

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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 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 ex parte
(Defence for Mr. Bemba and Mr. Kilolo only)*

Urgent Request for Access to the Content of Seized Communications

Source: Defence for Mr. Jean-Pierre Bemba Gombo

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

**Counsel for the Defence of Mr Jean-
Pierre Bemba Gombo**
Melinda Taylor

**Counsel for the Defence of Mr Aimé
Kilolo Musamba**
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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. The Defence for Mr. Jean-Pierre Bemba Gombo (the Defence) hereby submits an urgent request for access to the original telephone recordings, which constitute the basis for the Independent Counsel's analysis set out in ICC-01/05-01/13-845-Conf-Exp-AnxC.

2. The Defence further requests that its deadline for submitting its observations on this Annex be suspended, such that it will be either five days from the receipt of the original telephone recordings (if the request is granted), or five days from the Trial Chamber's decision rejecting the request.

3. The content of all future materials reviewed by the Independent Counsel, in which Mr. Bemba is the potential privilege holder, should also be transmitted at the same time as the Defence is granted access to the future reports of the Independent Counsel.

B. SUBMISSIONS

4. On 9 April 2015, the Trial Chamber issued its 'Decision on 'Request concerning the review of seized material' and related matters'' (the Decision),¹ in which the Trial Chamber determined that as "potential privilege holder", the Defence had the right to submit observations in relation to the Report and Annexes prepared by the Independent Counsel in relation to the 'Kilolo Material' (the Report).

5. On 13 April 2015, the Registry reclassified Annexes B, C, and D of the Report.

¹ ICC-01/05-01/13-893-Red.

6. However, whereas Annex B contains the full contents of the SMS messages analysed by the Independent Counsel, and Annex C only contains minimal details concerning the 196 phone calls, which the Independent Counsel has identified for transmission to the Prosecution and Defence teams.

7. Most importantly, the content of the communications is not included. It is unclear whether this is the case because the Belgium authorities did not transmit the contents, the Independent Counsel could not access the contents because of lack of software,² or because it was simply not included.

8. In any case, in the absence of further precision on this point, it is impossible for the Defence to identify the exact scope of the information, which could be transmitted to the Prosecution, if the Independent Counsel's recommendations are approved.

9. The information set out in Annex C is also patently insufficient to issue either effective observations or an informed decision as to whether the content of the phone calls are privileged or otherwise protected from transmission to the Prosecution. Evidence of either criminality or a lack of privileged information cannot be deduced from the mere date of the communications. Moreover, even if some information might be relevant to the charges, other aspects might be irrelevant, privileged, or pertain to ex parte protective measures.

10. Whereas the Defence team for Mr. Kilolo may possess independent knowledge of the content of the communications, the Defence for Mr. Bemba do not. Nonetheless, as Mr. Bemba is the client, he has the right to access all records and information concerning the Defence investigations in this case, including the content of the telephone communications in question. There is therefore no basis for withholding disclosure of the content of the communications from the Defence,

² ICC-01/05-01/13-845-Conf, para. 41.

particularly in circumstances in which access is required in order to realise the right of the Defence to assert privilege in an effective, rather than illusory manner.

C. RELIEF SOUGHT

11. For the reasons set out above, the Defence for Mr. Bemba respectfully requests the Honourable Trial Chamber to:

- i. Order the Registry to transmit to the Defence the content of the communications reviewed by the Independent Counsel, including the telephone calls reviewed in ICC-01/05-01/13-845-Conf-Exp-AnxC, and all future materials for which Mr. Bemba is the potential privilege holder; and
- ii. Order that the deadline for the Defence Observations to ICC-01/05-01/13-845-Conf-Exp-Anx shall be either five days from the receipt of the communications, or five days from the date of the Trial Chamber's decision.



Melinda Taylor
Counsel of Mr. Jean-Pierre Bemba

The Hague, The Netherlands

Dated this 13th day of April, 2015