



Original: **French**

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

Date: **25 August 2008**

PRE-TRIAL CHAMBER III

Before: Judge Fatoumata Dembele Diarra, Presiding Judge
Judge Hans-Peter Kaul
Judge Ekaterina Trendafilova

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF**

THE PROSECUTOR v. MR JEAN-PIERRE BEMBA GOMBO

Public Document

**WITH CONFIDENTIAL EX-PARTE ANNEXES AVAILABLE ONLY TO THE
REGISTRY AND THE DEFENCE**

**Registrar's Decision on the Application for Legal Assistance Paid by the Court
Filed by Mr Jean-Pierre Bemba Gombo**

Origin: The Registrar

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

The Office of the Prosecutor

Fatou Bensouda, Deputy Prosecutor
Petra Kneuer, Trial Lawyer

Counsel for the Defence

Liriss Nkwebe, Counsel
Aimé Kilolo Musamba, Co-counsel
Tjarda Van der Spoel, Co-counsel

Registrar

Silvana Arbia [initialled]

Division of Victims and Counsel

Didier Preira, Head

THE REGISTRAR of the International Criminal Court,

NOTING article 67(1)(d) of the *Rome Statute*;

NOTING regulations 83 to 85 of the *Regulations of the Court*;

NOTING regulations 130 to 132 of the *Regulations of the Registry*;

NOTING the Court's legal aid scheme as set out in the documents entitled "*Report to the Assembly of States Parties on options for ensuring adequate defence counsel for accused persons*"¹ ("the Report on Legal Assistance"); "*Report on the principles and criteria for the determination of indigence for the purposes of legal aid*" (pursuant to paragraph 116 of the *Report of the Committee on Budget and Finance of 13 August 2004*)² ("the Report on Indigence"); *Report to the Assembly of States Parties on options for ensuring adequate defence counsel for accused persons (Update to Annex 2: Payment details of the ICC legal aid scheme)*³ ("the Update"); and "*Report on the operation of the Court's legal aid system and proposals for its amendment*"⁴ ("the Amendments");

NOTING the "Financial Information Form" ("the Application") submitted by Mr Jean-Pierre Bemba Gombo ("the Applicant") on 9 July 2008 to apply for legal assistance paid by the Court for the purposes of his legal representation before the Court, together with his letters of 21 and 22 July 2008 in support of his application;⁵

NOTING the information on the Applicant's property and assets as detailed in the documents referred to in Annex 2;

¹ ICC-ASP/3/16 of 17 August 2004.

² ICC-ASP/6/INF.1 of 31 May 2007. The original reference number of the document was ICC-ASP/4/CBF.1/2 of 21 February 2005.

³ ICC-ASP/5/INF.1 of 31 October 2005. The original reference number of the document was ICC-ASP/4/CBF.1/8 of 15 March 2005.

⁴ ICC-ASP/6/4 of 31 May 2007.

⁵ See Annex 1.

CONSIDERING the information on the Applicant's assets, moveable, immoveable and other property;⁶

CONSIDERING the statements made by the Applicant at his 3 July 2008 meeting with representatives of the Registry, during which the said representatives provided him with all the relevant information on the rights of indigent persons to obtain payment for their legal assistance by the Court and on the main features of the scheme put in place by the Registrar;⁷

CONSIDERING that the information provided in support of the Application does not reflect all the information provided by the Applicant during the said meeting and that furthermore, the Application does not list all the property and assets directly or indirectly linked to the Applicant and referred to in the 2 July 2008 document mentioned in Annex 2;

CONSIDERING that pursuant to regulation 131 of the *Regulations of the Registry*, the Applicant was invited by letters dated 18 and 22 July 2008 to provide the necessary information in support of his Application in order to enable the Registrar to make an informed decision,⁸ and that the Applicant replied to the said letters with his letters dated 21 and 22 July 2008;

CONSIDERING that it is evident from the 23 July 2008 letter of the Head of the Division of Victims and Counsel⁹ that the latter informed the Applicant, amongst other things, that the information contained in the Applicant's above-mentioned letters in reply was incomplete in that the letters did not provide full and complete answers to the specific questions about the Application as set out in the letters of 18 and 22 July 2008;

⁶ See ICC-01/05-01/08-62-Conf-Exp-Annex 1.

⁷ See ICC-01/05-01/08-62-Conf-Exp, para. 16.

⁸ See ICC-01/05-01/08-62-Conf-Exp, Annexes II and III.

⁹ See Annex 3.

