

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/05-01/13**
Date: **12 September 2018**

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 Response to Mr Bemba's Urgent Request (ICC-01/05-01/13-2307)

Source: 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**

Ms Fatou Bensouda, Prosecutor

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Ms Mylène Dimitri

Counsel for Aimé Kilolo Musamba

Mr Michael G. Karnavas

**Counsel for Jean-Jacques Mangenda
Kabongo**

Mr Christopher Gosnell

Mr Peter Robinson

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

Mr Xavier-Jean Keïta

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

Mr Peter Lewis

Counsel Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section****Others**

Mr Jean-Pierre Kilenda Kakengi Basila

Mr Charles Achaleke Taku

I. Submissions

1. The Bemba Defence's Urgent Request ("Request") is legally and factually unsupported, and should be dismissed.¹

2. *First*, Bemba's request to admit a media article (annex A) as 'new evidence' should be rejected.² Nor should it be considered in determining Bemba's sentence.³ At the 4 July hearing, the Chamber afforded the three convicted persons the possibility of filing additional submissions by 19 July and foreclosed further such filings.⁴ The issues raised by Bemba amount to nothing more than an ill-conceived eleventh hour attempt to influence the Chamber's determination of his sentence based on collateral circumstances he could have reasonably anticipated long ago.

3. Sentencing proceedings cannot last indefinitely. Eventually, the submission of materials and arguments must conclude.⁵ And, Bemba's Request fails to justify the exception that he seeks. Article 23 of the Statute and rule 168 of the Rules are not probative of Bemba's far-reaching and incorrect submissions.⁶ Article 23 (*nulla poena sine lege*)⁷ has not been violated since the Chamber has yet to impose a sentence. Rule 168 (*ne bis in idem*)⁸ is not engaged either, since Bemba has not been convicted or acquitted twice by this Court or another with respect to the same conduct that forms

¹ ICC-01/05-01/13-2307 ("Urgent Request"). By email on 10 September 2018 at 22:28, Trial Chamber VII shortened the deadline of any response to Wednesday 12 September 2018 at 16:00 hours.

² *Contra* Urgent Request, paras. 1, 5(b), 42-46. *See* Annex A, CAR-D20-0010-0001.

³ *Contra* Urgent Request, paras. 3, 5(a), 41, 45, 47.

⁴ T-59, p. 3, ln. 20 to p. 4, ln. 12.

⁵ ICC-01/05-01/13-2099 ("Decision Final Submissions Sentencing"), para. 10 (where this Trial Chamber rejected Arido's belated request to submit two items which would have afforded the Parties a further opportunity to make submissions).

⁶ *Contra* Urgent Request, paras. 6-8, 19-27, 30-32, 39 (arguing that "the DRC Constitutional Court has offended both Rule 168 and Article 23") and 45 ("to demonstrate the existence of a penalty/sanction that has been imposed on Mr. Bemba").

⁷ Article 23, *Nulla poena sine lege* ("A person convicted by the Court may be punished only in accordance with this Statute").

⁸ Rule 168, *Ne bis in idem* ("In respect of offences under article 70, no person shall be tried before the Court with respect to conduct which formed the basis of an offence for which the person has already been convicted or acquitted by the Court or another court").

the basis of the article 70 convictions. No admissibility challenge has ever been filed, nor does the Request purport to lodge one.

4. Nor is the media article relevant to determine Bemba's sentence. As this Trial Chamber has stated, the fact that an ICC conviction had a negative impact on the professional life of a convicted person "is a natural consequence of the circumstances in which [the convicted person] found himself as a result of his criminal behaviour that he has been convicted for".⁹ This finding, which rejected the alleged impact of the article 70 convictions on Kilolo's professional reputation as a mitigating factor,¹⁰ must apply equally to Bemba.

5. *Second*, Bemba's request that the Chamber issue a declaration that "since the ICC exercises jurisdiction over the conduct of Mr. Bemba in the article 70 proceedings, the DRC authorities do not have the competence to unilaterally exercise jurisdiction and attach sanctions to the same conduct" should be dismissed.¹¹ For the reasons stated above, Bemba's arguments are flawed, and it is for the competent domestic authorities to regulate their own electoral proceedings.

6. *Third*, Bemba's convictions for article 70(1)(a) and (c) offences are final. Although Bemba does not request the Trial Chamber to rule on this matter,¹² this Chamber—and the Appeals Chamber—have already done so, and confirmed the finality of Bemba's convictions.¹³ Bemba's apparent disagreement¹⁴ does not change the fact, which he even implicitly contradicts in recent submissions¹⁵ foreshadowing

⁹ ICC-01/05-01/13-2123-Corr ("Sentencing Decision"), para. 189.

¹⁰ Sentencing Decision, para. 189.

¹¹ Urgent Request, paras. 40, 46.

¹² Urgent Request, para. 16.

¹³ See e.g. Trial Chamber VII (T-58, p. 3, lns. 9-11; T-59, p. 3, lns. 5-10; ICC-01/05-01/13-2291, para. 19) and Appeals Chamber (ICC-01/05-01/13-2275-Red ("Bemba Article 70 AJ"), para. 1631 and ICC-01/05-01/13-2276-Red ("Bemba Article 70 SAJ"), para. 16).

¹⁴ Urgent Request, paras. 12-15.

¹⁵ See e.g. ICC-01/05-01/13-2281-Red ("Bemba Re-Sentencing Submissions"), paras. 33 ("[...]the Appeals Chamber affirmed Mr. Bemba's conviction [...]") and 48 ("[t]he Appeals Chamber affirmed Mr. Bemba's convictions on the basis of the case that the Prosecution pleaded at trial and on appeal; it only remitted the case

his intention to file a motion for revision—which indeed requires that a judgement be final.¹⁶

II. Conclusion and Relief

7. For these reasons, the Prosecution respectfully requests the Chamber to dismiss the Request.



Fatou Bensouda, Prosecutor

Dated 12th day of September 2018
At The Hague, The Netherlands

back for resentencing and not a retrial. [...] These matters must therefore be considered to be *res judicata*”). *See also* para. 79 (“Within this framework, there is also a need for finality and certainty. [...]”).

¹⁶ ICC-01/05-01/13-2304 (“Bemba Response to Prosecution’s Detailed Notice”), para. 8 (“[t]he Defence therefore notifies the Chamber that it intends to file an Article 84 application in the coming weeks”). *See* article 84(1), Revision of conviction or sentence: (“The convicted person or, after death, spouses, children, parents or one person alive at the time of the accused’s death who has been given express written instructions from the accused to bring such a claim, or the Prosecutor on the person’s behalf, may apply to the Appeals Chamber to revise the *final* judgement of conviction or sentence on the grounds that:[...]”) (emphasis added).