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

Date: **08/05/2019**

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
*THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO***

Public

Mr. Bemba's Request for Leave to Reply to Prosecution's response and Registry's Observations to Mr. Bemba's claim for compensation and damages (ICC-01/05-01/08-3680-Red and ICC-01/05-01/08-3681-Red3)

Source: 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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REGISTRY

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A. PROCEDURAL BACKGROUND

1. On 8 June 2018, the Appeals Chamber acquitted Mr. Jean-Pierre Bemba Gombo in respect of all charges brought against him.¹

2. On 13 November 2018, Pre-Trial Chamber II, having been designated by the Presidency to consider any Article 85 claim or claim for compensation, extended by three months the deadline for Mr. Bemba to bring a claim under Article 85 of the Statute and allowed him to submit a request of not more than 60 pages.²

3. On 8 March 2019, Mr. Bemba filed a claim for compensation and damages.³ A public redacted version was filed on 12 March 2019.⁴

4. On 14 March 2019, Pre-Trial Chamber II filed an “Order on the conduct of the proceedings related to “Mr Bemba’s claim for compensation and damages”, in which it decided to convene a hearing on Thursday 9 May 2019, and ordered the Registry to submit observations on the Claim, no later than Monday 6 May 2019. It also permitted the Prosecution to file a response by Monday 6 May 2019, with an extended page limit of no more than 60 pages.⁵

5. On 6 May 2019, the Prosecution submitted its “Confidential redacted version of “Prosecution’s response to Mr Bemba’s claim for compensation and damages””⁶ and the Registry submitted its “Confidential EX PARTE Redacted version of the Registry’s Observations on the Defence Compensation Claim”.⁷ Both were

¹ ICC-01/05-01/08-3636-Red.

² ICC-01/05-01/08-3664.

³ ICC-01/05-01/08-3673-Conf.

⁴ ICC-01/05-01/08-3673-Red. It was later withdrawn and refiled on 19 March 2019, ICC-01/05-01/08-3673-Red2.

⁵ ICC-01/05-01/08-3675.

⁶ ICC-01/05-01/08-3680-Conf-Red2.

⁷ ICC-01/05-01/08-3681-Conf-Exp-Red2.

accompanied by public versions,⁸ pursuant to Chamber's order of 29 March 2019.⁹

B. APPLICABLE LAW

6. Regulation 24(5) of the Regulations of the Court states that "[p]articipants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations."

7. Regulation 37 governs the page limits for documents filed with the Registry, and provides that "A document filed with the Registry shall not exceed 20 pages, unless otherwise provided in the Statute, Rules, these Regulations or ordered by the Chamber." Regulation 37(2) states that "The Chamber may, at the request of a participant, extend the page limit in exceptional circumstances."

C. SUBMISSIONS

8. Mr. Bemba hereby seeks leave of the Pre-Trial Chamber to file a consolidated reply to the Prosecution and Registry Responses. An application for a leave to reply was indeed foreshadowed in Mr. Bemba's original application.¹⁰

9. Firstly, there is no doubt that the present litigation raises issues which are both novel and complex. The issues raised by Mr. Bemba's Article 85 claim, and now in the Responses, give rise to a plethora of legal questions which are, in significant part, thus far unique to international criminal law proceedings. This warrants a full hearing of the issues, and provides good cause for granting him the opportunity to reply. In Mr. Bemba's respectful submission, a reply will assist the Pre-Trial Chamber in the determination of the questions raised.

⁸ ICC-01/05-01/08-3680-Red ("Prosecution Response") and ICC-01/05-01/08-3681-Red3 ("Registry Response").

⁹ Email from Pre-Trial Chamber II to the parties sent on Friday 29 March 2019 at 10:04.

¹⁰ ICC-01/05-01/08-3673-Red, para. 169.

10. Secondly, the picture surrounding the treatment of Mr. Bemba's assets has always been murky. As the Registry concedes, "the Defence may not have the full picture"¹¹ concerning the actions of States and their level of involvement with the Registry. The Prosecution and Registry Responses go some way (albeit to a limited extent) to helping to complete this picture, and provide Mr. Bemba with new facts and allegations to which he wishes to respond. The Registry Response, for example, makes submissions on the legal status of items of property, which differ from his understanding.¹² Significantly, the Registry also submits that "the Court in the Main Case was in constant interactions with states in relation to freezing and/or seizure of assets on a conservatory basis, in particular with Portugal and the DRC".¹³ This is new information to Mr. Bemba, that has implications for the question of liability for the management of his property, on which he would like to make additional submissions.

11. In terms of the Prosecution Response, evidently the Prosecution and Mr. Bemba take opposing positions on the significance of the errors made during the *Bemba* trial process and in the Trial Judgement. Mr. Bemba respectfully submits that many aspects of the Prosecution's characterisation of its own conduct and that of the Trial Chamber and LRV warrant further submissions. In addition, however, the Prosecution Response seeks to introduce a new (and in Mr. Bemba's submission, incorrect) standard for the adjudication of claims under Article 85 of the Rome Statute,¹⁴ and makes concrete submissions as to alleged "public" nature of the claim¹⁵ which Mr. Bemba could not reasonably have anticipated. These aspects of the Prosecution Response give further justification for granting the present request for leave to reply.

12. Given the combined length of the Prosecution and Registry filings, Mr. Bemba

¹¹ Registry Response, para. 25.

¹² Registry Response, para. 8, 10 and *see* ICC-01/05-01/08-545-Conf-Exp-Anx2.

¹³ Registry Response, para. 26.

¹⁴ Prosecution Response, paras. 5-22.

¹⁵ Prosecution Response, paras. 96-102.

seeks authorisation to file his reply no later than 10 June 2019 (namely, six weeks following the filing of the Responses), and respectfully requests a variation of the page limit to 50 pages in length in order to reply to the numerous issues raised.

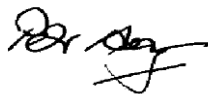
D. RELIEF SOUGHT

13. For the reasons outlined above, Mr. Bemba respectfully requests that Pre-Trial Chamber II:

GRANT Mr. Bemba's request for leave to file a reply to the "Confidential redacted version of "Prosecution's response to Mr Bemba's claim for compensation and damages"" and "Confidential EX PARTE Redacted version of the Registry's Observations on the Defence Compensation Claim" no later than 10 June 2019; and

GRANT Mr. Bemba's request for variation of the page limit under Regulation 37(2) of the Regulations of the Court to 50 pages.

The whole respectfully submitted.



Peter Haynes QC

Lead Counsel for Mr. Jean-Pierre Bemba

Done at The Hague, The Netherlands, 8 May 2019