8-10.

III. Analysis

15. As a preliminary matter, as regards the Prosecution's Request to Reply, which turns on issues of relevance of the Requested Information, the Single Judge considers that he has sufficient information before him to decide upon the Request and as such dismisses the Request to Reply.
16. Turning to the merits of the Request, Article 76(1) of the Statute reads: '[i]n the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence'. Article 76(2) of the Statute provides that the Chamber may hold a further hearing to hear any additional evidence or submissions relevant to sentencing.
17. As observed by the Accused, the Requested Information is sought by the Prosecution as a potentially aggravating factor to augment any future sentence(s). However, in the present case, the Chamber did not hear submissions on sentencing during the course of the trial hearings prior to the closing statements. Furthermore, in giving directions to the parties on the conduct of the closing proceedings, the Single Judge reiterated that the parties were not required to make submissions on sentencing in their closing statements, as, in the event of any convictions in the Case, they would thereafter be given the opportunity to raise sentencing considerations.²⁹
18. The Request is thus made at a time when the Chamber has hitherto heard no sentencing submissions, the Case is being deliberated, a judgment pursuant to Article 74 of the Statute on the guilt or innocence of the Accused has yet to be rendered and there has been no conviction against which the Request might be made. Moreover, the rationale for the timing of the Request, namely to avoid

²⁹ Decision on Prosecution Requests for Extensions Related to Closing Submissions and Closing Statements, ICC-01/05-01/13-1886, 10 May 2016, para. 1; Email from Trial Chamber VII Communications to the parties, 6 May 2016 at 17:21.

delay in any sentencing phase is rendered redundant by the Registry's Observations which confirm that, if so ordered, it could provide the information set out in paragraph 14 herein three days after any such order.³⁰ The Single Judge is confident that any broader financial information could be provided within a reasonable timeframe if so ordered.

19. The Single Judge thus concurs with the Accused that the Request is made prematurely, and will not proceed to consider its merits.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request to Reply; and

REJECTS the relief sought in the Request.

Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt, Single Judge

Dated 7 September 2016

At The Hague, The Netherlands

³⁰ Registrar's Observations, ICC-01/05-01/13-1973, para. 11.