



Original: English

No.: ICC-RoC85-01/13

Date: 29 May 2014

THE PRESIDENCY

Before: Judge Sang-Hyun Song, President
Judge Sanji Mmasenono Monageng, First Vice-President
Judge Cuno Tarfusser, Second Vice-President

**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
& NARCISSE ARIDO**

Public Document
with Confidential Annex *ex parte* Bemba defence only

**Defence request for clarification
of Presidency Decision ICC-RoC85-01/13-21**

Source: Defence for 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
Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo
Nicholas Kaufman

Legal Representatives of the Victims **Legal Representatives of the Applicants**

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel
for Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Herman von Hebel

Counsel Support Section
Esteban Peralta-Losilla
Abdoul Aziz Mbaye

Victims and Witnesses Unit

Detention Section

The Defence for Jean-Pierre Bemba Gombo ("the Suspect") hereby seeks clarification of the "*Decision on the Defence application to the Presidency for judicial review of the Registrar's second decision on legal assistance dated 27 February 2014*" ("the Decision").¹

1. Throughout the litigation pertaining to the Suspect's request for judicial review of the Registrar's refusal to award him legal assistance, the latter maintained that the amount considered appropriate for handling the present case at the Pre-Trial Stage under the legal aid scheme of the Court was 32,922 Euros per month. The Presidency accepted this declaration and cited it in the section of the Decision entitled "*[d]etermination of the defence costs within the scheme of legal assistance paid for by the Court*":

"...The Registrar noted that during this phase, a legally aided defence team is composed of Counsel:(€10,687), Associate Counsel (€9,043), a Legal Assistant (€5,622), and a Case Manager (€4,570). When these figures are added to the sum of €3,000 for the aforementioned overhead defence costs, the Registrar found the total defence costs to amount to a sum of €32,922".²

2. On 22 May 2014, in purporting to implement the Decision, the Registrar notified Counsel that he had fixed the aforementioned "*[d]etermination of the defence costs within the scheme of legal assistance paid for by the Court*" at 8542 Euros per month plus an additional 1000 Euros for travel costs.³ The Registrar gave no explanation for departing from the amount of 32,922 Euros per month which he had cited as his benchmark throughout the judicial review litigation other than the fact that he had awarded a similar (arbitrary) amount to the other legally aided teams in case ICC-01/05-01/13.

¹ ICC-RoC85-01/13-21-Conf-Exp.

² *ibid* at paragraph 23.

³ Conf-Exp-Anx.

3. It should be noted that, at paragraph 22 of the Decision, the Presidency was acute to the distinction that the Registrar himself had made between the scope of legal assistance in article 70 proceedings and the equation provided at paragraph 30 of the Single Policy document ICC-ASP-12/3. The former was deemed relevant for the purposes of calculating the indigence of the Suspect yet the latter, it should be stressed, was considered the correct parameter for assessing the costs of the defence in the instant case. At the end of the day, the Presidency upheld the Registrar's finding that the Suspect was not indigent. The Presidency did not, however, make any determination to the effect that 32,922 Euros per month was not to be viewed as the appropriate monthly amount for the Suspect's defence at the pre-trial stage of the proceedings.

4. The article 70 proceedings have already dwarfed the principal case in terms of the sheer volume of defence work required at the pre-trial stage. The Single Judge, in his response to the disqualification applications, indeed acknowledged "[t]he sheer amount of litigation originated in connection with this case".⁴ Hundreds of intercepted Lingala conversations need to be reviewed with the assistance of an interpreter. Forensic expert analysis of the Suspect's accounts needs to be performed. Missions to interview potential witnesses who may corroborate the Suspect's version of events need to be conducted. Counsel suggests that the Registrar cannot justifiably assert that equality of arms is maintained by comparing the paltry monthly award of 8542 Euros to the fortune spent by the Prosecution in conducting the article 70 proceedings for more than a year.

5. The Presidency was careful to state that the award of 4 months legal assistance should not be "squandered". The term "squander" has no relevance unless it refers to the monthly amount of 32,922 Euros. 8,542 Euros per month cannot be "squandered". Once the costs of an appropriate investigation as intimated in paragraph 4 above are deducted and in light of the complete denial of retroactive

⁴ ICC-01/05-01/13-419-Anx at paragraph 12.

compensation for work performed – it will be appreciated that Counsel has been left completely out of pocket. The only thing that can be said to have been “squandered” is Counsel’s good-will and naïve sense of ethical duty for having represented the Suspect for absolutely nothing over the last six months.

Relief Sought

6. In light of the aforementioned, the Presidency is requested to clarify that a loan of 32,922 Euros per month is the amount that it indeed considered appropriate to allow the Suspect to conduct a defence at the present stage of the proceedings in accordance with the principle of equality of arms.

Urgency

7. The Presidency is requested to deliver an urgent ruling on this matter given the short time remaining until the commencement of the confirmation proceedings. No response from the Registrar should be required given that the correct interpretation of a judicial decision is within the province of the judiciary alone.



Nicholas Kaufman

Counsel for Jean-Pierre Bemba Gombo

Jerusalem, Israel

Thursday, May 29, 2014