

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/05-01/13
Date: **11 November 2016**

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Single Judge

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

**Decision on the Prosecution Renewed Request to Obtain Financial Information from
the Registry**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Gosnell

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Others

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber VII ('Single Judge' and 'Chamber', respectively) of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Rule 84 of the Rules of Procedure and Evidence, issues the following 'Decision on the Prosecution Renewed Request to Obtain Financial Information from the Registry'.

I. Procedural history

1. On 10 August 2016, the Office of the Prosecutor ('Prosecution') requested the Chamber to direct the Registry to provide it with financial information concerning the case ICC-01/05-01/08, *The Prosecutor v. Jean-Pierre Bemba Gombo* ('Main Case') in order to use it in the determination of the appropriate sentences of the then-accused.¹
2. On 17 August 2016, the defence teams filed responses² and the Registry submitted its observations ('Initial Registry Observations').³
3. On 7 September 2016, the Single Judge issued a decision on the Prosecution's request, dismissing it as premature since no judgment pursuant to Article 74 of the Statute had been rendered at that point in time.⁴
4. On 19 October 2016, the Chamber issued its judgment pursuant to Article 74 of the Statute, finding all 5 accused guilty of offences against the administration of justice.⁵

¹ Prosecution's Request to Obtain Financial Information from the Registry, ICC-01/05-01/13-1966.

² Réponse de la Défense de M. Babala à la « Prosecution's Request to Obtain Financial Information from the Registry » (ICC-01/05-01/13-1966), ICC-01/05-01/13-1969-Conf, with a public redacted version filed on 19 August 2016 ; Defence Response to the Prosecution 'Request to Obtain Financial Information from the Registry', ICC-01/05-01/13-1970; Narcisse Arido's Response to the Prosecution Request to Obtain Financial Information from the Registry" (ICC-01/05-01/13-1966); Response to Prosecution's Request to Obtain Financial Information from the Registry (ICC-01/05-01/13-1966), ICC-01/05-01/13-1972; Réponse de la défense de monsieur Aimé Kilolo Musamba à « Prosecution Request to Obtain Financial Information from the Registry» (ICC-01/05-01/13-1966), ICC-01/05-01/13-1974.

³ Registry's Observations to "Prosecution's request to Obtain Financial Information from the Registry", ICC-01/05-01/13-1973.

⁴ Decision on Prosecution's Request to Obtain Financial Information from the Registry, ICC-01/05-01/13-1979.

5. On 4 November 2016, the Prosecution filed a renewed request to obtain the financial information from the Registry ('Request').⁶ The Prosecution repeats its initial request and seeks to obtain from the Registry: the costs associated with the trial of the Main Case generally and those costs specifically incurred by the Court in relation to the 14 Main Case Defence witnesses ('14 Witnesses') who were the subject of the charges in this case ('Requested Information').⁷
6. On 9 November 2016,⁸ the defence for Mr Bemba and Mr Arido ('Bemba Defence' and 'Arido Defence', respectively) filed their responses ('Bemba Response' and 'Arido Response', respectively).⁹ The Bemba Defence submits that, if the Request is granted, additional information should be provided¹⁰ and the Arido Defence requests that the Request be rejected.¹¹
7. On 10 November,¹² the Registry filed its observations ('Registry Observation').¹³

II. Submission and Analysis

1. *Extent of the Requested Information*

8. The Prosecution submits that the Requested Information is necessary to determine the appropriate sentences for the five convicted persons ('Convicted Persons').¹⁴ It argues that the overall costs of the trial of the Main Case represents the potential pecuniary consequences, or 'real risk' to the Court by the

⁵ Judgment pursuant to Article 74 of the Statute, ICC-01/05-01/13-1989-Conf, a public redacted version was filed on the same day. ICC-01/05-01/13-1989-Red.

⁶ Prosecution's Renewed Request to Obtain Financial Information from the Registry, ICC-01/05-01/13-2007.

⁷ Request, ICC-01/05-01/13-2007, para. 2.

⁸ The Chamber shortened the response time to this date, E-mail from Trial Chamber Communications to the parties on 4 November 2016, at 16:30.

⁹ Response to the "Prosecution's Renewed Request to Obtain Financial Information from the Registry", ICC-01/05-01/13-2017 and Narcisse Arido's Response to "Prosecution's Renewed Request to Obtain Financial Information from the Registry" (ICC-01/05-01/13-2007), ICC-01/05-01/13-2019.

¹⁰ Bemba Response, ICC-01/05-01/13-2017, para. 10.

¹¹ Arido Response, ICC-01/05-01/13-2019, paras 2 and 9.

¹² The deadline was initially set by the Chamber to 9 November 2016 and subsequently extended to 10 November 2016, E-mails on 4 November 2016, at 18:35 and 9 November 2016, at 17:22.

