

**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**

Public

Decision on Independent Counsel Report of 25 June 2015

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

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Others

Independent Counsel

Trial Chamber VII (the ‘Chamber’) of the International Criminal 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 and Regulation 23 *bis* of the Regulations of the Court, issues the following ‘Decision on Independent Counsel Report of 25 June 2015’.

1. The Chamber recalls its previous decisions appointing an independent counsel (the ‘Independent Counsel’) to review certain seized materials in this case¹ and setting out how the relevance and potentially privileged character of selected materials would be assessed.²
2. On 25 June 2015, the Independent Counsel filed a report (the ‘Report’) informing the Chamber that he had reproduced a list of relevant contacts contained on a forensic copy of material seized by national authorities (the ‘Contact List’). This contact list was reproduced from a ‘*carte mémoire*’ of a telephone belonging to Mr Kilolo.³ This information was reclassified so that the defence teams for Mr Bemba and Mr Kilolo (the ‘Bemba Defence’ and ‘Kilolo Defence’, respectively) could file observations on the Report.⁴

¹ Decision on ‘Request concerning the review of seized material’ and related matters, 9 April 2015, ICC-01/05-01/13-893-Red (confidential version notified same day). This decision maintained a procedure initially established by the Pre-Trial Chamber. Pre-Trial Chamber II, Decision on Prosecutor’s “Request for judicial order to obtain evidence for investigation under Article 70”, 29 July 2013, ICC-01/05-52-Red2 (public redacted version notified 3 February 2014); Decision appointing an Independent Counsel and taking additional measures for the purposes of the forensic acquisition of material seized in the proceedings, 13 December 2013, ICC-01/05-01/13-41-Red (reclassified as public on 3 February 2014) and Decision on the “Prosecution’s Request to Refer Potentially Privileged Materials to Independent Counsel”, 25 April 2014, ICC-01/05-01/13-366-Red (confidential version notified same day).

² Public-redacted version of Decision on Independent Counsel Report on Material transmitted by the Dutch Authorities, 30 June 2015, ICC-01/05-01/13-1046-Red (confidential *ex parte* version filed same day); Decision Providing Materials in Two Independent Counsel Reports and Related Matters, 15 May 2015, ICC-01/05-01/13-947.

³ Addendum au 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-01/05-01/13-1035-Conf-Exp (with annex; notified 26 June 2015).

⁴ Email from a Legal Officer of the Chamber to the Registry, 7 July 2015 at 15:30; Email from the Registry to a Legal Officer of the Chamber, 9 July 2015 at 12:36.

3. On 15 July 2015, the Bemba Defence⁵ and Kilolo Defence⁶ filed their observations. The Bemba Defence requests the Chamber to not transmit the Contact List on grounds that it is irrelevant, or contains privileged information/confidential work product.⁷ The Kilolo Defence also requests the Chamber to not provide the Contact List to the parties, and further requests access to the materials analysed by the Independent Counsel in the framework of the Report.⁸
4. The Contact List links phone numbers on Mr Kilolo's *carte mémoire* with certain names and other information. The listed names include Mr Babala, an accused in this case, and another person whose phone contacts with Mr Kilolo have been previously transmitted to the other parties.⁹
5. The Chamber considers the Contact List to be relevant and not privileged except for entry 7, which the Bemba Defence and Kilolo Defence persuasively explain has no relevance to this case.¹⁰ The other arguments made against the Contact List's accuracy or the Independent Counsel's methodology in preparing it do not justify withholding it from the other parties. The Chamber emphasises that the present determination is without prejudice to future decisions the Chamber may make on the Contact List's admissibility or weight.¹¹
6. As to the Kilolo Request to access the materials analysed in the Report, the Chamber has already directed that the contents of the DVD analysed in the Report be made

⁵ Defence Observations on «Addendum au 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-01/05-01/13-1086-Conf-Exp.

⁶ Observations de la Défense de Monsieur Aimé Kilolo relatives à «l'Addendum au Rapport du Conseil indépendant sur la levée des scellés et l'analyse de pièces saisies par les autorités françaises et les autorités belges», ICC-01/05-01/13-1087-Conf-Exp.

⁷ ICC-01/05-01/13-1086-Conf-Exp, para. 27.

⁸ ICC-01/05-01/13-1087-Conf-Exp, paras 10-11.

⁹ Contact List, ICC-01/05-01/13-1035-Conf-Exp-Anx. *See also* Annexes B et C du 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), 20 May 2015, ICC-01/05-01/13-845-Conf-AnxB-Red, pages 22-28, and ICC-01/05-01/13-845-Conf-AnxC-Red, *passim* (ex parte versions filed 13 April 2015; redacted versions ordered by the Chamber in ICC-01/05-01/13-947).

¹⁰ ICC-01/05-01/13-1086-Conf-Exp, para. 10; ICC-01/05-01/13-1087-Conf-Exp, para. 7.

¹¹ *See* ICC-01/05-01/13-947, para. 17.

available to the Kilolo Defence and Bemba Defence.¹² No further order in this regard is necessary.

7. The Chamber notes the Bemba Defence's argument that, in view of the elapsed 30 June 2015 disclosure deadline, the Prosecution 'no longer enjoys the right to freely' add items to its list of evidence.¹³ The Chamber received the Report and Contact List prior to the disclosure deadline, but is only ruling on whether to provide it to the Prosecution now. When this happened on a previous occasion, the Chamber allowed the Prosecution a short extension of time to add the documents provided to its list of evidence.¹⁴ The Chamber will proceed the same way on this occasion.
8. Finally, in view of its ruling, the Chamber considers that the Report does not contain any substantive analysis of the Independent Counsel's selection process which could potentially assist the Prosecution in a manner inconsistent with the Independent Counsel's neutral mandate.¹⁵ This filing is to be reclassified as 'confidential'.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DIRECTS the Independent Counsel, within five days of notification of the present decision, to file a confidential redacted version of the Contact List (ICC-01/05-01/13-1035-Conf-Exp-Anx) in accordance with paragraph 5 above;

ALLOWS for an extension of the 30 June 2015 disclosure deadline for the Prosecution to add the Contact List to its list of evidence within two days of its notification; and

ORDERS the Registry to reclassify the Report (ICC-01/05-01/13-1035-Conf-Exp) as 'confidential'.

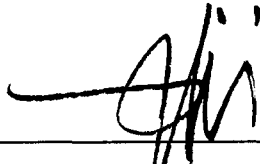
¹² ICC-01/05-01/13-845-Conf, para. 41; ICC-01/05-01/13-947, paras 39-41, page 19.

¹³ ICC-01/05-01/13-1086-Conf-Exp, paras 18-26.

¹⁴ ICC-01/05-01/13-1046-Red, page 12.

¹⁵ *In this regard*, see ICC-01/05-01/13-947, paras 27, 29.

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



Judge Chile Ebo-Osuji, Presiding



Judge Olga Herrera Carbuccion



Judge Bertram Schmitt

Dated 20 July 2015

At The Hague, The Netherlands