

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 December 2012

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

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

Confidential *ex parte* Office of the Prosecutor and Registry only

**Decision on the Registry's observations on the prosecution's request relating to
Article 70 investigations**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Ms Petra Kneuer

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the 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

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Defence Support Section

Mr Peralta Losilla Esteban

Mr Sam Sasan Shoamanesh

Victims and Witnesses Unit

Ms Maria-Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber III ("Chamber") of the International Criminal Court in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* issues the following Decision on the Registry's observations on the prosecution's request relating to Article 70 investigations.

1. On 15 November 2012, the Office of the Prosecutor ("prosecution") filed its "Prosecution Request for Record of Payments made by the Registry to Witnesses called by the Defence of Mr Jean-Pierre Bemba Gombo ("Request"),¹ in which it informs the Chamber that it is currently conducting an investigation pursuant to Article 70 of the Rome Statute ("Statute"). To this end, the prosecution requests the Chamber to order the Registry to: (i) provide the prosecution with the record of the payments effected by the Registry to defence witnesses who have testified or who are testifying in the future, including the three expert witnesses, on any ground related to their testimonies, either directly or through any intermediary person or persons; and (ii) provide the prosecution with information as to the amount of professional fees that the three defence expert witnesses were granted and paid.
2. On 20 November 2012, the Chamber issued its "Decision requesting the Registry's observations on the prosecution's request relating to Article 70 investigations",² in which, in order to issue an informed decision on the matter, it ordered the relevant sections within the Registry to submit observations on the prosecution's Request by 16.00 on 26 November 2012.
3. The Registry filed its submissions confidentially and *ex parte* prosecution and Registry only ("Registry's Submissions"),³ in which, in relation to the

¹ Prosecution Request for Record of Payments made by the Registry to Witnesses called by the Defence of Mr Jean-Pierre Bemba Gombo, 15 November 2012, ICC-01/05-01/08-2412-Conf-Exp.

² Decision requesting the Registry's observations on the prosecution's request relating to Article 70 investigation, 20 November 2012, ICC-01/05-01/08-2412-Conf-Exp.

³ Registry's Observations relating to the "Decision requesting the Registry's observations on the prosecution's request relating to Article 70 investigations", Confidential *ex parte* Prosecution and Registry only, 26 November

payments made by the Victims and Witnesses Unit ("VWU"), it indicates the types of expenses incurred in relation to all witnesses, irrespective of the calling party, and stresses that financial decisions are made independently by the VWU and approved by the Registrar.⁴ In addition, the Registry states that, on certain occasions, payments were made through the defence counsel or *pro bono* legal assistants of the defence in order to facilitate witnesses' applications for travel documents and to cover expenses relating to their accommodation in the field.⁵ Further, in relation to the payments from the Counsel Support Section, the Registrar details the fees agreed between the accused and the expert witnesses called by the defence, but underlines that no remuneration has been paid to any of the expert witnesses so far.⁶ A detailed table in Annex 1 to the Registry's Submissions, filed confidentially and *ex parte* VWU only, with the amounts so far paid in relation to each witness called by the defence was also provided to the Chamber.⁷ Finally, the VWU specifies that, due to its "neutral" role towards parties and participants, it is currently preparing a similar table containing expenses of all prosecution witnesses that it intends to file in the record of the case.⁸

4. The Chamber notes that, although only requested to provide observations on the prosecution's Request, the Registry, in its cover filing, has already addressed the prosecution's Request and provided the prosecution with most of the information sought in relation to witnesses called by the defence including the type of expenses incurred, the instances in which payments were made through the defence team, and the professional fees to be paid to the expert witnesses. In addition, the Registry also states that, subject to the application of certain redactions, the detailed information relating to the

2012, ICC-01/05-01/08-2441-Conf Exp, with Annex 1, confidential *ex parte*, VWU only, and Annexes 2 to 6, confidential *ex parte* Registry only.

⁴ ICC-01/05-01/08-2441-Conf-Exp, paragraphs 2 to 6.

⁵ ICC-01/05-01/08-2441-Conf-Exp, paragraph 5.

⁶ ICC-01/05-01/08-2441-Conf-Exp, paragraphs 8 to 13.

⁷ ICC-01/05-01/08-2441-Conf-Exp-Anx1.

⁸ ICC-01/05-01/08-2441-Conf-Exp, paragraph 7.

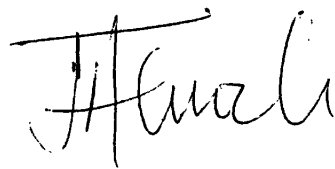
expenses incurred and payments made to each defence witness, contained in its Annex 1, could be shared with the parties.⁹ In the view of the Chamber, in the event that the prosecution requires more detailed information than that already at its disposal, it should request it directly from the Registry.

5. In view of the foregoing, and pursuant to Article 64(6)(f) of the Statute, the Chamber finds that a decision on the prosecution's Request is no longer required.

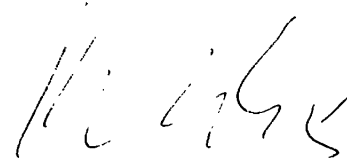
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 3 December 2012

At The Hague, The Netherlands

⁹ ICC-01/05-01/08-2441-Conf-Exp, paragraph 14.