CONSIDERING that in the normal course of her management duties of the Court's legal assistance scheme, specifically under regulation 132(2) of the *Regulations of the Registry*, the Registrar received information contained, in particular, in the document of 14 August 2008 mentioned in Annex 2;

CONSIDERING that the information is reliable and therefore constitutes documentation that should also be taken into account to determine the Applicant's indigence in that it provides objective intelligence on the Applicant's financial situation;

CONSIDERING that pursuant to regulation 84(1) of the *Regulations of the Court*, it is the Registrar's responsibility to determine the Applicant's means and whether he shall be provided with full or partial payment of legal assistance;

CONSIDERING that pursuant to regulation 84(2) of the *Regulations of the Court*, means include direct or indirect financial resources of all kinds including "but not limited to, direct income, bank accounts, real or personal property, pensions, stocks, bonds or other assets held, but excluding any family or social benefits to which he or she may be entitled";

CONSIDERING, furthermore, that the above-mentioned regulation states that account shall also be taken of any transfers of property by the Applicant which the Registrar considers relevant, and of the apparent lifestyle of the Applicant;

CONSIDERING that the above-mentioned information indicates that the Applicant owns and is directly or indirectly linked to the property and assets listed in Annex 4;

CONSIDERING that the investigation conducted by the Registry shows that the Applicant might have other property and assets whose details are unknown for the time being;

CONSIDERING that, contrary to the statement made in the Application, in which the Applicant certifies on his honour that the information he has provided in support of the Application is complete and accurate, the information at the Registrar's disposal¹⁰ indicates that the Applicant did not provide all the information as required by the Application (particularly part II thereof "Statement of Assets" at points 1, 6 and 7) for the purposes of calculating indigence on the basis of the principles and criteria set out in the Report on Indigence and the subsequent documents supplementing and amending the said report;

CONSIDERING that, since the investigation into the Applicant's property and assets is ongoing, in particular with regard to determining, with expert assistance, the value of the Applicant's moveable and immovable property and the existence of other resources of all kinds, the Registrar considers that the sums identified in the bank accounts and a minimalist appraisal of the moveable and immovable property already identified enable her provisionally to make an objective decision on the Applicant's indigence;

CONSIDERING that pursuant to regulation 84(2) *in fine* of the *Regulations of the Court*, the Registrar "shall allow for expenses claimed by [a person applying for legal assistance paid by the Court] provided they are reasonable and necessary";

CONSIDERING that the Application must be reviewed while allowing the Applicant to honour his obligation to his dependants as prescribed in paragraph 9 of the Report on Indigence and that such review must be conducted in accordance with the rules and principles governing the determination of indigence as stipulated in the Update and Amendments, in particular, in Annex I entitled "Amendment to the principles governing the determination of indigence";

¹⁰ See ICC-01/05-01/06-62-Conf-Exp, Annexes II and III.

CONSIDERING that obligations to dependants are calculated on the basis of statistics on the cost of living published by any official authority in the country of residence of the Applicant's dependants;

CONSIDERING that in the Application the Applicant states *inter alia* that he has obligations to the six members of his family whose details are provided in Annex 5, which also helps to gauge the scope of his obligations for the purpose of determining indigence;

CONSIDERING that the country of residence of the Applicant's six dependants publishes statistics on the average household budget, including expenses per person per year and statistics on the evolution of the consumer price index,¹¹ and thus makes it possible to more accurately determine the budget necessary for the subsistence of dependants on a per-person-per-year basis;

CONSIDERING that the calculations relating to the Applicant's indigence¹² carried out in accordance with the principles and criteria set out in the above-mentioned Report on Indigence (paras. 12 *et seq*) and the Amendments (page 13), in particular, on the basis of all the information received to date on the Applicant's property and assets and a minimalist appraisal of his moveable and immoveable property as well as on the existence and scope of his obligations, show that the sums currently on deposit in bank accounts and the property directly or indirectly linked to the Applicant could cover his obligations to his six dependants and a legal team acting at least during the entire pre-trial stage of the proceedings according to the fee schedule under the Court's legal aid scheme;

CONSIDERING that it is for the Applicant to request any legal measures that would enable him to make use of these funds to meet the stated needs;

DECIDES:

¹¹ The references to all these statistics and the relevant details used in their calculation are provided in Annex 6.

¹² Details of the calculations are available in Annex 6.

Provisionally, and pending the completion of the financial investigation for the purposes of indigence, that Mr Jean-Pierre Bemba Gombo is not indigent and accordingly, pursuant to regulation 85(1) *in fine* of the *Regulations of the Court*, may not be provided with full or partial legal assistance paid by the Court;

This decision shall be reviewed upon completion of the investigation into the Applicant's assets pursuant to regulation 85(2) of the *Regulations of the Court*;

INFORMS the Applicant that he may apply to the Presidency of the Court for a review of this decision within fifteen (15) calendar days of notification of the decision;

FURTHER INFORMS the Applicant that this decision pertains to the pre-trial stage of the proceedings before the Court and that if he is brought to trial before the completion of the investigation into his assets, he will be entitled to submit a new application for the Registrar's decision;

NOTIFIES this decision to Mr Jean-Pierre Bemba Gombo and his counsel, Mr Liriss Nkwebe.

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

Silvana Arbia,
Registrar

Dated this 25 August 2008

At The Hague