

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 23 March 2016

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Single Judge

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 Request by the Independent Counsel for Assistance by an Expert

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

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber VII ('Single Judge' and 'Chamber', respectively) 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 Article 64(6) of the Rome Statute and Regulation 23 bis(3) of the Regulations of the Court, issues the following 'Decision on Request by the Independent Counsel for Assistance by an Expert'.

1. On 29 July 2013, the Single Judge of Pre-Trial Chamber II appointed counsel from the List of Counsel ('Independent Counsel'), to review logs and recordings of telephone calls with regard to privilege and relevance, and submit a report as to the results of his review.¹ On 13 December 2013² and 25 April 2014,³ the Single Judge further appointed Independent Counsel to review seized material and DVDs containing email communications.
2. On 9 April 2015, the Chamber renewed the mandate of the Independent Counsel and tasked him with, *inter alia*, reviewing material seized by national authorities to identify privileged or obviously irrelevant material for the purposes of these proceedings.⁴ Over the course of the year 2015, the Independent Counsel received these materials and liaised with the Registry in order to fulfil his assignment.⁵

¹ Decision on Prosecutor's "Request for judicial order to obtain evidence for investigation under Article 70", ICC-01/05-52-Conf.

² Decision appointing an Independent Counsel and taking additional measures for the purposes of the forensic acquisition of material seized in the proceedings, ICC-01/05-01/13-41-Conf-Exp (ICC-01/05-01/13-41-Red).

³ Decision on the "Prosecution's Request to Refer Potentially Privileged Materials to Independent Counsel", ICC-01/05-01/13-366-Conf with a public redacted version, ICC-01/05-01/13-366-Red.

⁴ Decision on 'Request concerning the review of seized material' and related matters, ICC-01/05-01/13-893-Red.

⁵ *See*, Registry observations in response to filing ICC-01/05-01/13-938-Conf and in relation to the actions taken with items ICC-01/05-01/13-RPM-0022-0004 and ICC-01/05-01/13-RPM-0022-0037, 12 May 2015, ICC-01/05-01/13-944-Conf; Addendum au Rapport conjoint du Greffe et du Conseil indépendant (ICC-01/05-01/13-931-Conf), 2 June 2016, ICC-01/05-01/13-981-Conf; Further Registry submission related to the implementation of Decision ICC-01/05-01/13-947, 6 November 2015, ICC-01/05-01/13-1469-Conf.

3. On 18 March 2016, the Independent Counsel filed an application requesting the assistance of an expert in the analysis of the received materials ('Request'),⁶ explaining that he is unable to properly analyse the remaining materiel.⁷
4. As a preliminary matter, the Single Judge notes that the Request does not contain any information which should not be communicated to the parties and, accordingly, orders the Registry to reclassify the Request as 'confidential'.
5. The Single Judge notes that the Independent Counsel has consulted, throughout the process, with the Registry in order to ensure proper fulfilment of the task assigned to him by the Chamber.⁸ No reasons have been put before the Chamber as to why a deviation from this practice is necessary in the present circumstances. The Chamber will only intervene if a situation arises which requires resolution by the Chamber.

⁶ Communication du Conseil indépendant concernant les difficultés techniques rencontrées dans l'analyse de matériels électroniques et demande d'enjoindre le Greffe de désigner un expert pour l'assister, ICC-01/05-01/13-1729-Conf-Exp, available to the Independent Counsel and Registry only.

⁷ Request, ICC-01/05-01/13-1729-Conf-Exp, para. 16.

⁸ Request, ICC-01/05-01/13-1729-Conf-Exp, paras 11- 15.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

ORDERS the Registry to reclassify the Request as 'confidential'; and

ORDERS the Independent Counsel to liaise with the Registry in order to resolve the issue in the Request.

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

A handwritten signature in black ink, appearing to read 'Bertram Schmitt', is written over a horizontal line.

Judge Bertram Schmitt, Single Judge

Dated 23 March 2016

At The Hague, The Netherlands