

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **4 June 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***

Confidential

Decision on Prosecution Request to obtain Records from the VWU

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 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

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

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber VII (the 'Chamber') of the International Criminal Court (the 'Court'), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Article 64(2) of the Rome Statute, issues the following 'Decision on Prosecution Request to obtain Records from the VWU'.

I. Procedural history and submissions

1. On 5 May 2015, the Office for the Prosecutor ('Prosecution') filed an application for the Chamber to order the Victims and Witnesses Unit ('VWU') to provide records of witness payments to the parties ('Request').¹ The Prosecution requests that the VWU be ordered to transmit the records and the dates of payments related to 21 defence witnesses in the case of *Prosecutor v. Jean-Pierre Bemba Gombo* ('Main Case'),² as well as receipts, invoices and documents obtained by the Registry in this regard ('Requested Material').³ The Prosecution argues that the Requested Material is relevant to: (a) 14 witnesses allegedly interfered with by the accused;⁴ (b) six witnesses referred to by the defence of Mr Kilolo ('Kilolo Defence') when explaining the system of reimbursement of defence witnesses in the Main Case;⁵ and (c) one witness who is also an accused in this case, namely Mr Arido, who claims that the sums paid by the defence for Mr Bemba ('Bemba Defence') in the Main Case were related to his expert testimony.⁶
2. On 22 May 2015, the VWU filed its observations to the Request, informing the Chamber that it does not oppose to transmit the Requested Material to the

¹ Prosecution's Request to obtain Records from the Victims and Witnesses Unit, ICC-01/05-01/13-937-Conf.

² Witnesses D-2, D-3, D-4, D-6, D-7, D-9, D-11, D-13, D-15, D-23, D-25, D-26, D-29, D-36, D-52, D-53, D-54, D-55, D-57, D-59 and D-64.

³ Request, ICC-01/05-01/13-937-Conf, paras 6 and 15.

⁴ Request, ICC-01/05-01/13-937-Conf, paras 8 and 10. These are witnesses D-2, D-3, D-4, D-6, D-13, D-15, D-23, D-25, D-26, D-29, D-54, D-55, D-57, and D-64.

⁵ Request, ICC-01/05-01/13-937-Conf, para. 14. These are witnesses D-7, D-9, D-36, D-52, D-53 and D-59.

⁶ Request, ICC-01/05-01/13-937-Conf, para. 14. This is Witness D-11.

Prosecution, although it does not stipulate its view on the transmission vis-à-vis the other parties in the case.⁷

3. On the same date, the Bemba Defence filed its response, opposing the Request ('Bemba Response').⁸ It argues that the Request concerns confidential Defence information and the Prosecution has failed to establish the legal basis for obtaining such information.⁹ Further, it submits that the Request concerns several witnesses who are not directly relevant to the case.¹⁰ It also contends this is an attempt by the Prosecution to 'circumvent the Court's disclosure regime, as well as the defendant's right to silence and related privilege against self-incrimination', as the Requested Material derives from the Bemba Defence.¹¹ The Bemba Defence argues that its dependence on the VWU to provide services should not 'operate to the detriment of the confidentiality or independence of the Defence'.¹² The Bemba Defence finally submits that the Prosecution provides no explanation for its dilatory submission of its Request.¹³

II. Analysis

4. First, the Chamber notes that any determination with regard to the Requested Material is solely done in respect to the issue at hand and does not prejudice in any way the Chamber's later assessment of an individual item for admission into evidence or for the final determination on the charges.¹⁴
5. The Chamber notes that at the heart of this case are allegations of improper interference of 14 defence witnesses in the Main Case, including alleged bribery

⁷ Victims and Witnesses Unit's observations on the "Prosecution's Request to obtain Records from the Victims and Witnesses Unit" (ICC-01/05-01/13-937-Conf). ICC-01/05-01/13-957-Conf.

⁸ Defence Response to Prosecution's Request to obtain Records from the Victims and Witnesses Unit ICC-01/05-01/13-937-Conf, ICC-01/05-01/13-961-Conf.

⁹ Bemba Response, ICC-01/05-01/13-961-Conf, paras 5, 12-19.

¹⁰ Bemba Response, ICC-01/05-01/13-961-Conf, paras 6, 20-22.

