

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: 5 March 2015

TRIAL CHAMBER VII

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

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

**Request for extension of time to respond to the 'Prosecution's Submission on
the Appointment of Defence Counsel'**

Source: Counsel for Mr. Jean-Pierre Bemba Gombo

Document 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 Mr. Jean-Pierre Bemba Gombo

Ms. Melinda Taylor

Counsel for Mr. Aimé Kilolo Musamba

Mr. Paul Djunga Mudimbi

Counsel for Mr. Jean-Jacques Mangenda Kabongo

Mr. Christopher Michael Gosnell

Counsel for Mr. Fidele Babala Wandu

Mr. Jean-Pierre Kilenda Kakengi Basila

Counsel for the Mr. Narcisse Arido

Mr. Göran Sluiter

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

Introduction

1. On 17 February 2015, the Prosecution filed its 'Submission on the Appointment of Defence Counsel', (Submission)¹ which sets out its position that it is necessary for the Trial Chamber to review the appointment of Mr. Bemba's Counsel in light of Articles 12(3) and 16(1) of the Code of Professional Conduct for Counsel. Pursuant to an order of the Trial Chamber, the Submission was reclassified as 'Confidential' on 23 February 2015.
2. *Per* email, the Defence for Mr. Bemba (the Defence) notified the Trial Chamber and the Prosecution that Mr. Bemba wished to avail himself of the ability to obtain independent advice in relation to the Submission, before providing final instructions to the Defence as to his position.
3. For reasons beyond his control, Mr. Bemba has not yet been able to identify an available Counsel to provide him with such advice.
4. The Defence therefore requests an extension of time, pursuant to Regulation 35(1) of the Regulations of the Court, in order to facilitate Mr. Bemba's ability to obtain independent advice, before instructing the Defence on this matter.
5. This request has been filed on confidential basis due to the fact that it refers to the Prosecution's Submission, which is confidential. There is, however, nothing in the contents of this request which is confidential, and the Defence would have no objection to it being reclassified as public.

¹ ICC-01/05-01/13-819-Conf-Exp.

Submissions

6. In 2009, the Presidency directed the Registry to establish a system, which would enable the Defence (and presumably defendants) to obtain independent advice in relation to ethical issues arising under the Code of Professional Conduct.² To the knowledge of the Defence, no such system has been established.
7. Given the imperative that such advice must be 'independent', the Defence is also not in a position to advise Mr. Bemba as to possible Counsel, who would not have any conflict of interest with either the Main Case or the Article 70 case, and who would be willing to provide advice to Mr. Bemba on a *pro bono* basis.
8. Mr. Bemba was scheduled to meet with the Director of Court Services on Thursday 26 February 2015, and intended to raise this issue with him. Due to other work commitments, the Director cancelled the meeting and the meeting has not yet been rescheduled.
9. On Friday 27 February 2015, Mr. Bemba also submitted a request through the Detention Unit to meet with the Principal Counsel of the Office of Public Counsel for the Defence (OPCD), for the purpose of obtaining his advice as to the existence of either suitable candidates, or mechanisms for obtaining such independent advice.³

² ICC-02/04-01/05-378.

³ Counsel for the Defence informed Mr Bemba that since the Principal Counsel is the former supervisor of Counsel, the OPCD might lack the requisite appearance of 'independence' as concerns their ability to provide substantive advice on the issues in question. This would not, however, impede their ability to provide procedural or logistical advice on this issue.

10. The Defence subsequently contacted the OPCD for the purpose of firstly, notifying them that the Defence had no objection to Mr. Bemba meeting either with the OPCD for this initial purpose or with any Counsel designated to provide Mr Bemba with independent legal advice, and secondly, to request that the Defence be informed as soon as a suitable candidate was identified by Mr. Bemba, so that the Defence could request the Trial Chamber to reclassify any materials that might be required by such Counsel to perform his or her mandate.
11. The Defence was nonetheless informed on Thursday 5 March 2015, that the Principal Counsel had not yet received Mr. Bemba's request to meet with him, from the Detention Unit.
12. It therefore appears unlikely that a suitable candidate will be appointed, and have sufficient time to request and obtain relevant documentation, and then meet with Mr. Bemba, before the expiration of the deadline for the Defence response on 10 March 2015.
13. It is in the interests of the Defence that the issues raised by the Submission be addressed and resolved as expeditiously as possible. This need for expedition must, however, be balanced by the need to ensure that Mr. Bemba is fully aware of his rights and interests, and that his right to effective legal representation is preserved through informed choices.
14. There is therefore good cause to extend the deadline in order to facilitate this process, and to ensure that Mr. Bemba is in a position to provide informed instructions to the Defence as to his position on the Submission.

15. The time frame for the selection of Counsel, and the designated Counsel's subsequent availability to meet with Mr. Bemba fall outside of the control of the Defence. It is thus difficult for the Defence to anticipate when these events will occur. Nonetheless, given that the need for expedition will be impressed on all persons involved in this process, the Defence anticipates that an additional two weeks should suffice.

Relief Sought

16. For the reasons set out above, the Defence for Mr. Bemba requests the Honourable Trial Chamber to vary the deadline for the Defence Response to the 'Prosecution's Submission on the Appointment of Defence Counsel' from 10 March 2015, to 24 March 2015.



Melinda Taylor
Counsel for Mr. Jean-Pierre Bemba Gombo

Dated this, 5th Day of March 2015
At The Hague, The Netherlands