



Original: English

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

Date: 13/04/2015

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 Redacted

**Observations of the Defence for Mr. Jean-Pierre Bemba Gombo on the Agenda of
the First Status Conference**

Source: Defence 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

Fatou Bensouda

James Stewart

Kweku Vanderpuye

Counsel for the Defence of Mr Jean-Pierre Bemba Gombo

Melinda Taylor

Cécile Lecolle

Natacha Lebaindre

Counsel for the Defence of Mr Aimé Kilolo Musamba

Paul Djunga

Counsel for the Defence of Jean-Jacques Mangenda Kabongo

Christopher Gosnell

Counsel for the Defence of Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Counsel for the Defence of Mr Narcisse Arido

Charles Achaleke Taku

Philippe Larochelle

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section Other

A. INTRODUCTION

1. Without prejudice to the arguments and positions set forth in the Joint Defence Submissions, the Defence for Mr. Jean-Pierre Bemba Gombo respectfully submits its observations in relation to the following issues:

- i. The position of the Bemba Defence in relation to the agenda items; and
- ii. Additional items that the Bemba Defence wishes to raise at the Status Conference.

2. The Defence has filed confidential version and a public redacted version of this filing. [Redacted].

B. SUBMISSIONS

1. The position of the Bemba Defence in relation to the agenda items

3. The position of the Bemba Defence in relation to these items is encapsulated fully in the Joint Defence Submissions.

4. The Defence is not in a position to provide any further detail concerning the proposed number of Defence witnesses, documentary evidence, agreed facts, or the commencement of the trial.

5. In terms of the latter aspect, the Defence does wish to highlight that its ability to review evidence and obtain instructions in an expeditious and efficient manner has been significantly hampered by the unstructured manner of Prosecution disclosure, and the Prosecution's failure to submit an updated document containing the charges.

2. Additional items that the Bemba Defence requests to add to the agenda for the Status Conference.

6. The Defence respectfully requests the Trial Chamber to add the following discrete issues to the agenda of the Status Conference:

Firstly: the Prosecution's obligation to disclose:

- i. whether it has requested national authorities to monitor either the Defence or persons who could be actual or potential Defence witnesses in this case; and
- ii. whether it is aware or has any information which suggests that national authorities are independently monitoring the Defence or persons who could be actual or potential witnesses in this case.

Secondly: [Redacted].

The first issue is relevant to the fair, expeditious and impartial conduct of the proceedings

7. The Prosecution has adopted the position that it is not required to disclose the fact that it might be monitoring persons as part of its investigations.¹

8. This position has far-reaching consequences as regards the security and confidentiality of Defence investigations, and the protection of Defence witnesses and sources.

9. Article 68(1) of the Statute and Article 8 of the Code of Professional Conduct impose stringent obligations on the Defence to ensure the confidentiality of its interactions with actual and potential Defence witnesses, and sources.

10. It is therefore imperative that the confidentiality of Defence communications with such persons can be assured.

¹ ICC-01/05-01/13-883, paras. 2 and 7.

11. The Defence will not, however, be in a position to conduct its investigations in a confidential and secure manner if there is a possibility that either its communications or those of the persons it is meeting are being monitored.

12. It is not feasible to expect the Defence to meet potential witnesses 'cold'. The name, contact details and relevance of the person must have been communicated to the Defence by someone at some point in time.

13. However, if the national authorities, in which either Defence witnesses or associates are likely to reside, are monitoring such persons, then it will be impossible for the Defence to contact these witnesses or associates without alerting the authorities to the potential status of these persons as Defence witnesses. This could have adverse consequences for the security and well-being of persons *in situ*.

14. The existence of monitoring in such Countries therefore creates a concrete impediment as concerns the ability of the Defence to investigate in both an effective and a secure manner. If the monitoring is particularly directed against persons associated with either the Defence or Mr. Bemba, it would constitute a violation of the right, under Article 67(1)(e) to obtain the attendance of witnesses on the Defence's behalf under the same conditions as the witnesses against the Defence.

15. In light of the significant ramifications for Defence investigations and preparation, the issue is relevant to the overall conduct of the proceedings. It would therefore be appropriate to address this issue at the Statute Conference.

The second issue is relevant to the fair, expeditious and impartial conduct of the proceedings

16. [Redacted]

17. [Redacted]

18. [Redacted]

19. [Redacted]

20. [Redacted]

21. [Redacted].²

22. [Redacted].³

23. [Redacted].⁴

24. [Redacted].⁵

25. [Redacted]

26. [Redacted] ⁶

27. [Redacted]

28. Although the Prosecution has the prerogative to enter into agreements with the United Nations, its power to do so is subject to its duty to respect the rights of the Defence under the Statute.⁷ In accordance with Article 64(2) and (3)(c), the Trial

² [Redacted]

³ [Redacted]

⁴ [Redacted]

⁵ [Redacted]

⁶ The case law of the ICC has recognised that correspondence with external entities can be potentially exculpatory, or otherwise disclosable under Rule 77: ICC-01/04-01/06-3017, ICC-01/04-01/10-47, para. 14; ICC-01/04-01/10-275. In the Katanga case, pursuant to Rule 77, the Prosecution disclosed correspondence between OTP and DRC concerning the provision of evidence and assistance to the DRC: ICC-01/04-01/07-949, footnote 41.

⁷ Article 54(1)(c) of the Statute; ICC-01/04-01/06-1486, paras. 2, 44, 45, 51.

Chamber has the duty to intervene in relation to any consequences, which stem from the Prosecutor's conclusion of agreements, and which impact on the rights of the Defence.

29. [Redacted].⁸ [Redacted]

C. RELIEF SOUGHT

30. For the reasons set out above, the Defence respectfully requests the Honourable Trial Chamber to:

- a. Adopt the Joint Defence Submissions; and
- b. Include the following items in the agenda of the Status Conference:
 - i. The Prosecution's obligation to disclose:
 - a. whether it has requested national authorities to monitor either the Defence or persons who could be actual or potential Defence witnesses in this case; and
 - b. whether it is aware or has any information which suggests that national authorities are independently monitoring the Defence or persons who could be actual or potential witnesses in this case.
 - ii. [Redacted].



Melinda Taylor
Counsel for Mr. Jean-Pierre Bemba Gombo

Dated this 13th day of April, 2015
The Hague, The Netherlands

⁸ [Redacted]