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

Date: **17 July 2018**

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 Bemba Defence Request regarding the Employment Conditions of
Defence Staff**

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

Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Michael Karnavas

Counsel for Jean-Jacques Mangenda

Kabongo

Mr Christopher Gosnell

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber VII ('Single Judge' and 'Chamber', respectively) 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*, having regard to Articles 64(2) and 67 of the Rome Statute ('Statute') issues the following 'Decision on Bemba Defence Request regarding the Employment Conditions of Defence Staff'.

I. Procedural history

1. On 20 June 2018, the defence for Mr Bemba ('Defence') filed a request concerning the employment conditions of the support staff of the Defence ('Request').¹ Therein, the Bemba Defence raises a number of issues concerning the employment conditions of the Defence support staff and the position of the Registry towards those issues.²
2. On 29 June 2018, the Registry provided its observations ('Observations').³ It submits that the Request has no legal basis⁴ and – should it be considered as a request for review of a decision by the Registry – that it lacks merit.⁵

II. Analysis

3. The Single Judge notes that the formulation of the relief sought slightly varies throughout the Request. In paragraph 46 of the Request, the Defence requests the Chamber to issue orders concerning legal service agreements with Defence support staff ('Service Agreements'). It seeks an order for the Registry either to issue such Service Agreements or to apply the existing Legal Aid Policy ('LAP') in a manner that is consistent with the Service Agreement that is concluded between the counsel of the Bemba Defence and the Defence support staff. However, the

¹ Request to Review the Registry's Decision to Neither Apply or Comply With Legal Service Agreements with Defence Support Staff, ICC-01/05-01/13-2292 with ten annexes.

² Request, ICC-01/05-01/13-2292, paras 17-44.

³ Registry's Observations on the "Request to Review the Registry's Decision to Neither Apply or Comply With Legal Service Agreements with Defence Support Staff" (ICC-01/05-01/13-2292), ICC-01/05-01/13-2294.

⁴ Observations, ICC-01/05-01/13-2294, paras 3-10.

⁵ Observations, ICC-01/05-01/13-2294, paras 11-27.

title of the Request – ‘Request to Review the Registry’s Decision to Neither Apply or Comply With [Service Agreements]’ – is different from the relief formulated in paragraph 46. Further, in paragraph one of the Request, the Defence seeks that the Registry is ordered to apply the LAP in a manner that is consistent with the equality of arms and ‘[i]nternationally recognised human rights of support staff’.

4. Due to these slightly different formulations in the Request, the Single Judge must first identify the exact nature of the Defence’s relief sought. The Defence does not request additional funding.⁶ The Request is also, despite its title, not aimed at reviewing a specific decision by the Registry. Rather, in essence, the Defence requests that the Chamber intervenes in order to alter the employment situation of the Defence support staff, which it considers to be unfair.⁷ The Request cites alleged general shortcomings of the employment system for defence teams, such as issues of rights to annual leave, sick leave, maternity leave or protection against termination of the employment.⁸
5. The Single Judge notes that the statutory framework sets out specific situations for the review of a Registry decision by a chamber, such as Regulations 83 of the Regulations of the Court (‘Regulations’) and Regulation 135 of the Regulations of the Registry. He finds that it is not his role, or that of the Chamber, to organise the framework of the employment system for support staff of the Defence team.
6. As noted by the Defence, the Chamber has a duty to ensure the fairness of the trial. However, the jurisprudence cited by the Defence in support of an intervention by the Chamber⁹ is different from this Request as those cases concerned concrete issues of either the staffing of defence teams or the financial

⁶ Request, ICC-01/05-01/13-2292, para. 2.

⁷ *See for instance*, Request, ICC-01/05-01/13-2292, para. 4., listing the absence of certain rights and protections as ‘unfair and unjust’.

⁸ Request, ICC-01/05-01/13-2292, para. 3.

⁹ Request, ICC-01/05-01/13-2292, paras 8 and 9; footnotes 3 and 4. Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision reviewing the Registry’s decision on legal assistance for Mr Thomas Lubanga Dyilo pursuant to Regulation 135 of the Regulations of the Registry, 31 August 2011, ICC-01/04-01/06-2800; Decision on Bemba Defence Request for Provisional Legal Assistance, 30 August 2016, ICC-01/05-01/13-1977.

assistance they received. In both cases, the chamber reviewed a specific decision by the Registrar pursuant to Regulation 83(4) of the Regulations.

7. As far as the rights of the accused are invoked,¹⁰ the Single Judge notes that the Request argues for the rights of legal support staff and fails to show how the alleged shortcomings to protect those rights affect Mr Bemba's specific Article 67 rights in this case. General references to the 'adequate time and facilities' of the Defence,¹¹ 'equality of arms'¹² and 'right to an effective defence'¹³ are not sufficient.
8. Rather than showing how Mr Bemba's rights have been affected, the Request seems to aim to make a broader statement about the employment system and advocate for a policy change in general.¹⁴ Short of admitting this, the Defence states that the motivation for the Request is a perceived failure '...to administer the legal aid system in a manner that respects the Court's commitment to providing a healthy, non-discriminatory, and fair work environment.'¹⁵ The Single Judge underlines that a request for an order by this Chamber is not the appropriate vehicle to further these objectives. Equally, this ruling is not a judgment on the pertinence of certain shortcomings cited by the Defence or whether an improvement of the current system would be proper.
9. Accordingly, and for the reasons above, the Single Judge rejects the Request.

¹⁰ Article 67(1) of the Statute is noted in the applicable law section.

¹¹ Request, ICC-01/05-01/13-2292, para. 46.

¹² Request, ICC-01/05-01/13-2292, paras 14, 17, 42.

¹³ Request, ICC-01/05-01/13-2292, para. 7.

¹⁴ *See, for instance*, Request, ICC-01/05-01/13-2292, paras 20-23, 44, which contains a comparative analysis with other international tribunals and courts and submissions on how to best structure the employment of legal support staff.

¹⁵ Request, ICC-01/05-01/13-2292, para. 45.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY
REJECTS the Request.

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

A handwritten signature in black ink, appearing to read 'BS', is written over a horizontal line.

Judge Bertram Schmitt, Single Judge

Dated 17 July 2018

At The Hague, The Netherlands