

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 April 2016

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding
Judge Marc Perrin de Brichambaut
Judge Raul C. Pangalangan

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 'Defence Request for Judicial Notice'

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

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' or 'ICC'), 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 Article 69(6) of the Rome Statute ('Statute') issues the following Decision on the 'Defence Request for Judicial Notice'.

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 17 March 2016, the defence for Mr Bemba ('Bemba Defence') requested ('Request') that the Chamber take judicial notice of the dates and content of 79 documents from the case of *The Prosecutor v Jean-Pierre Bemba Gombo* ('Main Case') and the situation in the Central African Republic (ICC-01/05).¹ Those filings are set out in Annex A to the Request.² They relate to: issues of preparation, investigation and funding of the defence team in the Main Case;³ the fourteen defence witnesses who are the subject of the incidents set out in the charges brought pursuant to Article 70 of the Statute in the *Bemba et al* case;⁴ and, general structural matters which arguably shed light on the overall context in which the charged incidents took place.⁵ The Bemba Defence states that it 'is not seeking to admit the contents of these filings for the truth of their contents;

¹ Defence Request for Judicial Notice, ICC-01/05-01/13-1728, with confidential Annex A, ICC-01/05-01/13-1728-Conf-AnxA; a corrigendum was filed on 29 March 2016, ICC-01/05-01/13-1728-Conf-AnxA-Corr.

² Annex A to the Request, ICC-01/05-01/13-1728-Conf-AnxA-Corr. The items relate to 'i. The funding allocated to the Main Case Defence team, and Defence investigations; ii. Logistical issues encountered during Defence investigations, and in connection with the ability of the Defence to ensure the availability of Defence witnesses; iii. Assessments by various entities in the Court concerning the security and military status of Defence witnesses; iv. The timing and scheduling for Defence witnesses; v. The protection of Defence witnesses, and security concerns regarding potential intimidation or retaliation; vi. The demarcation of responsibilities between the Defence and the Registry as concerns issues pertaining to Defence witnesses; vii. The use of intermediaries as part of the evidence gathering process amongst CAR victims and witnesses; and viii. The overall system and context of witness payments in CAR, the nexus between such payments and issues of credibility/veracity.'

³ Request, ICC-01/05-01/13-1728, paras 9-10.

⁴ Request, ICC-01/05-01/13-1728, paras 9-10.

⁵ Request, ICC-01/05-01/13-1728, paras 9 and 11.

rather, the purpose is limited to establishing the various positions of the parties, Registry, and Trial Chamber throughout the Main Case proceedings'.⁶

2. On 24 March 2016, the Office of the Prosecutor ('Prosecution') filed its response to the Request opposing the taking of judicial notice of the majority of the documents.⁷ The Prosecution's argument rests on two main objections. The first is that the Bemba Defence is, contrary to its submissions, seeking to admit the filings for the truth of their contents.⁸ The second is that the majority of the documents tendered by the Bemba Defence are irrelevant to the issues in the case.⁹ In this vein, the Prosecution claims that the Bemba Defence has failed to identify a genuine link between facts in the Main Case and the conduct of the accused alleged in the *Bemba et al* case;¹⁰ and has failed to establish a link between the conduct of court agents and the alleged conduct of the accused in the *Bemba et al* case.¹¹ The Prosecution does not object to the Chamber taking judicial notice of the following Main Case records set out in Annex A: numbers 8, 13, 26, 27, 28, 29, 32, 34 and 72.¹²

II. ANALYSIS

3. Article 69(6) of the Statute provides that '[t]he Court shall not require proof of facts of common knowledge but may take judicial notice of them'. The Chamber has previously interpreted such "'facts of common knowledge'" to include facts which are capable of ready determination by resort to sources whose accuracy

⁶ Request, ICC-01/05-01/13-1728, para 6.

⁷ Prosecution's Response to Bemba's 'Defence Request for Judicial Notice', ICC-01/05-01/13-1751 (with confidential Annex A, ICC-01/05-01/13-1751-Conf-AnxA).

