

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13

Date: 14 April 2015

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuca
Judge Bertram Schmitt

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

Decision on 'Urgent Request for Access to the Content of Seized Communications'

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Gosnell

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Legal Representatives of Victims

Legal Representatives of 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

Others

Independent Counsel

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Trial Chamber VII ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido* ('Bemba et al. case'), having regard to Regulations 23bis and 35 of the Regulations of the Court ('Regulations'), issues the following 'Decision on "Urgent Request for Access to the Content of Seized Communications"'.

1. On 13 March 2015, the independent counsel appointed to review potentially privileged material transmitted to the Court in relation to the *Bemba et al.* case ('Independent Counsel') identified, from a SIM card belonging to Mr Kilolo ('Kilolo SIM Card'), 41 text messages, 196 phone calls from a call log, and 77 contacts as relevant to the proceedings and not privileged ('March 2015 Report').¹ On 9 April 2015, the Chamber authorised the defence for Mr Kilolo ('Kilolo Defence') and the defence for Mr Bemba ('Bemba Defence') to make observations on this material, if any, within five days of being notified thereof ('Review Procedure Decision').² On 13 April 2015, the Kilolo Defence and Bemba Defence were notified of the relevant material.

2. Also on 13 April 2015, the Bemba Defence urgently requested (i) access to the original telephone recordings of those calls listed in Annex C to the March 2015 Report which, it alleges, constituted the basis for Independent Counsel's analysis; (ii) an extension of the deadline for submitting its observations to either five days from the receipt of the original telephone recordings or five days from the Chamber's rejection of its Request; and (iii) future access to the

¹ Rapport du Conseil indépendant sur la levée des scellés et l'analyse de pièces saisies par les autorités françaises et les autorités belges (Décisions ICC-01/05-01/13-41 et ICC-01/05-01/13-366 et 446), ICC-01/05-01/13-845-Conf, paras 43-46; *see also* ICC-01/05-01/13-845-Conf-Exp-AnxB; ICC-01/05-01/13-845-Conf-Exp-AnxC; ICC-01/05-01/13-845-Conf-Exp-AnxD.

² Decision on 'Request concerning the review of seized material' and related matters, ICC-01/05-01/13-893-Red, para. 24.

content of all materials reviewed by Independent Counsel in which Mr Bemba is a potential privilege-holder ('Request').³

3. The Chamber does not consider it necessary to receive any further submissions in relation to the Request in order to reach its decision thereupon.
4. The Chamber considers that the Request is based on a misunderstanding of the March 2015 Report and is therefore without merit. Independent Counsel reported that all recordings acquired from the Kilolo SIM Card were irrelevant to the *Bemba et al.* case.⁴ Annex C to the March 2015 Report only contains entries on a call log forensically acquired from the Kilolo SIM Card and Independent Counsel's analysis thereof.⁵ The Bemba Defence does not provide any basis for its assertion that Independent Counsel reviewed any recordings of the telephone calls listed on the call log or had any other information relating to the call log entries identified in Annex C to the March 2015 Report.
5. Other than its unfounded request for access, the Bemba Defence fails to indicate any reason why the Chamber should extend the deadline for observations on Annex C to the March 2015 Report. The Chamber therefore finds that the Bemba Defence has not shown the existence of good cause, pursuant to Regulation 35(2) of the Regulations, for an extension of time.
6. The Chamber also considers that the request for future access to material reviewed by Independent Counsel is unfounded. The Chamber has already adopted a procedure which permits the information owners and potential privilege-holders to make observations on any material identified by Independent Counsel as relevant to the proceedings and non-privileged before such material is provided to the other parties.⁶ Insofar as the Bemba

³ Urgent Request for Access to the Content of Seized Communications, ICC-01/05-01/13-903-Conf-Exp.

⁴ March 2015 Report, ICC-01/05-01/13-845-Conf, para. 47.

⁵ March 2015 Report, ICC-01/05-01/13-845-Conf, paras 42 and 45; ICC-01/05-01/13-845-Conf-Exp-AnxC.

⁶ Review Procedure Decision, ICC-01/05-01/13-893-Red, paras 17-24.

Defence requests access to all material reviewed by Independent Counsel, it fails to provide any justification for reconsideration of the relevant procedure.

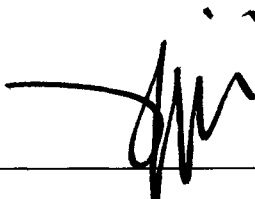
7. Finally, the Chamber notes that the Request is classified 'confidential, *ex parte*'. However, the Chamber does not consider that the information therein warrants this classification. In the interests of publicity and transparency, the Request will therefore be reclassified as 'Public' pursuant to Regulation 23bis(3) of the Regulations.

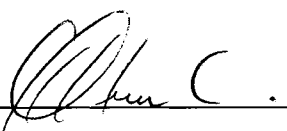
FOR THE FOREGOING REASONS THE CHAMBER HEREBY

REJECTS the Request in its entirety; and

ORDERS the Registry to reclassify the Request (ICC-01/05-01/13-903-Conf-Exp) as 'Public'.

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



Judge Chile Eboe-Osuji, Presiding

Judge Olga Herrera Carbuccia

Judge Bertram Schmitt

Dated 14 April 2015

At The Hague, The Netherlands