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**International
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Court**



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No.: **ICC-01/05-01/13**
Date: **4 November 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, AIMÉ KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA
WANDU AND NARCISSE ARIDO

Public Document

Prosecution's Renewed Request to Obtain Financial Information from the Registry

Source: Office of the Prosecutor

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

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I. Introduction

1. The Office of the Prosecutor (“Prosecution”) renews its request for Trial Chamber VII (“Chamber”) to direct the Registry to produce financial information concerning *The Prosecutor v. Jean Pierre Bemba* (“Main Case”);¹ and to provide such information to the Parties as soon as practicable, and in any event, not later than 21 November 2016. This application is now timely, given the Chamber’s 19 October 2016 decision of conviction pursuant to article 74 (“Judgment”),² and the Chamber’s initiation of the sentencing phase.³

2. As detailed in the Prosecution’s Prior Request,⁴ the Prosecution seeks to obtain (1) the overall financial cost associated with the trial of the Main Case generally; and (2) those costs specifically incurred by the Court in relation to the 14 Main Case Defence witnesses, the subjects of the offenses committed in this case (“14 Witnesses”) (collectively “Requested Information”).⁵ The Registry has previously confirmed that, if so ordered, it could provide the information within three days of an order by the Chamber.⁶ Should the Chamber grant this request, the Prosecution proposes that the Registry produce the Requested Information in the form of a report, such that it may be considered by the Chamber in its determination of the appropriate sentences to be imposed on the Convicted Persons.

¹ See ICC-01/05-01/13-1966 (“Prior Request”).

² See ICC-01/05-01/13-1989.

³ See ICC-01/05-01/13-1990.

⁴ See ICC-01/05-01/13-1966, paras. 4-9.

⁵ See ICC-01/05-01/13-1966, para. 1.

⁶ See ICC-01/05-01/13-1979, para. 18 (*citing* ICC-01/05-01/13-1973, para. 11).

II. Submissions

A. The Motion is timely

3. The Prosecution's application is timely. Although the Chamber denied the Prior Request as premature, absent a judgment of conviction against the Accused, it did so without ruling on its merits.⁷ That circumstance has now changed. The Accused have each been found guilty,⁸ and the case has now moved to the sentencing phase. The Registry's provision of the Requested Information is necessary for the Prosecution's preparation of its sentencing submissions, due on 7 December 2016.⁹

B. The Requested Information is limited and readily available to the Registry

4. The Prosecution seeks the Registry's provision of very limited information; namely (1) the general cost associated with the trial of the Main Case, including any cost incurred by the Court from the beginning of the Main Case to Bemba's conviction by Trial Chamber III¹⁰ – *i.e.* the potential loss to the Court had the unlawful scheme successfully undermined the trial; and (2) the cost of the proceedings involving the 14 Witnesses – *i.e.* the actual pecuniary loss by the Court. The cost associated with these witnesses was unnecessarily incurred by the Court given the Main Case Defence's withdrawal of its reliance on the 14 Witnesses' tainted evidence.¹¹

5. The Requested Information is relevant to the Chamber's determination of the appropriate sentence to be imposed on the Convicted Persons, as set out in the

⁷ See ICC-01/05-01/13-1979, paras. 18-19.

⁸ See ICC-01/05-01/13-1989-Conf, pp. 455-457.

⁹ See ICC-01/05-01/13-1990, para. 2(iii).

¹⁰ See ICC-01/05-01/08-3343, para. 752.

¹¹ See ICC-01/05-01/08-3343, para. 262.

Prosecution's Prior Request and incorporated by reference herein.¹² As detailed in the Prior Request, the total financial cost associated with the trial of the Main Case is necessary to assess the potential consequences to the Court of the Convicted Persons' criminal conduct,¹³ while the cost of the proceedings involving the 14 Witnesses will shed light on the actual pecuniary loss to the Court.¹⁴ Given the Registry's prior submissions, some points of clarification are required.

6. *First*, the Prosecution does *not* request Court expenses that would have been incurred irrespective of the Main Case and/or the 14 Witnesses.¹⁵ For instance, the Requested Information is not intended to include the "general 'lights on' costs that would have been incurred by the Court irrespective of the existence of the two cases".¹⁶ Rather, the Requested Information only encompasses those additional costs incurred to meet the specific needs of the Main Case and/or the 14 convicted incidents. Those additional costs include expenses related to, *inter alia*, witness transportation to the place of testimony; accommodations; incidental and attendance allowances; video-links with the Court; Rule 74 counsel; translation into situation languages; 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, as well as to staff the courtroom during their ostensible "testimony".¹⁷ All of these costs are assessable, quantifiable, and arise separately from the "general 'lights on costs'" referred to in the Registry's prior submissions.

