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

Date: 11/06/2015

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuca
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

**Public Redacted Version of “Defence Request for Access to Communications with
Confidential Ex parte Annex A and B, Bemba Defence only”**

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

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 Laroche

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section Other

Introduction

1. The Defence for Mr. Jean-Pierre Bemba Gombo respectfully requests the assistance of the Trial Chamber to order the Registry to transmit to the Defence:

All correspondence between the Registrar, Deputy Registrar, their representatives, or the Counsel Support Section (CSS), and current or former members of the Bemba Defence, or Mr. Bemba, between the time period of 1 January 2011, and 31 November 2013.

2. Any such correspondence either directly concerned Mr. Bemba, or was entered into on his behalf. Mr. Bemba has the right to receive a copy *via* his Defence. There is therefore no confidentiality, which would preclude its confidential transmission to his Defence team, with Mr. Bemba's consent.

3. The information is also relevant to the preparation of the Defence in this case. Given the mandate of the Defence to assert privilege or otherwise request the Trial Chamber to take measures to protect the interests of Mr. Bemba, the correspondence may also provide important contextual information, which would assist the Defence to protect Mr. Bemba's right in an effective manner.

4. The Defence exhausted all other avenues before requesting this information from the Registry.

5. Given that the Registry has indicated that it will not grant this request, it is necessary for the Defence to seise the Trial Chamber in order to obtain a timely remedy.

6. This Request has been filed on a confidential *ex parte* basis due to the fact that it concerns confidential lines of inquiry and potential Defence strategy.¹ A public redacted version will be filed with such information redacted.

Submissions

7. During the course of 2011 to 2013, the Defence corresponded with the Registrar, Deputy Registrar or their representatives on a range of issues that might be relevant to Defence preparation in this case.

8. In particular, [Redacted].

9. [Redacted].

10. [Redacted].

11. [Redacted].

12. After having exhausted other avenues, on 30 April 2015, upon Mr. Bemba's instructions, the Defence submitted a request to CSS to obtain access to any communications between CSS and members of the Defence for Mr. Bemba, which fall between the period of 1 January 2011, and 31 November 2013.²

¹ *Prosecutor v. Katanga and Ngudjolo*, 'Decision on the "Defence Application pursuant to Article 57(3)(b) of the Statute to Seek the Cooperation of the Democratic Republic of Congo (DRC)', 25 April 2008, ICC-01/04-01/07-444, pp.3-4; *Prosecutor v Banda and Jerbo*, 'Decision on "Defence Application pursuant to articles 57(3)(b) & 64(6)(a) of the Statute for an order for the preparation and transmission of a cooperation request to the Government of the Republic of the Sudan', 1 July 2011, ICC-02/05-03/09-169, para. 34; *Prosecutor v. Mbarushimana*, 'Decision on the Defence's request for State cooperation from the Democratic Republic of the Congo', 15 February 2011, ICC-01/04-01/10-56, p.4.

² Confidential Ex Parte (Bemba Defence only) Annex A.

13. As indicated to CSS, the current Lead Counsel for Mr. Bemba in Case No. ICC-01/05-01/08 also consented for the Article 70 Defence team to have access to this information.

14. After a delay of five and a half weeks, CSS responded on 9 June 2015 that:

- i. Due to 'case law of the Court', it was necessary for Mr. Bemba to consent to each and every documents or piece of information in question; and
- ii. It is the "long-standing practice of the Registry, and therefore of CSS, not to disclose information pertaining to the relationship between a legal team and the Registry to third parties".³

15. These grounds do not form a valid basis for refusing the request.

16. On the first point, Mr. Bemba is unable to provide his consent to each and every document, unless he is first provided with each and every document. It is therefore a condition, which is impossible to fulfil. Mr. Bemba has nonetheless provided his express consent to the Defence accessing the identified information.⁴

17. With respect to the second ground, the Defence does not dispute this principle, but does dispute the fact that it should be considered as a 'third party'.

18. Mr. Bemba is the owner of all documentation concerning his Defence. He therefore has the right to instruct his Defence in Case No. ICC-01/05-01-13 to request the disclosure of this information in order to assist him.⁵ This is subject to

³ Confidential Ex Parte (Bemba Defence only) Annex A.

⁴ Confidential Ex Parte (Bemba Defence only) Annex B. Although this consent is provided for a broader range of documents, this filing is limited to the correspondence requested herein.

⁵ ICC-01/05-01/13-440, p.3. See also ICC-01/05-01/13-338.

the understanding of both Mr. Bemba and the Defence that the transmission of this information to the Defence does not alter the confidential status of this correspondence, or in any way, lift any privilege which might attach to its contents.

19. The Lead Counsel for Case No. ICC-01/05-01/08 has also provided his express consent as concerns CSS disclosing the requested correspondence to the Article 70 Bemba Defence.⁶

20. There therefore does not appear to be any legal or procedural impediment as concerns granting the Defence access to Defence correspondence.

21. As noted above, the Defence has exhausted alternative means to obtain the documentation.

22. Bearing in mind the pending trial date, and the amount of time which might be required to review the communications, the Defence respectfully requests the urgent assistance of the Trial Chamber in order to obtain these materials.

Relief sought

23. For the reasons set out above, the Defence for Mr. Bemba requests the Trial Chamber to order the Registry to transmit (on a confidential basis to the Bemba Defence only):

All correspondence between the Registrar, Deputy Registrar, their representatives, or the Counsel Support Section (CSS), and current or former members of the Bemba Defence, or Mr. Bemba, between the time period of 1 January 2011, and 31 November 2013.

⁶ Confidential Ex Parte (Bemba Defence only) Annex B.



Melinda Taylor
Counsel of Mr. Jean-Pierre Bemba

Date this 11st day of June 2015

The Hague, The Netherlands