

PUBLIC ANNEX A

From: Gibson, Kate
Sent: 01 December 2011 10:31
To: Scaliotti, Massimo; Lowery, Sam; [Redacted]
Cc: [Redacted]
Subject: RE: Bemba case - List of documents for the purpose of the examination of Witness CAR-OTP-PPPP-0219

Dear Sam,

I have been asked by counsel to send the following email.

The Defence has some sympathy with the Prosecution's position. It plainly did not anticipate that four of its principal witnesses would refuse to attend during this calendar year and that it would have to call General Opande in order to ensure a measure of continuity in its case.

The Defence, nonetheless, notes with interest the General's availability to attend and is compelled to remark that it appears that the Chamber would have been faced with an application from the Prosecution for a substantial suspension of proceedings to accommodate him in any event, had all other evidence been completed, say, sometime in January 2012.

That period of suspension would have easily facilitated proper and timely service of his expanded report and revised list of source materials, about which the Defence could have no possible complaint. In the Defence submission, mere expediency (or rather the convenience of certain Congolese politicians) does not justify the circumnavigation of the rules on disclosure of expert evidence to the prejudice of the Defence.

Skeletal though it may be, General Opande's October 2010 report is the only proper and timely indication that the Defence has been given of his proposed oral testimony. Accordingly, you are correct to assume that the objection to the use of these documents which do not form part of the source materials of his report is one of substance and not admissibility.

As submitted by Defence Counsel on Monday, the regime prescribed by the decisions of this Chamber make a special category of expert witnesses. Opposing parties are entitled to have full disclosure at least 30 days in advance of testimony not just of the gist of an expert witness' opinion, but of its detail and its sources. To permit General Opande to give evidence by reference to a list of documents, (the sections of which will be relied upon remain unspecified), is to ambush the Defence in its preparation for this witness. That these documents form part of the record is irrelevant. What is relevant is whether this material was before the expert when he prepared his report.

The Defence is not suggesting that the military expert draft an additional report "every time a new fact relevant to his expertise" arises. However, contrary to Mr. Scaliotti's assertions, it is common practice for parties calling an expert witness to seek supplemental reports based upon facts which arise during the proceedings. The Defence cannot comprehend by what mechanism General Opande can have come by Defence materials (such as the *Cahier de Communication* referred to in his expanded report), other than through additional instructions from the Prosecution. By providing him with these additional source materials, but failing to seek and disclose a supplemental expert report in a timely manner, the

Prosecution is bypassing the rules of disclosure which govern expert evidence in this trial, to the prejudice of Defence preparations.

Such prejudice would be alleviated by the calling of General Opande after a sufficient lapse of time from the disclosure of the supplemental report and expanded list of source materials.

Kind Regards,
Kate Gibson
Legal Assistant of Mr. Jean-Pierre Bemba

From: Scaliotti, Massimo
Sent: 30 November 2011 15:48
To: Lowery, Sam; Gibson, Kate; [Redacted]
Cc: [Redacted]
Subject: RE: Bemba case - List of documents subject for the purpose of the examination of Witness CAR-OTP-PPPP-0219

Dear Sam,

The Defence objection is without merit and seeks to obscure the facts of the case and distort the opinion of the military expert. The documents objected to by the Defence form or likely will form part of the record and are facts in this case. If facts, such as the facts contained in these documents, are withheld from the military expert he will effectively be prevented from offering his expert opinion on crucial evidence in the case. The military expert's opinion could become distorted by not having available to him these salient facts touching on his area of expertise. The Prosecution has proceeded with its preparation for the examination of the military expert under the reasonable assumption that he would assist the Chamber by providing an expert opinion on the military significance of certain facts relevant to his area of expertise. These facts are included in the transcripts, the documents of the case, and witness statements. It is inconceivable that the military expert would draft an additional report, as suggested by the Defence, every time a new fact relevant to his expertise arose in the proceedings. Were that the case, there would be absolutely no need for him to present oral testimony and instead the Chamber could rely entirely on written information. This practice would not only be inefficient but entirely impracticable. The Defence objection severely undermines the rationale behind calling an expert witness for live testimony in the first place.

Kind regards,

Massimo

Massimo Scaliotti
Trial Lawyer
Office of the Prosecutor
International Criminal Court
tel. [Redacted]
fax 0031 70 515 8555
e-mail [Redacted]

From: Lowery, Sam
Sent: 30 November 2011 15:35
To: Scaliotti, Massimo; 'Gibson, Kate'; [Redacted]
Cc: [Redacted]
Subject: RE: Bemba case - List of documents for the purpose of the examination of Witness CAR-OTP-PPPP-0219

Dear Mr Scaliotti,

Email observations would assist the Chamber, thank you.

I do not understand the defence to be objecting to the admission of documents 6, 7, 8, 9, 10, 11, 12, 13, 21 and 22 into evidence, but rather the use of those documents during the witness' questioning. In which case, decision 1470 does not apply.

Ms Gibson, if this reading of the defence's objection is not correct, please clarify.

From: Scaliotti, Massimo
Sent: 30 November 2011 15:28
To: Lowery, Sam; 'Gibson, Kate'; [Redacted]
Cc: [Redacted]
Subject: RE: Bemba case - List of documents for the purpose of the examination of Witness CAR-OTP-PPPP-0219

Dear Sam,

The Prosecution has observations and could respond to the Defence objections in writing in a few minutes.

However, since exchange of emails on objections does not seem to be envisioned by Decision 1470, we would kindly ask you to shed light on whether the Chamber requests Prosecution observations in writing now.

Kind regards,

Massimo

Massimo Scaliotti
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From: Lowery, Sam
Sent: 30 November 2011 15:07
To: 'Gibson, Kate'; [Redacted]
Cc: [Redacted]; Scaliotti, Massimo; [Redacted]
Subject: RE: Bemba case - List of documents for the purpose of the examination of Witness CAR-OTP-PPPP-0219

Does the prosecution have any observations on the defence's objection?

From: Gibson, Kate
Sent: 30 November 2011 14:28
To: [Redacted]; Lowery, Sam; [Redacted]
Cc: [Redacted]; Scaliotti, Massimo; [Redacted]
Subject: RE: Bemba case - List of documents for the purpose of the examination of Witness CAR-OTP-PPPP-0219

Dear Sam,

I have been asked by counsel to send the following email, concerning the Prosecution's List of Documents for the examination of Witness CAR-OTP-PPPP-0291 (the military expert).

The Defence objects to the use of documents 6, 7, 8, 9, 10, 11, 12, 13, 21 and 22. These materials were not amongst those provided to the expert witness in the preparation of his report. Had the Prosecution intended to seek the expert witness' opinion on these documents, these should have been provided to him, and an additional report detailing his opinion on these materials should have been disclosed to the Defence at least 30 days prior to his testimony.

Kind Regards,
Kate Gibson
Legal Assistant of Mr. Jean-Pierre Bemba

From: [Redacted]
Sent: 28 November 2011 17:10
To: [Redacted]
Cc: [Redacted]
Subject: Bemba case - List of documents for the purpose of the examination of Witness CAR-OTP-PPPP-0219

Dear all,

Please find attached the list of documents (pursuant to the decision # 1470, paragraphs 7a and 15) that will be used by the Prosecution for the purpose of the examination of Witness CAR-OTP-PPPP-0219.

Kind regards,

Mesdames, Messieurs,

Veillez trouver ci-joint la liste des documents (conformément à la Décision ICC-01/05-01/08-1470, paragraphes 7a et 15) que l'Accusation utilisera durant l'audition du témoin CAR-OTP-PPPP-0219.

Meilleures salutations,

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