

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 April 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 Bemba Defence Request for Extension of Time

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

Kingdom of The Netherlands

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(2) of the Rome Statute and Regulations 23 *bis*(3) and 35 of the Regulations of the Court ('Regulations') issues the following 'Decision on Bemba Defence Request for Extension of Time'.

I. Procedural History and Submissions

1. On 9 March 2016, the Chamber set the deadline of 8 April 2016 for, *inter alia*, all requests related to the submission or exclusion of evidence to be filed ('8 April Deadline').¹
2. On 17 March 2016, the defence for Mr Mangenda ('Mangenda Defence') filed a request for cooperation with the Dutch Authorities.² Therein, it prayed the Chamber to request the Dutch Authorities to disclose documents related to the surveillance of telephone numbers attributed to Mr Mangenda and any documents 'attached to those documents' or which are 'integrally connected to those documents such as, for example any request that resulted in the issuance thereof' ('Requested Material').³
3. On 5 April 2016, the Single Judge granted the above request, directing the Registry, in cooperation with the Mangenda Defence, to prepare the necessary cooperation request in order to facilitate the disclosure of the Requested Material ('Cooperation Decision').⁴

¹ Hearing on 9 March 2016, ICC-01/05-01/13-T-42-CONF-ENG, page 42, line 21 to page 43, line 12.

² Second Request for Disclosure of Information from Dutch Authorities, ICC-01/05-01/13-1727-Conf, with 10 confidential annexes A to J.

³ Request, ICC-01/05-01/13-1727-Conf, para. 25.

⁴ Decision on Second Mangenda Request for Cooperation, ICC-01/05-01/13-1768.

4. On the same day, the defence for Mr Bemba ('Bemba Defence') filed a request to extend the 8 April Deadline ('Request').⁵ Therein, it states, *inter alia*, that it was provided with material from the defence for Mr Kilolo ('Kilolo Defence') which is subject to the Cooperation Decision.⁶ The Bemba Defence explains that it requested the other defence teams to be allowed to assess any material connected to national proceedings before the Dutch authorities which are referenced in Requests for Assistance and was provided with copies of the Kilolo Defence's material on 4 April 2016. This material contains documents which form part of the Requested Material of the Cooperation Decision ('Kilolo Material').⁷
5. The Bemba Defence therefore requests an extension of the 8 April Deadline until 15 April 2016 in respect of its motion concerning the collection of evidence in The Netherlands in order to be able to incorporate the Kilolo Material into its submission.⁸
6. On the same day, the Mangenda Defence filed further information regarding the Cooperation Decision ('Further Information').⁹ Therein, it explains that it also received the Kilolo Material and informs the Chamber that part of its cooperation request, and incidentally the Cooperation Decision, became moot.¹⁰
7. On 6 April 2016, the Office of the Prosecutor ('Prosecution') filed its response to the Request, deferring to the Chamber's discretion ('Response').¹¹ However, it submits that the Bemba Defence did not sufficiently justify why it only received the Kilolo Material now, arguing that there was an extended period of inactivity

⁵ Urgent Defence Request for Extension of Time, ICC-01/05-01/13-1769-Conf.

⁶ Request, ICC-01/05-01/13-1769-Conf, para. 9.

⁷ Request, ICC-01/05-01/13-1769-Conf, paras 6, and 8-9.

⁸ Request, ICC-01/05-01/13-1769-Conf, paras 11, and 13.

⁹ Notice in Relation to Decision ICC-01/05-01/13-1768, ICC-01/05-01/13-1770-Conf.

¹⁰ Further Information, ICC-01/05-01/13-1770-Conf, para. 5.

¹¹ Prosecution's Response to the Bemba Defence's "Urgent Defence Request for Extension of Time" (01/05-01/13-1769-Conf), ICC-01/05-13-1773-Conf.

in which the Bemba Defence did not make any efforts to obtain the material.¹² Additionally, the Prosecution requests that, in case the Request is granted, either the requested extension is applied to all parties in order to harmonise the schedule; or the Prosecution receives additional time to file a consolidated response to the Bemba Defence's submission concerning the legality of the collection of evidence in The Netherlands and any other defence team; or the accused be directed to file a joint motion on the matter in order to enable the Prosecution to file a single response ('Prosecution Request').¹³

II. Analysis

8. As a preliminary matter, the Single Judge notes that as the Request and the Further Information have been filed confidentially, the parties are to prepare public-redacted versions of their respective filings or request reclassification thereof.
9. It is confounding that there has been such an apparent lack of communication and cooperation between the defence teams resulting in the current situation. From the motions filed by the Mangenda and Bemba Defence, all defence teams were well aware that the information contained in the Requested Material was of interest to at least some of the defence teams. Further, information related to the legality of the intercepted material has been the subject of numerous requests by defence teams. While the interests of the different defence teams may not always align, the Single Judge finds that as a matter of professional cooperation and comity the material in question should have been promptly made available without any further order by the Chamber or a specific request by another defence team.

¹² Response, ICC-01/05-413, para. 4.

¹³ Response, ICC-01/05-413, para. 5.

10. The Single Judge notes that the main reason advanced by the Bemba Defence - the late reception of the material containing relevant information - was outside of its control. The Bemba Defence stated that it requested '[t]hroughout the course of 2015'¹⁴ other defence teams for any relevant information. Therefore, the Single Judge finds that, according to the provided submissions, the Bemba Defence did not act in a negligent manner in trying to obtain the Kilolo Material, as suggested by the Prosecution. Further, the requested extension of time is for the limited purpose of submissions related to the specific evidence that has been intercepted by the Dutch authorities. Therefore, the Single Judge finds that 'good cause' within the meaning of Regulation 35(2), first sentence, of the Regulations, is shown. However, he considers that an extension until 12 April 2016 is sufficient and, accordingly, partially grants the Request.
11. Further, the Single Judge considers that the Kilolo Material is relevant to all defence teams and accordingly orders the Kilolo Defence to make it available, should it be requested.
12. In respect of the Requested Material, which was the subject of the Cooperation Decision, the Single Judge orders the Mangenda Defence to liaise with the Registry and adapt the cooperation request in light of the new information, in order to facilitate the cooperation with the Dutch authorities as expeditiously as possible.
13. With regard to the Prosecution Request, the Single Judge notes that the Request is to a specific limited issue. Further, the Single Judge finds it premature at this point in time to make any decision concerning responses to applications that have not been filed yet. Accordingly, the Prosecution Request is rejected.

¹⁴ Request, ICC-01/05-01/13-1769-Conf, para. 6.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request partially, extending the deadline for the Bemba Defence to file any submissions concerning the collection of evidence in The Netherlands by 12 April 2016 at 16h00;

REJECTS the Prosecution Request;

DIRECTS the parties to prepare public-redacted versions of their respective filings or request reclassification thereof;

DIRECTS the Kilolo Defence to make the Kilolo Material available to any other defence team should it be requested to do so;

DIRECTS the Mangenda Defence to liaise with the Registry in order to adapt the request for cooperation to the Dutch authorities; and

DIRECTS the Registry to transmit this decision to The Netherlands in the course of the execution of the related cooperation 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 6 April 2016

At The Hague, The Netherlands