¹³ Registry's Observations to "Prosecution's Renewed Request to Obtain Financial Information from the Registry" (ICC-01/05-01/13-2007), ICC-01/05-01/13-2024.

¹⁴ Request, ICC-01/05-01/13-2007, para. 5.

Convicted Persons conduct and that the costs incurred by the testimony of the 14 Witnesses is the actual monetary loss for the Court.¹⁵

9. In respect to arguments made in the Initial Registry Observations, the Prosecution clarifies that the Requested Information only pertains to ‘additional costs incurred to meet the specific needs of the Main Case and/or the 14 convicted incidents’¹⁶ and that, unlike proposed in the Initial Registry Observations and re-submitted in the Registry Observations,¹⁷ it does not seek to obtain financial information about the current case and the costs it generated.¹⁸
10. The Bemba Defence requests that, in case the Request is granted, the following information is included by the Registry: (i) a breakdown of the expenses per witness; (ii) the date on which the expenses occurred; (iii) the particular section of the Registry that provided the payments and (iv) whether such expenses have been included in the ‘putative legal aid debt’ attributed to Mr Bemba.¹⁹ It submits that this additional information is relevant to the attribution of costs and to determine the extent to which Mr Bemba has already paid for such costs.²⁰
11. The Arido Defence argues that the Request should have been made with Trial Chamber III, citing to a prior decision from the Single Judge in which he stated that it is that chamber which has ‘primary authority to decide whether to provide access to material in the Main Case record’.²¹ It further submits that Article 78(1) of the Rome Statute does not apply, and that therefore the Prosecution request of information which it intends to submit for the gravity of

¹⁵ Request, ICC-01/05-01/13-2007, paras 5, 8.

¹⁶ Request, ICC-01/05-01/13-2007, para. 7.

¹⁷ Initial Registry Observations, ICC-01/05-01/13-1973, paras 8-9; Registry Observations, ICC-01/05-1/13-2024, para.7 c..

¹⁸ Request, ICC-01/05-01/13-2007, paras 6-7.

¹⁹ Bemba Response, ICC-01/05-01/13-2017, paras 3 and 10.

²⁰ Bemba Response, ICC-01/05-01/13-2017, para. 4.

²¹ Arido Response, ICC-01/05-01/13-2019, para. 4, citing to its prior submission ‘Narcisse Arido’s Response to the Prosecution “Request to Obtain Financial Information from the Registry” (ICC-01/05-01/13-1966)’, ICC-01/05-01/13-1971, in which it cited to ‘Decision on Defence Requests for Disclosure of Materials from the Record of the Case of The Prosecutor v. Jean-Pierre Bemba Gombo and Related Matters, ICC-01/05-01/13-1188, para. 13.

the crime should be 'rejected as a matter of law'.²² Additionally, it argues that both the information to the costs of the Main Case generally and those costs specifically incurred by the 14 Witnesses unfairly prejudice the defence since it needs access to the Main Case proceedings in order to be able to respond. Further it argues that the 'real risk' argument by the Prosecution, with regard to the general overall costs, is speculative and could never be fairly responded to.²³

12. In its Observations, the Registry submits that can provide the Requested Information but that further guidance by the Chamber – with regard to the temporal and substantial scope - is necessary in order for it to be able to provide information related to the general costs of the Main Case.²⁴

13. With regard to the information that the Bemba Defence requests to be included, the Registry informs the Chamber that it can provide general costs per witnesses (including travel costs, accommodation costs and allowances paid) and list the section who paid for them.²⁵ It further confirms that 'all relevant expenses have been included in the putative legal aid debt attributed to Mr Bemba in the Main Case'.²⁶ Regarding the specific date on which the expenses occurred, it submits that this information would take more time to collect.²⁷

14. The Single Judge finds it appropriate that the Prosecution obtains the Requested Information. This is without any prejudice on the actual assessment of the Requested Information or the question whether the Chamber will ultimately take it into account. The sole purpose is to enable the Prosecution to fully present the arguments it considers relevant in respect of the appropriate sentencing of the Convicted Persons.

²² Arido Response, ICC-01/05-01/13-2019, para. 8.

²³ Arido Response, ICC-01/05-01/13-2019, paras 5-7.

²⁴ Registry Observations, ICC-01/05-01/13-2024, paras 13-16.

²⁵ Registry Observations, ICC-01/05-01/13-2024, para. 20.

²⁶ Registry Observations, ICC-01/05-01/13-2024, para. 20.

²⁷ Registry Observations, ICC-01/05-01/13-2024, para. 20.