7. *Second*, the Prosecution does *not* seek that the Registry produce information concerning the costs associated with prosecuting this article 70 case.¹⁸ The

¹² See ICC-01/05-01/13-1966, paras. 4-9.

¹³ See ICC-01/05-01/13-1966, para. 5.

¹⁴ See ICC-01/05-01/13-1966, para. 6.

¹⁵ *Contra* ICC-01/05-01/13-1973, paras. 8-9.

¹⁶ See ICC-01/05-01/13-1973, para. 8.

¹⁷ See ICC-01/05-01/13-1966, para. 6.

¹⁸ *Contra* ICC-01/05-01/13-1973, para. 5.

Prosecution does not consider that an accused's exercise of his or her statutory right to defend himself or herself¹⁹ is an appropriate basis on which to assess sentence.

8. However, a convicted person's sentence can, and should, account for the "real risk" of harm that could have been caused had his or her criminal objectives been fully successful.²⁰ This sentencing principle has equally been adopted and applied in contempt matters before other international courts as referenced in the Prosecution's Prior Request.²¹ As asserted in the Prior Request and confirmed in the Judgment, the purpose of the Overall Strategy was "to illicitly interfere with defence witnesses in order to ensure that these witnesses would provide evidence in favour of Mr Bemba".²² The Convicted Persons' conduct thus put the entire Main Case at real risk of collapse thereby making its overall cost a reasonable measure of the seriousness of their actions, and thus relevant to their sentence here.

9. *Third*, granting this Motion does not require the Registry to disclose confidential information emanating from the Main Case.²³ The Prosecution does not seek an item-by-item or witness-by-witness explanation of the costs associated with the Requested Information. Rather, it is sufficient if the Registry provides the Requested Information in aggregate form. Alternatively, the Registry could disclose such information in redacted form to avoid any confidentiality issues. Should the Registry require additional clarification to avoid the divulgence of confidential information, the Prosecution is willing to provide it.

¹⁹ Statute, art. 67(1).

²⁰ See ICC-01/05-01/13-1966, para. 4; *contra* ICC-01/05-01/13-1973, para. 5.

²¹ See ICC-01/05-01/13-1966, para. 4, fn. 1 (*citing e.g. Prosecutor v. Hartmann*, Case No. IT-02-54-R77.5, Judgment on Allegations of Contempt, 14 September 2009, para. 80 ("[t]he heart of the matter is the issue of *real risk cause by the Accused* by her disclosure. [...] the Chamber considers that the Accused's conduct has created a real risk that states may not be as forthcoming in their cooperation with the Tribunal where provision of evidentiary material is concerned.")) (emphasis added)).

²² See ICC-01/05-01/13-1989-Conf, para. 103. See also ICC-01/05-01/13-1966, para. 5.

²³ *Contra* ICC-01/05-01/13-1973, para. 10.

10. *Lastly*, while the Requested Information may be broader than what the Registry has previously offered to provide, the information is readily available to the Registry²⁴ and its provision will not impose any supplementary burden on the Registry. This is consistent with the Single Judge's consideration that "any broader financial information could be provided within a reasonable timeframe if so ordered".²⁵

C. The Requested Information should be provided in the form of a report

11. The Prosecution proposes that the Requested Information be provided in the form of a report which may be formally submitted in the sentencing proceedings. As suggested above, such a report can include aggregated figures to avoid breaching any confidentiality conditions imposed by Trial Chamber III. To the extent that the Chamber grants the current request, the Prosecution aims to add the Registry's report to its list of additional evidence to be considered for sentencing. For that reason, the report should be disclosed to the Parties in accordance with the Registry's previous submissions, and in any event not later than 21 November 2016. This will provide sufficient time for the Parties to meet the Chamber's 23 November deadline for the disclosure and formal submission of additional evidence.²⁶

12. At this stage, the Prosecution does not consider that it is necessary for a Registry representative to give evidence on the Requested Information. However, the Prosecution reserves the right to amend its witness list to include such a representative should the Chamber: (1) not accept the Registry's report for formal submission; or (2) otherwise deems it appropriate for the Defence to examine such an official to test the information contained in the Registry's report.

²⁴ See ICC-01/05-01/13-1973, paras. 8-9.

²⁵ See ICC-01/05-01/13-1979, para.18.

²⁶ See ICC-01/05-01/13-1990, para. 2(ii).

III. Relief Requested

13. For the foregoing reasons, the Chamber should direct the Registry to provide the Parties with the Requested Information concerning the Main Case as soon as practicable and, in any event, not later than 21 November 2016.



Fatou Bensouda, Prosecutor

Dated 4th Day of November 2016
At The Hague, The Netherlands