

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 20 July 2015

**TRIAL CHAMBER VII**

**Before:** Judge Chile Eboe-Osuji, Presiding Judge  
Judge Olga Herrera Carbuccion  
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***

**Confidential**

**Decision on the Independent Counsel Report of 2 July 2015**

**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**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Trial Chamber VII** (the 'Chamber') of the International Criminal Court (the '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*, having regard to Articles 64(2), (3), (6), 67 and 68(1) of the Rome Statute and Rules 73, 77 and 84 of the Rules of Procedure and Evidence (the 'Rules'), issues the following 'Decision on the Independent Counsel Report of 2 July 2015' (the 'Decision').

## **I. Background and Procedural History**

1. On 9 April 2015, the Chamber maintained a procedure, initially established by the Pre-Trial Chamber,<sup>1</sup> for an appointed independent counsel (the 'Independent Counsel') to review certain seized materials in this case.<sup>2</sup> The Independent Counsel was tasked with: (i) being present at the unsealing of seized material, (ii) reviewing it, and (iii) submitting a report to the Chamber as to which materials he considered to be relevant and not privileged.<sup>3</sup> These reports were to be notified *ex parte* to the Chamber and the defence teams that represent the accused who own the material or are potential privilege holders thereof,<sup>4</sup> in this instance namely the defence teams for Mr Bemba, Mr Kilolo and Mr Mangenda. These defence teams were to make any observations on the reports within five days of being notified thereof.<sup>5</sup> The Chamber was thereafter to rule on any objections raised and provide the material to the other parties as appropriate.
2. On 20 April 2015, Registry representatives and Independent Counsel met with Representatives of the Ministry of Justice of the Kingdom of Belgium

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<sup>1</sup> See ICC-01/05-01/13-41-Conf-Exp (ICC-01/05-01/13-41-Red) and ICC-01/05-01/13-366-Conf (ICC-01/05-01/13-366-Red).

<sup>2</sup> ICC-01/05-01/13-893-Red.

<sup>3</sup> ICC-01/05-01/13-893-Red, paras 19-23, page 13.

<sup>4</sup> ICC-01/05-01/13-893-Red, paras 22-24.

<sup>5</sup> ICC-01/05-01/13-893-Red, paras 22-24.

in order to unseal material transmitted by the Belgian authorities,<sup>6</sup> consisting of 'documentary material (hundreds of pages) and various electronic items such as two mobile phones, one hard drive, several SIM cards, one iPod, several DVDs/CDs and a USB stick'.<sup>7</sup>

3. On 15 May 2015, the Registry transmitted to the Independent Counsel a CD containing a copy of the judicial file transmitted by the Belgian authorities, consisting of 35 files.
4. On 2 July 2015, Independent Counsel submitted a report on the material seized by the Belgian authorities, selecting 21 items he considered relevant and non-privileged (the 'Report').<sup>8</sup> Those 21 items were annexed to the Report (the 'Annexes').
5. On 8 July 2015, the defence team for Mr Bemba (the 'Bemba Defence')<sup>9</sup> and the defence team for Mr Kilolo (the 'Kilolo Defence')<sup>10</sup> submitted their observations on the Report.
6. On 14 July 2015, the Prosecution responded to observations made by the Bemba Defence.<sup>11</sup>

## II. Submissions and Analysis

7. The Chamber incorporates by reference a previous decision in which it outlined its approach when assessing material identified by Independent Counsel as relevant and non-privileged, including its understanding of Rule 73 of the Rules and the crime or fraud privilege exception.<sup>12</sup>

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<sup>6</sup> ICC-01/05-01/13-931-Conf, page 3.

<sup>7</sup> ICC-01/05-01/13-931-Conf, para. 3.

<sup>8</sup> ICC-01/05-01/13-1047-Conf-Exp.

<sup>9</sup> ICC-01/05-01/13-1069-Conf-Exp; ICC-01/05-01/13-1069-Conf-Red.

<sup>10</sup> ICC-01/05-01/13-1071-Conf-Exp.

<sup>11</sup> ICC-01/05-01/13-1081-Conf.

<sup>12</sup> ICC-01/05-01/13-947, paras 13-19.

8. Having considered the Report, the redactions proposed therein to the Annexes by the Independent Counsel and the submissions before it, the Chamber considers the Annexes, analysed further below, to be relevant and not privileged except where otherwise stated.
9. Annex 1, presently available only to the Independent Counsel, is the judicial file containing information on the process by which the materials were seized in Belgium. Annex 2, presently additionally available to the Kilolo Defence, and Annex 3, presently additionally available to the Kilolo Defence, Bemba Defence and the defence for Mr Mangenda, are redacted versions of the same. The Chamber will maintain the redactions thereto, noting that they concern submissions and decisions which are confidential, *ex parte* or under seal or information which is not relevant to the case or privileged,<sup>13</sup> and transmit Annex 3 to all of the parties.
10. Annex 4 comprises the content of Mr Kilolo's hand baggage, including receipts of a monetary transfer. The Chamber decides that the parts of the annex which concern persons irrelevant to the case shall be redacted, in line with the submissions of the Kilolo Defence.<sup>14</sup>
11. Annex 5, a receipt for a phone, shall be transmitted to all of the parties.
12. Annex 6, a money transfer request from Mr Bemba to his bank, shall not be transmitted to all of the parties as it is dated outside of the relevant timeframe (end of 2011 and 14 November 2013)<sup>15</sup> and arose prior to the freezing of Mr Bemba's assets and is therefore irrelevant to the charges.
13. Annex 7, a list of draft questions to be put to witnesses (at pages 7-11 of that document), shall not be transmitted to the parties as they concern the

