

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 10 August 2016

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
THE PROSECUTOR *v.* JEAN-PIERRE BEMBA GOMBO, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO**

Public Document

Prosecution's Request to Obtain Financial Information from the Registry

Source: The Office of the Prosecutor

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

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I. Introduction

1. Pursuant to article 64(6)(f) of the Rome Statute (“Statute”), the Office of the Prosecutor (“Prosecution”) requests Trial Chamber VII (“Chamber”) to direct the Registry to provide the Prosecution with financial information concerning *The Prosecutor v. Jean-Pierre Bemba* (“Main Case”). Specifically, the Prosecution seeks to obtain such information as relates to: (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 case (“Requested Information”).

2. The Requested Information is limited, targeted, and relevant to the determination of sentence, should the case progress to such stage. It is also material to the Prosecution’s preparation of its submissions on sentencing, and will assist the Chamber to assess the actual and potential pecuniary damage to the Court caused by the Accused’s criminal conduct.

3. Although this request is made prior to the Chamber’s article 74 decision, this is necessary to provide sufficient time to the Registry to prepare and produce it, and allow the Prosecution an opportunity to make effective use of it, thus avoiding any unnecessary delay.

II. Submissions

A. The Requested Information is relevant to the determination of sentence

4. The Requested Information is directly relevant to the Chamber’s determination of sentence, should any of the Accused be convicted. Article 78(1) stipulates that the Court shall take into consideration the gravity of the crime in the determining the sentence. Rule 145(1)(c) directs the Chamber to consider “the extent of the damage caused” by the crime(s) committed. Further, any assessment of the

severity of criminal conduct must also consider its potential consequences — the “real risk caused by the Accused[‘s] [conduct]”.¹ In that respect, the Chamber must consider the real risk to the Main Case created by the Accused’s conduct. Here, 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.

5. *First*, the total financial cost of the Main Case is necessary to assess that aspect of the “real risk” caused by the Accused’s criminal conduct. As detailed in the Prosecution’s trial submissions, including its Pre-Trial Brief² and Closing Submission,³ the alleged aim of the Accused’s conduct was to obtain Bemba’s acquittal using criminal means. Those alleged criminal means threatened the entirety of the Main Case. As has become clear before this Court, witness interference, whether unchecked or undetected, has unravelled and tainted entire trials; it has wasted valuable resources allocated to those proceedings; and it has denied victims justice and potential reparations.⁴ Bemba’s conviction in the Main Case,⁵ despite the conduct charged in this case, does not lessen the relevance of the Requested Information in assessing the potentially serious consequences to the Court of the Accused’s conduct.

6. *Second*, the Court’s expenditures in respect of each of the 14 witnesses directly reflect the pecuniary damage actually caused by the Accused’s acts. Each of these witnesses testified in the Main Case.⁶ However, in view of the charged conduct, none could be relied on in contributing to the trial process, the establishment of the truth, and delivering justice to the victims of the crimes committed. The Bemba Defence’s

¹ See *Prosecutor v. Hartmann*, Case No. IT-02-54-R77.5, Judgment on Allegations of Contempt, 14 September 2009, para. 80. See also *Prosecutor v. Marija i & Rebi*, Case No. IT-95-14-R77.2, Judgement, 10 March 2006, para. 50; *Prosecutor v. Eric Senesie*, Case No. SCSL-2011-01-T, Sentencing Judgement, para. 17.

² See e.g. ICC-01/05-01/13-1110-Red, paras. 17-20.

³ See e.g. ICC-01/05-01/13-1905-Red, paras. 52-59.

⁴ See e.g. ICC-01/09-01/11-2027-Red-Corr, paras. 147-148, Reasons of Judge Eboe-Osuji, paras. 2, 7, 139, 141, 193, 464.

⁵ See ICC-01/05-01/08-3343, para. 752.

⁶ See ICC-01/05-01/08-3343, para. 261.

demurrals to rely on these 14 Defence witnesses in its Closing Submissions⁷ starkly illustrates the wastage of valuable Court resources and time attendant to their appearance and testimony. In relation to these witnesses, the Court paid for, *inter alia*, their transportation to the place of testimony;⁸ accommodations;⁹ incidental and attendance allowances;¹⁰ video-links with the Court;¹¹ Rule 74 counsel;¹² and the costs relating to transport and accommodate Registry staff to the field to assess the witnesses' security and to carry out the familiarisation process,¹³ as well as to staff the courtroom during their ostensible "testimony". The Chamber should not be deprived of an opportunity to properly and fully assess and weigh this evidence when determining the actual and potential impact of the Accused's criminal conduct in this case.

