

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08

Date: 19 April 2018

TRIAL CHAMBER III

Before: Judge Geoffrey Henderson , Presiding Judge
Judge Chang-ho Chung
Judge Kimberly Prost

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
THE PROSECUTOR *v.* JEAN-PIERRE BEMBA GOMBO**

Public

Registry's Observations on Defence Request ICC-01/05-01/08-3622

Source: Registry

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

Ms Fatou Bensouda

Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes

Ms Kate Gibson

Legal Representatives of the Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of the Applicants**Unrepresented Victims****Unrepresented Applicants
(Participation/Reparation)****The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

Mr Xavier-Jean Keita

States' Representatives**Amicus Curiae****REGISTRY****Registrar**

Mr Peter Lewis

Counsel Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section****Other**Defence for Mr Jean-Pierre Bemba
Gombo in the case ICC-01/05-01/13

I - Introduction

1. Pursuant to the Trial Chamber III's ("Chamber") email instruction on 12 April 2018,¹ the Registry submits the following observations to Mr Jean-Pierre Bemba Gombo's defence "Request for Access to Filings in case ICC-01/05-01/08" ("Mr Bemba", "Article 70 Defence" and "Request", respectively).²
2. As to access to categories 1 and 2 information as described below, the Registry opposes the Request. With regard to category 3 information, the Registry does not oppose the Request.

II – Applicable Law

3. The following provisions are of particular relevance to the present submissions: rules 166(4) and (5), 217 to 222 of the Rules of Procedure and Evidence ("Rules") and regulations 23 *bis* and 116(1) of the Regulations of the Court ("RoC").

III - Submissions

4. As a preliminary remark, the Registry notes that since the Appeals Chamber remitted the case *The Prosecutor vs Mr Jean-Pierre Bemba, Mr Aime Kilolo Musanba and Mr Jean-Jacques Mangenda Kabongo* ("Article 70 Case") back to Trial Chamber VII ("TC VII") to determine a new sentence, this is not the first time that TC VII is requesting observations on Mr Bemba's solvency. When preparing its submissions for the first solvency report in the Article 70 case, the Article 70 Defence did not seize the Chamber of any request for general access to all confidential or confidential *ex parte* financial information in the present case ("Main Case").

¹Email from Trial Chamber III to Registry on 12 April 2018 at 16.25.

² Article 70 Defence, "Request for Access to Filings in case ICC-01/05-01/08", 9 April 2018, ICC-01/05-01/08-3622.

5. The Article 70 Defence seeks access to three categories of information in the Main Case:
- a. Category 1 information: financial information classified as under seal that is only available to the Registry or experts;
 - b. Category 2 information: financial information that is only available to the Registry and the Prosecution; and
 - c. Category 3 information: financial information available to the defence in the Main case.
6. With regard to category 3 information, the Registry does not oppose the Article 70 Defence being given access to information filed before this Chamber and to which Mr Bemba himself or his defence team in the Main Case has access.
7. The Registry underlines that, for the purpose of the first solvency report in the Article 70 Case, it has, on two prior occasions, requested authorisation from the Chamber to share with the Article 70 Defence confidential financial information submitted in the Main Case. The Chamber granted that request.³ Accordingly, information available to the defence in the Main Case was shared with the Article 70 Defence for the purpose of its first sentencing decision.⁴
8. On 13 April 2018, the Registry updated the above-mentioned information that is available to the Article 70 Defence.⁵ Accordingly the Request, to the extent that it seeks access to category 3 information, is partially moot.
9. As to information falling under categories 1 and 2, the Registry opposes the Request for the reasons outlined below.

³ Email from Trial Chamber III to Registry on 1st December 2016 and 6 March 2017 ; see also, Registry, "Registry's report on the convicted person's solvency", 6 December 2016, ICC-01/05-01/13-2081, para. 3, footnotes 2 and 3, concerning the document ICC-01/05-01/08-3375-Conf-AnxII and "Updated Registry's report on the convicted person's solvency", 6 December 2016, ICC-01/05-01/13-2119, para. 3, footnotes 2 and 3.

⁴ *Ibid*, ICC-01/05-01/13-2081-Conf-Exp-AnxI-B and ICC-01/05-01/13-2119-Conf-Exp-AnxI.

⁵ Registry, "Registry's Updated Report on Solvency of the Convicted Persons", 13 April 2018, ICC-01/05-01/13-2278 and ICC-01/05-01/13-2278-Conf-Exp-AnxI.

10. First, the Registry opposes the Request because it is too general. As explained above, the Article 70 Defence already has access to some information. However, it does not base its Request on such information. Rather, it has identified broad categories of information depending on the classification level. The Article 70 Defence does not specify any of the assets on which information is sought or how any information requested could assist Mr Bemba in paying any fine imposed. The Request consists *in fine* of a general request for access to *all* under seal documents filed to date in the Main Case, be they *ex parte* Registry only or *ex parte* Registry and Office of the Prosecutor.
11. Further, for the remaining financial information sought, the Chamber determined the classification as under seal. The Registry always followed this classification in accordance with regulation 23 *bis*(2) of the RoC otherwise it would violate a Chamber's ruling.⁶ The Registry submits that the basis for this classification still exists and no re-classification pursuant to regulation 23 *bis*(3) of the RoC is warranted at this stage. This holds particularly true now that reparations proceedings are ongoing, and the financial information sought may not serve the sole purpose of paying a fine in the Article 70 Case. Therefore, in balancing the competing interests at stake – the Article 70 Defence preparation *versus* the basis for the level of classification of financial information - the Registry considers that the Request is not specific enough and should be denied.
12. As to the specific request concerning Mr Bemba's bank account in the Democratic Republic of the Congo,⁷ the Registry recalls that, upon the Appeals Chamber's order,⁸ the Article 70 Defence was made aware of the balance of this account.⁹ It is

⁶ In this respect, the reference at paragraph 14 and footnote 11 of the Request to TC VII or Pre-Trial Chamber II decisions giving Mr Bemba's co-defendants access to information originating from national authorities is misplaced here as it was in the context of requests to unfreeze assets.