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<sup>13</sup> ICC-01/05-01/13-1047-Conf-Exp, para. 5.

<sup>14</sup> ICC-01/05-01/13-1071-Conf-Exp, paras 6-7.

<sup>15</sup> ICC-01/05-01/13-947, para. 19.

internal work product of the defence in another case, pursuant to Rule 81(1) of the Rules.

14. Annex 8, a list of names and numbers in the possession of Mr Kilolo, shall be redacted to exclude the names and numbers of those persons who are neither listed in the Confirmation Decision nor any of the fourteen witnesses alleged to have been interfered with,<sup>16</sup> and therefore of no relevance to the case, in line with the submissions of the Bemba Defence<sup>17</sup> and Kilolo Defence.<sup>18</sup>
15. Annex 9, containing a money transfer request for Mr Kilolo, shall be transmitted to all of the parties as it falls within the relevant timeframe and may thus be of relevance to the case, contrary to the submission of the Kilolo Defence.<sup>19</sup>
16. Annex 10, concerning telephone sim card information in the possession of Mr Kilolo, shall be transmitted to all of the parties.
17. Annex 11 and 12, pictures of the phones in the possession of Mr Kilolo, shall be transmitted to all of the parties.
18. Annex 13 a money transfer request for Mr Kilolo, shall be redacted to exclude the transfer to a person who is not relevant to the case, in line with the submission of the Kilolo Defence.<sup>20</sup>
19. The following, found in the possession of Mr Kilolo, shall be transmitted to all of the parties: Annex 14, a picture of a sim card; Annex 15, a picture of a

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<sup>16</sup> ICC-01/05-01/13-947, para. 19.

<sup>17</sup> ICC-01/05-01/13-1069-Conf-Exp, para. 34

<sup>18</sup> ICC-01/05-01/13-1071-Conf-Exp, para. 11.

<sup>19</sup> ICC-01/05-01/13-1071-Conf-Exp, para. 12.

<sup>20</sup> ICC-01/05-01/13-1071-Conf-Exp, para. 14.

Western Union card; Annexes 16, 17 and 18, pictures of sim cards; Annex 19, a receipt for a money transaction; and Annex 20, an accounting list.

20. Annex 21, a picture of the passport of Mr Kilolo, shall not be transmitted to all of the parties as it is irrelevant to the case.

21. With respect to the Bemba Defence request that the Prosecution be prevented from relying on any of the material transmitted to it as a result of the Belgium seizure on the ground that the Report and its Annexes were transmitted to the Defence (and the Chamber) after the expiration of the Prosecution deadline for the disclosure of evidence, the Chamber considers it premature to pronounce on this point until the Prosecution, upon receiving the materials, indicates an intention to rely on that material as incriminating evidence at trial.

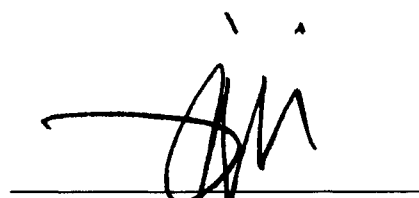

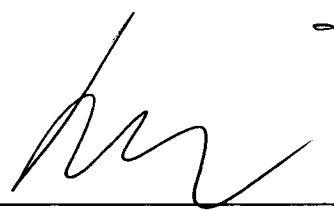
#### **FOR THE FOREGOING REASONS THE CHAMBER HEREBY**

**DIRECTS** the Registry, after the Independent Counsel applies the indicated redactions in Annexes 3, 5, 9-12 and 14-20 to the Report within five days of notification of the present decision, to transmit those Annexes to all of the parties;

**DIRECTS** the Bemba and Kilolo Defence to promptly inform the Independent Counsel of the specific additional information to be redacted from Annexes 4, 8 and 13 to the Report in accordance with paragraphs 10, 14 and 18 above; and

**DIRECTS** the Registry, after the Independent Counsel applies all required redactions in Annexes 4, 8 and 13 to the Report within seven days of notification of the present decision, to transmit them to the other parties.

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

  
**Judge Chile Eboe-Osuji**  
(Presiding)  
**Judge Olga Herrera Carbuccion**  
**Judge Bertram Schmitt**

Dated 20 July 2015

At The Hague, The Netherlands