⁸ Response, ICC-01/05-01/13-1751, paras 1, 5-8.

⁹ Response, ICC-01/05-01/13-1751, paras 2, 9-15.

¹⁰ Response, ICC-01/05-01/13-1751, para. 10.

¹¹ Response, ICC-01/05-01/13-1751, para. 11.

¹² Response, ICC-01/05-01/13-1751, para. 16.

cannot reasonably be questioned'.¹³ The Chamber found the dates and contents of ICC court records to fall within this category.¹⁴ The Chamber further recalls its decision that a ruling on judicial notice is limited to taking judicial notice of the dates and contents of the relevant document and not to the truth or falsity of the document itself.¹⁵

4. The present request similarly concerns filings in the ICC court records system, the accuracy of which cannot reasonably be questioned. Furthermore, the Chamber accepts that the Bemba Defence is seeking judicial notice of the facts and content of these records rather than to establish the truth or falsity of any particular fact or position.
5. The Bemba Defence requests that the Chamber only take judicial notice of specific parts of transcript T-361 of the Main Case.¹⁶ The contents of the remainder of the transcript also fall within the remit of Article 69(6) of the Statute and the Chamber will therefore take notice of the contents of the entire transcript.
6. With regards to relevance, the Chamber has previously found that it 'may take judicial notice of facts of common knowledge without first assessing the relevance of these facts to the case at hand'.¹⁷ Whilst the Chamber retains the discretion to decline to take judicial notice of clearly irrelevant facts,¹⁸ the issues raised by the Bemba Defence in its Request cannot be said to be so plainly immaterial. The Chamber shall in its judgment pursuant to Article 74 of the Statute determine the extent to which, if at all, it will rely on facts of which it has

¹³ Decision on Prosecution Motion for Clarification of Rule 68(3) Direction in Conduct of Proceedings Decision, 15 September 2015, ICC-01/05-01/13-1249 ('Decision of 15 September 2015'), para. 5.

¹⁴ Decision of 15 September 2015, para. 6; *see also* Decision on Prosecution Request for Judicial Notice, 9 November 2015, ICC-01/05-01/13-1473 ('Decision of 9 November 2015'), para. 5.

¹⁵ Decision of 15 September 2015, ICC-01/05-01/13-1249, para. 6.

¹⁶ Annex A to the Request, ICC-01/05-01/13-1728-Conf-AnxA-Corr, p. 22, item 37.

¹⁷ Decision of 9 November 2015, ICC-01/05-01/13-1473, para 6.

¹⁸ Decision of 9 November 2015, ICC-01/05-01/13-1473, para 6.

taken judicial notice in its assessment of the evidence, in accordance with its approach to the general assessment of evidence laid down in previous decisions.¹⁹

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY


GRANTS the relief sought in the Request; and

TAKES judicial notice of the dates and contents of the materials contained in Annex A to the Request.

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



Judge Bertram Schmitt, Presiding



Judge Marc Perrin de Brichambaut



Judge Raul C. Pangalangan

Dated 13 April 2016

At The Hague, The Netherlands

¹⁹ Decision on Prosecution Requests for Admission of Documentary Evidence (ICC-01/05-01/13-Red, ICC-01/05-01/13-1113-Red, ICC-01/05-01/13-1170-Conf), 24 September 2015, ICC-01/05-01/13-1285, paras 9-13; Decision on ‘Prosecution’s Fourth Request for the Admission of Evidence from the Bar Table’, 12 November 2015, ICC-01/05-01/13-1480 para. 3; Decision on ‘Prosecution’s Fifth Request for the Admission of Evidence from the Bar Table’, 14 December 2015, ICC-01/05-01/13-1524, para. 3; and Decision on ‘Jean-Jacques Mangenda’s Request for the Admission of Evidence from the Bar Table’, 6 April 2016, ICC-01/05-01/13-1772, para. 7.