¹¹ Bemba Response, ICC-01/05-01/13-961-Conf, paras 7-8, 23-27.

¹² Bemba Response, ICC-01/05-01/13-961-Conf, paras 28-30.

¹³ Bemba Response, ICC-01/05-01/13-961-Conf, paras 10, 34-41.

¹⁴ See also, Decision Providing Materials in Two Independent Counsel Reports and Related Matters, 15 May 2015, ICC-01/05-01/13-947, para. 17.

of these witnesses. Accordingly, information related to payments effected to these witnesses is potentially relevant to the case. This relevance extends beyond the 14 witnesses mentioned in the decision confirming the charges against the accused, as payments to other defence witnesses could be deemed useful in understanding the overall system of money transfer and payment of witnesses in the Main Case.

6. Despite its assertion of irrelevance,¹⁵ the Bemba Defence's argument that the Prosecution has violated its obligation to investigate according to Article 54(1)(a) of the Rome Statute by not requesting this information previously¹⁶ indicates that it too considers the Requested Material to be, at least indirectly, relevant to the case.
7. In this regard, the Chamber looks with grave concern at the belated nature of the Request. As noted above, the relevance of this material, and its potential benefit, not only for the Prosecution's investigation, but also for the preparation of the defence, is clear. Accordingly, the Prosecution should have sought this material on a timely manner, and more appropriately, in the beginning of its investigations during the confirmation of charges stage.¹⁷
8. In respect of the Bemba Defence's assertion of privilege against self-incrimination and the accused's right to silence,¹⁸ the Chamber considers that this argument is misplaced. Without taking a position as to whether communications between an accused's lawyer and Registry persons aiding legal services could be privileged under Rule 73 of the Rules, the Chamber notes that the Relevant Materials are not communications between the Bemba Defence and the VWU. Rather, they are receipts of payments between the VWU and Main

¹⁵ Bemba Response, ICC-01/05-01/13-961-Conf, para. 6.

¹⁶ Bemba Response, ICC-01/05-01/13-961-Conf, para. 37.

¹⁷ See, the Prosecutor v. Mbarushimana, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled "Decision on the confirmation of charges", 30 May 2012, ICC-01/04-01/10-514, para. 44. In this judgment, the Appeals Chamber determined that 'the investigation should largely be completed at the stage of the confirmation of charges hearing'.

¹⁸ Bemba Response, ICC-01/05-01/13-961-Conf, paras 3 and 7.

Case witnesses. The Chamber does not consider such receipts to constitute 'communications made in the context of the professional relationship between a person and his or her legal counsel' within the meaning of Rule 73(1) of the Rules.¹⁹ Accordingly, no applicable privilege prevents the Chamber from ordering production of the Requested Materials, nor is the accused's right to silence implicated.

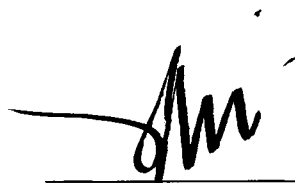
9. Moreover, the Chamber notes the material is readily available and there is no opposition from the VWU to the Request. Hence, no further investigative action is required which will delay the disclosure deadline of 30 June 2015, which remains unchanged.
10. In light of the above, the Chamber hereby grants the Request.

¹⁹ Decision Providing Materials in Two Independent Counsel Reports and Related Matters, ICC-01/05-01/13-947, para. 20. See also: Decision on the Prosecutor's "Request for judicial order to obtain evidence for investigation under Article 70", 3 February 2014, ICC-01/05-52-Red2, paras 3-4 (filed confidential *ex parte* on 29 July 2013; reclassification to 'Confidential' was ordered on 15 May 2014); Decision on the filing in the record of items seized upon the searches of the person and cell of Jean-Pierre Bemba Gombo, 19 May 2014, ICC-01/05-01/13-408, page 5.

FOR THE FOREGOING REASONS THE CHAMBER HEREBY

ORDERS the VWU to provide the Requested Material to the parties.

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



Judge Chile Eboe-Osuji, Presiding



Judge Olga Herrera Carbuccion



Judge Bertram Schmitt

Dated 4 June 2015

At The Hague, The Netherlands