⁷ Request, para. 22.

⁸ Appeals Chamber, "Order for submissions on Mr Bemba's application regarding frozen assets", 10 July 2017, ICC-01/05-01/08-3539.

within the Chamber's discretion to determine whether under seal *ex parte* information on this account, in particular whether this bank account can be used to pay the fine, should be reclassified and made available to the Article 70 Defence.

13. Second, Mr Bemba is required by TCVII to estimate his own financial needs and those of his dependents.¹⁰ This is in connection with the application of rule 166(3) of the Rules. The Request is not relevant to the calculation of the needs in question and is therefore ill-founded. Mr Bemba is best-placed to know such information. Therefore, the Registry fails to see how accessing under seal financial information in the Main Case would be of any further assistance to the Article 70 Defence.

14. In any event, should the Chamber decide to grant access to some financial information to the Article 70 Defence, the Registry submits that under seal *ex parte* information has been transmitted to the Registry through cooperation requests with states. These cooperating states would have to be consulted before any disclosure to Mr Bemba and his respective defence teams could take place.

15. Third, the Registry opposes the Request because, in addition to the ongoing reparations proceedings, Mr Bemba is accumulating a significant debt towards the Court that has, for over 10 years, advanced funds to him to pay for his defence.¹¹ Pursuant to the Chamber's order on 7 December 2010, the defence in the Main Case was to report to the Registry as to "steps taken to free up all or part of the funds needed to finance his defence team and reimburse the amounts

⁹ Registry, "The Registrar's submission pursuant to the 'Order for submissions on Mr Bemba's application regarding frozen assets'", 24 July 2017, ICC-01/05-01/08-3545-Conf-Exp-Anx1.

¹⁰ Trial Chamber VII, "Order on Sentencing Submissions Following Appeals Chamber Judgments", 14 March 2018, ICC-01/05-01/13-2277, para. 5 and footnote 3.

¹¹ The Registry acknowledges that some of the advanced funds have been recovered, https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP13/ICC-ASP-13-Res1-ENG.pdf, page 18.

16. previously advanced by the Registry".¹² The Registry was also ordered to assist the defence and Mr Bemba in determining and implementing the most appropriate measures for quickly accessing the funds needed to finance his defence and reimburse the Court.¹³ Finally the Chamber ordered the Registry to continue its financial investigation to recover any funds advanced to Mr Bemba.¹⁴ Mr Bemba did not propose to date any practicable measures to the Registry or made any assets available to comply with the Chamber's above-mentioned order.¹⁵ How to make available assets known to Mr Bemba and his defence teams should be addressed first as opposed to seeking additional information on unspecified assets.

17. Fourth, the Registry underlines that, pursuant to rule 217 of the Rules and regulation 116(1) of the RoC, it will be for the Presidency to enforce the fine with the assistance of the Registry. To this end, the Presidency will be the competent authority to timely give access to relevant information in order to prioritise the enforcement of a potential fine or reparation order, if any. In addition, when deciding on the disposition or allocation of property or assets belonging to the sentenced person, the Presidency must "give priority to the enforcement of measures concerning reparations to victims".¹⁶ For the purpose of the Article 70 case, enforcement measures will intervene only if Mr Bemba refuses to pay the fine within the time given by TC VII.¹⁷ As stated above, before reaching this point, Mr Bemba may first seek to access identified assets. Accordingly, the Registry considers the Request premature.

¹² Trial Chamber III, "Redacted Version of Decision on the Defence Application for Review of the Registrar's Decision of 15 October 2010 on the Application for Adjustment of the Expenses and Fees of the Defence (ICC-01/05-01/08-1007-Conf)", 7 December 2010, ICC-01/05-01/08-1007-Red, paras 12 and 39 (i), (ii) and (v).

¹³ *Ibid.*, para. 39(vi).


¹⁴ Registry, "Fourth Report of the Registrar pursuant to the Decision on the Defence Application for review of the Registrar's Decision of 15 October 2010 on the Application for Adjustment of the Expenses and Fees of the defence (ICC-01/05-01/08-1007-Red) dated 7 December 2010", 13 July 2011, ICC-01/05-01/08-1596, p. 4.

¹⁵ *Ibid.*

¹⁶ Rule 221(2) of the Rules.

¹⁷ Rule 166(4) and (5) of the Rules.

18. Finally, as to the Article 70 Defence's request for information on, *inter alia*, the current value of Mr Bemba's assets or on the Registry's conclusions concerning the ownership of particular assets,¹⁸ these issues – and any contestation thereof – should also be addressed by the Presidency in accordance with rules 217 to 222 of the Rules. In the meantime, should the Article 70 Defence contest "the reliability and accuracy of the Registry's calculations"¹⁹ available to it, the Registry would welcome any independent valuation by the defence, should the Chamber so permit.



Marc Dubuisson, Director of the Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 19 April 2018

At The Hague, the Netherlands

¹⁸ Request, para. 5.

¹⁹ Request, para. 11.