15. As to the Arido Defence's argument that it cannot respond to the Requested Information without access to the Main Case record and that, in any case, Trial Chamber III needs to provide authorisation for such information, the Chamber is of the view that the provision of the Requested Information does not necessitate the authorisation from the Trial Chamber of the Main Case. The citation to a prior decision by Single Judge in support of this argument is misleading, since it is not a question of providing access to the Main Case record, but information about the Main Case (and its related costs). The Arido Defence does not substantiate why it needs access to the Main Case record in order to meaningfully respond to an anticipated argument by the Prosecution or why it cannot respond to the 'real risk' argument.
16. In respect of the argument that Article 78 of the Statute is not applicable, the Single Judge merely notes Rule 163 of the Rules of Procedure and Evidence and finds that, indeed, Article 78 of Statute is applicable for proceedings under Article 70.²⁸
17. The Single Judge notes that the Registry confirmed that a breakdown of the expenses per witness and the section of the Registry which provided the costs can be provided. Accordingly, the Single Judge instructs the Registry to include this information when providing the Requested Information. As to the exact date when the expenses occurred, the Single Judge does not consider it necessary for the Bemba Defence to meaningfully challenge the anticipated argument by the Prosecution. Accordingly, this information does not need to be included. The Single Judge further notes that the Registry already confirmed the further information sought by the Bemba Defence, namely that the expenses have been included in the relevant legal aid debt attributed to Mr Bemba in the Main Case.

²⁸ It seems that the notions of 'gravity' in Articles 17(1)(d) and 78 of the Statute were confused in the response.

18. With regard to the submissions by the Registry that it needs further guidance by the Chamber in order to be able to prepare the Requested Information the Single Judge notes that the purpose of the Request is that the Prosecution is able to fully present its arguments for the purposes of sentencing. It is therefore up to the Prosecution to decide which sort of information should be included and to which scope. Further, the Prosecution itself offered that it is willing to provide clarification on the Requested Information to the Registry, if necessary.²⁹ Accordingly, the Registry is instructed to liaise with the Prosecution in order to resolve any outstanding question with regard to the scope and content of the Requested Information.

2. Form of the Requested Information and date of its provision

19. The Prosecution argues that, contrary to the submissions made in the Initial Registry Observations,³⁰ no authorisation from Trial Chamber III is necessary for the Registry to provide the Requested Information.³¹ It further submits that the Requested Information should be provided by no later than 21 November 2016 in form of a report, which the Prosecution intends to formally submit in the sentencing proceedings.³²

20. The Registry confirms that the Requested Information can be provided in a Report.³³ However, it submits that this cannot be done – as assured in its Initial Observations – within three days but rather within a ‘reasonable timeframe’.³⁴ In respect of the information related to the 14 Witnesses, it specifies that it can – depending on the scope of the information sought – provide it within a three day or seven day timeframe.³⁵

²⁹ Request, ICC-01/05-01/13-2007, para. 9.

³⁰ Initial Registry Observations, ICC-01/05-01/13-1973, para. 10.

³¹ Request, ICC-01/05-01/13-2007, para. 8.

³² Request, ICC-01/05-01/13-2007, para. 11.

³³ Registry Observations, ICC-01/05-01/13-2024, paras 12, 17.

³⁴ Registry Observations, ICC-01/05-01/13-2024, paras 11-12.

³⁵ Registry Observations, ICC-01/05-01/13-2024, para. 17.

21. As stated above, the Single Judge finds that the Requested Information can be represented in a form which does not necessitate the authorisation from the Trial Chamber of the Main Case. As to the form in which the Requested Information is provided, for the intended purpose it is not necessary that specific details about protective measures are included. The Single Judge notes that the Prosecution proposes to provide clarification on this matter, should the Registry have doubts how to present the Requested Information. Accordingly, the Registry is instructed to provide the Requested Information in a manner which does not disclose information endangering the security of the Main Case witnesses or reveals any other sensible material. This can be achieved while still be providing concrete numbers and specific details. In case of doubt, the Registry is to liaise with the Prosecution on the manner how to present the Requested Information.

22. As to the proposal by the Prosecution to provide the information in the form of a report the Single Judge agrees that this seems to be the most efficient form of presentation. In respect of the proposed timeline, the Chamber notes that the Registry submitted that it could provide the information 'within a reasonable timeframe'.³⁶ Taken all factors into consideration, the Single Judge considers that 21 November 2016 – as requested by the Prosecution – is 'reasonable'. Accordingly, the Registry is instructed to provide the report containing the Requested Information as early as possible and, in any event, no later than 21 November 2016.

³⁶ Registry Observations, ICC-01/05-01/13-1973, para. 10.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request and instructs the Registry to provide the Requested Information in accordance with paragraphs 17, 18, 21 and 22.

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



Judge Bertram Schmitt, Presiding Judge

Dated 11 November 2016

At The Hague, The Netherlands