

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 15 April 2015

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
THE PROSECUTOR *v.* JEAN-PIERRE BEMBA GOMBO, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO**

Confidential

**Order Related to Prosecution's Request for Reclassification of ICC-01/05-01/13-670-
Conf-Exp and its Annexes**

Decision 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 Anton Steynberg

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 Michael Gosnell

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
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States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber VII (the 'Chamber') of the International Criminal Court, in the case of *The Prosecutor v Jean-Pierre Bemba Gombo, Aime Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidele Babala Wandu and Narcisse Arido*, having regard to Regulation 23 *bis* of the Regulations of the Court, renders this 'Order Related to Prosecution's Request for Reclassification of ICC-01/05-01/13-670-Conf-Exp and its Annexes'.

1. On 21 March 2014 the French authorities transmitted to the Office of the Prosecutor (the 'Prosecution') two DVDs containing the content of the email accounts of Mr Kilolo, Mr Mangenda, Mr Babala and Mr Arido.¹
2. On 25 April 2014, an independent counsel (the 'Independent Counsel') was appointed by the Single Judge of Pre-Trial Chamber II to review these DVDs and prepare a report on their contents.²
3. On 11 September 2014, the Independent Counsel delivered his report (the 'Report'), and three corresponding annexes, concerning the material on the second DVD. Therein, Independent Counsel also submitted his proposals for redactions of sixteen emails extracted from Mr Kilolo's account that were not subject to privilege and were considered pertinent to the context of the proceedings.³
4. On 24 November 2014, the Single Judge, *inter alia*, reclassified Annex B of the Report as confidential, *ex parte* Independent Counsel and Defence for Mr Kilolo only.⁴ The defence for Mr Kilolo was permitted five days to submit observations, if

¹ See Prosecution's Request to Refer Potentially Privileged Materials to Independent Counsel, 2 April 2014, ICC-01/05-01/13-310-Conf, notified on 3 April 2014. .

² Decision on the "Prosecution's Request to Refer Potentially Privileged Materials to Independent Counsel", 25 April 2015, ICC-01/05-01/13-366-Red (confidential version notified same day).

³ Rapport du Conseil indépendant suivant la Decision ICC-01/05-01/13-366-Conf (Analyse d'un premier lot d'emails), 11 September 2014, ICC-01/05-01/13-670-Conf-Exp, available, initially, to the Independent Counsel only (with three confidential *ex parte* Annexes thereto).

⁴ Decision on various filings related to two DVDs received from national authorities, 24 November 2014, ICC-01/05-01/13-765, page 8.

any, on the redactions proposed by the Independent Counsel.⁵ No such observations were filed.

5. On 27 February 2015 the Prosecution requested the Chamber to reclassify as 'Confidential' the Report and its annexes (the 'Request').⁶
6. On 9 April 2015, the Chamber decided to maintain the Independent Counsel review procedure established by the Single Judge, subject to certain modifications.⁷
7. As with the other material the Chamber considered within the Independent Counsel's mandate, before any reclassification to the parties of the Report and its relevant annex, the owner and potential privilege-holders of the material at issue must be given an opportunity to comment on the redactions proposed.⁸ The Chamber considers that the material in Annex B of the Report concern accused other than Mr Kilolo, namely Mr Bemba. Accordingly, it is necessary for the defence of Mr Bemba to also be provided with an opportunity to assess the material prior to ruling on the Prosecution's relief sought in the Request.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DIRECTS the Registry to reclassify ICC-01/05-01/13-670-Conf-Exp and ICC-01/05-01/13-670-Conf-Exp-AnxB as confidential, *ex parte*, Independent Counsel and defence for Mr Kilolo and Mr Bemba only.

DIRECTS the defence for Mr Bemba to submit observations, if any, within 5 days following reclassification.

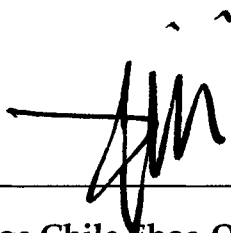
⁵ Decision on various filings related to two DVDs received from national authorities, 24 November 2014, ICC-01/05-01/13-765, page 8.

⁶ Prosecution's Request for Reclassification of ICC-01/05-01/13-670-Conf-Exp and Confidential *ex parte* Annexes thereto, 27 February 2015, ICC-01/05-01/13-828-Conf. A public redacted version was filed on 3 March 2015, ICC-01/05-01/13-828-Red.

⁷ Decision on 'Request concerning the review of seized material' and related matters, 9 April 2015, ICC-01/05-01/13-893-Red. A confidential version was filed on the same day.

⁸ See ICC-01/05-01/13-893-Red, paras 22-24.

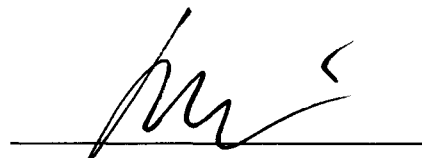
Done in both English and French, the English version being authoritative.



Judge Chile Eboe-Osuji
(Presiding)



Judge Olga Herrera Carbuccion



Judge Bertram Schmitt

Dated 15 April 2015

At The Hague, The Netherlands