B. The Requested Information is limited, presumptively available, and its production will not prejudice the Defence

7. As noted, the Prosecution seeks the Registry's provision of the Requested Information, namely: (1) the costs associated with the trial of the Main Case generally; and (2) those specifically incurred by the Court in relation to the Defence witnesses who are the subject of the charged offences in this case.¹⁴ The request's scope is thus limited to material that should be readily available to the Registry, and further, causes no unfair prejudice to the Defence.

⁷ See ICC-01/05-01/08-3121-Red, para. 14; ICC-01/05-01/08-3343, para. 262.

⁸ D-0055, D-0057, and D-0064 testified in The Hague. See *e.g.* ICC-01/05-01/08-T-256-CONF-ENG ET, p. 5, lns. 2-4; ICC-01/05-01/08-T-259-CONF-ENG ET, p. 4, lns. 20-21; ICC-01/05-01/08-T-264-CONF-ENG ET, p. 5, lns. 15-16. See also ICC-01/05-01/08-1081-Anx, paras. 24-26; Regulations of the Registry, regulation 81.

⁹ See Regulations of the Registry, regulation 82.

¹⁰ See Regulations of the Registry, regulations 84-85.

¹¹ D-0002, D-0003, D-0004, D-0006, D-0013, D-0015, D-0023, D-0025, D-0026, D-0029, and D-0054 testified via video-link. See *e.g.* ICC-01/05-01/13-1905-Red, paras. 90, 106, 127, 200, 209, 247; ICC-01/05-01/08-2740.

¹² See ICC-01/05-01/13-157-Conf-Exp, fn. 7. See also *e.g.* ICC-01/05-01/08-T-325-CONF-ENG ET, p. 6, lns. 4-24 (D-0003); ICC-01/05-01/08-T-328-CONF-ENG ET, pp. 5-6, lns. 13-9 (D-0006); ICC-01/05-01/08-T-343-CONF-ENG ET, pp. 9-10, lns. 5-10 (D-0015); ICC-01/05-01/08-T-332-CONF-ENG ET, pp. 10-11, lns. 20-15 (D-0023); ICC-01/05-01/08-T-347-CONF-ENG ET, p. 6, lns. 5-21 (D-0054); ICC-01/05-01/08-T-256-CONF-ENG ET, p. 9, lns. 1-19 (D-0057); ICC-01/05-01/08-T-259-CONF-ENG CT, pp. 6-7, lns. 23-12 (D-0064).

¹³ See generally ICC-01/05-01/08-1016; ICC-01/05-01/08-1081-Anx.

¹⁴ D-0002; D-0003; D-0004; D-0006; D-0013; D-0015; D-0023; D-0025; D-0026; D-0029; D-0054; D-0055; D-0057; D-0064.

8. *First*, the Registry is responsible for collecting and preserving Court financial records, including those relating to the Requested Information.¹⁵ However, the Requested Information is not publically available and the Prosecution has no other means of obtaining it. The scope of the material sought is limited and targeted. It concerns a single case, 14 specific witnesses and it is restricted to a single issue — namely the cost of the Main Case. Therefore, the Registry should not be overburdened in identifying and providing the Requested Information.

9. *Second*, no confidentiality issues arise in respect of the transmittal of the Requested Information to the Prosecution. In particular, neither the Accused nor the relevant witnesses have any legitimate expectation of privacy regarding the Requested Information. Even if this were the case — and it is clearly not — the Chamber's responsibility to assess all relevant information in determining the gravity of the crimes as prescribed by article 78(1) of the Statute, as well as the propriety of any corresponding sentence should take precedence to ensure fairness. The Registry can also produce the information confidentially or with appropriate redactions, as the Chamber may deem appropriate.

10. *Third*, that the Requested Information is sought prior to the Chamber's article 74 decision is neither premature nor prejudicial to the Accused's rights. Instead, the timing of the request will ensure that evidence relevant to the sentencing phase of the trial will be timely available, ensuring the efficient conduct of any further proceedings. Absent any compelling interest to the contrary — and there is none — there is no reason why information on the total costs of the Main Case to the Court and those specific to the 14 witnesses comprising the charged incidents in this case should not be made available at this stage, given their clear relevance to the proceedings.

¹⁵ See generally Statute, art. 43; Financial Regulations and Rules, ICC-ASP/7/5, regulations 3, 10.

III. Relief Requested

11. For the foregoing reasons, the Prosecution respectfully requests the Chamber to direct the Registry to provide the Prosecution with the Requested Information concerning the Main Case as soon as practicable.



Fatou Bensouda, Prosecutor

Dated this 10th day of August 2016
At The Hague, The Netherlands