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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

**Response to the “Prosecution’s Renewed Request to Obtain Financial
Information from the Registry”**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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Victims Participation and Reparations Section Other

Introduction

1. The Defence for Mr. Jean-Pierre Bemba hereby files its response to the “Prosecution’s Renewed Request to Obtain Financial Information from the Registry” (the Prosecution Request).¹

Submissions

2. The Prosecution has requested the Registry to disclose,²

(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”).

3. If the Trial Chamber determines that such information is relevant to sentencing, the Defence requests the Trial Chamber to order the Registry to provide the following information:
 - i. The expenses broken down *per* witness;
 - ii. The date on which the expense was incurred;
 - iii. The particular Registry section that paid the expenses; and
 - iv. Whether such expenses have been included in the putative legal aid debt attributed to Mr. Bemba in the Main Case.
4. This information is relevant to firstly, the question as to the accurate attribution of responsibility of such costs, and secondly, the extent to which Mr. Bemba has already been financially penalised for such costs.

¹ ICC-01/05-01/13-2007

² Para. 2.

5. As concerns the first aspect, the Prosecution had notice from mid-2012 onwards that certain Defence witnesses had fabricated elements of their testimony. The Prosecution has not disputed that it knowingly withheld information in its possession concerning the credibility of such witnesses, until after their testimony (and after the expenses had been incurred).³
6. The Prosecution acknowledged in the Main Case, prior to the commencement of Defence evidence, that information concerning the credibility of Defence witnesses was disclosable under Rule 77.⁴ Trial Chamber III found that the existence of an Article 70 investigation did not, in itself, exempt the Prosecution from its disclosure obligation, or entitle the Prosecution to withhold disclosure on a unilateral basis.⁵
7. In a more recent filing, the Prosecution acknowledged that covertly intercepted communications with Defence witnesses fell under the scope of Rule 77, and should be disclosed in advance of the witness's testimony in order to assist Defence preparation.⁶ The Prosecution also called for appropriate measures to "protect the integrity of the proceedings" to be taken, in advance of the witnesses' testimony.⁷

³ Indeed, during the testimony of D-15 (which took place after the Prosecution started to receive call data records), the Prosecution trial attorney went to so far as to intimate to the Chamber, MR IVERSON: Madam President, I believe he's giving an indication. But if any Trial Chamber later on were to look at this testimony in the context of any proceedings, it might be difficult for them to determine whether or not this is a clear statement of fact, and that's why I continued to ask the question and insist that he provide a clear answer.

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⁴ ICC-01/05-01/08-2283, para.14.

⁵ CC-01/05-01/08-3255, para. 83.

⁶ ICC-01/04-02/06-1616, para. 3.

⁷ ICC-01/04-02/06-1616, para. 17.

8. Finally, it is also relevant that the Prosecution relied on testimony from some of the fourteen witnesses in its final submissions in the Main case.⁸
9. As concerns the issue of Mr. Bemba's double punishment for such costs, as a non-indigent accused, the costs associated with all Defence missions were included in Mr. Bemba's legal debt to the Court. This legal debt was already reimbursed through the transfer of funds from Mr. Bemba's account, at the end of 2014. It is therefore important that his contribution to the payment of such costs is reflected in the information prepared by the Registry.

Relief sought

10. For the reasons set out above, if the Trial Chamber grants the Prosecution Requests, the Defence requests the Honourable Trial Chamber to order the Registry to provide information concerning:

- i. The expenses broken down *per* witness;
- ii. The date on which the expense was incurred;
- iii. The particular Registry section that paid the expenses; and
- iv. Whether such expenses have been included in the putative legal aid debt attributed to Mr. Bemba in the Main Case.

⁸ ICC-01/05-01/08-3079-Conf-Corr: the Prosecution also relied on the testimony of D6 (paras.11, 17, 127), D26 (para.3), and D13 (paras.10, 18, 127, 130, 151), as witnesses of truth.



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Dated this 9th day of November 2016

The Hague, The Netherlands