

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 15 July 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 Kilolo Defence Request for Reconsideration

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

Mr 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 Articles 64(2) and 67(1) of the Rome Statute (the 'Statute'), issues the following 'Decision on Kilolo Defence Request for Reconsideration'.

I. Background and Submissions

1. On 29 June 2015, the Chamber rendered the 'Decision on the "Requête aux fins d'obtenir la communication des coordonnées des témoins D-2 et D-3" (the 'Decision')'.¹
2. On 3 July 2015, the defence for Mr Kilolo (the 'Kilolo Defence') filed a request for reconsideration of the Decision (the 'Request').² The Kilolo Defence argues that the Chamber erred when it based its Decision on the prior refusal of the witnesses concerned. It suggests that this refusal to share the contact details with the defence was not expressed in the best circumstances, having been provided to the Office of the Prosecutor (the 'Prosecution') rather than the neutral Victims and Witnesses Unit (the 'VWU').³ The Kilolo Defence also submits that the witnesses expressed their refusal to meet the Kilolo Defence several months ago and may have changed their minds in the meantime.⁴ The Kilolo Defence further contends that the Chamber should not have considered the fact that the witnesses refused to be contacted by the defence of Mr Fidèle Babala Wandu (the

¹ ICC-01/05-01/13-1045-Conf.

² Requête aux fins de reconsidération de la « Decision on the « Requête aux fins d'obtenir la communication des coordonnées des témoins D-2 et D-3 » », ICC-01/05-01/13-1053-Conf.

³ ICC-01/05-01/13-Conf, paras 12 and 13.

⁴ ICC-01/05-01/13-1053-Conf, para. 15.

'Babala Defence'), when asked recently by the VWU, as this refusal concerns another accused in this case.⁵

3. On 13 July 2015,⁶ the Prosecution filed its response to the Request.⁷ It submits that the Request should be rejected, as nothing raised therein justify reconsideration.⁸ The Prosecution argues that the Chamber's Decision was reasonable and the Request is speculative.⁹ It further contends that the Kilolo Defence is misleading the Chamber making unfounded allegations of prosecutorial misconduct and in order to clarify the issue submits verbatim extracts of the questions posed to the witnesses' concerned as regards their contact with the Kilolo Defence.¹⁰

II. Analysis

4. The Statute does not provide guidance on reconsideration of interlocutory decisions,¹¹ but the Chamber considers that the powers of a chamber allow it to reconsider its own decisions, prompted by one of the parties or *proprio motu*.¹² Reconsideration is exceptional, and should only be done if a clear error of reasoning has been demonstrated or if it is necessary to do so to

⁵ ICC-01/05-01/13-1053-Conf, para. 17.

⁶ The Chamber shortened the deadline for responses to 13 July 2015. See e-mail from Trial Chamber VII Communications to counsel on 9 July 2015 at 10:06.

⁷ Prosecution's Response to the Kilolo Defence's Request for Reconsideration of the Decision on the «*Requête aux fins d'obtenir la communication des coordonnées des témoins D-2 et D-3* » ICC-01/05-01/13-1045-Conf, ICC-01/05-01/13-1080-Conf + Anx.

⁸ ICC-01/05-01/13-1080-Conf, paras 3-4.

⁹ ICC-01/05-01/13-1080-Conf, paras 5-6.

¹⁰ ICC-01/05-01/13-1080-Conf, paras 7-11.

¹¹ See Article 84 of the Statute expressly permitting revision of a final conviction or sentence in light of, *inter alia*, new evidence.

¹² Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the defence request to reconsider the "Order on numbering of evidence" of 12 May 2010, 30 March 2011, ICC-01/04-01/06-2705; Trial Chamber V, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the request to present views and concerns of victims on their legal representation at the trial phase, 14 December 2012, ICC-01/09-01/11-511, para. 6; Trial Chamber V(B), *The Prosecutor v. Uhuru Muigai Kenyatta*, Decision on the Prosecution's motion for reconsideration of the decision excusing Mr Kenyatta from continuous presence at trial, 26 November 2013, ICC-01/09-02/11-863.

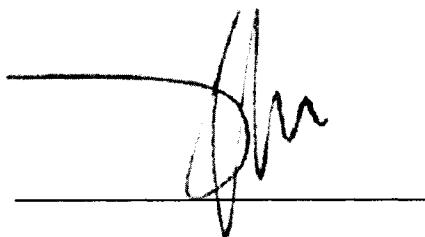
prevent an injustice. New facts and arguments arising since the decision was rendered may be relevant to this assessment.¹³

5. In the present case, the Chamber considers that the fact that the witnesses concerned had expressed their refusal to meet the Kilolo Defence to the Prosecution and not the VWU, and that the witnesses had reiterated their refusal to meet with the defence for Mr Babala to the VWU recently, were clearly within the Chamber's contemplation at the time of issuing the Decision. As a result, the Chamber is not persuaded that there are any developments that amount to new facts and circumstances warranting reconsideration.

FOR THE FOREGOING REASONS THE CHAMBER HEREBY

REJECTS the Request.

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 July 2015

At The Hague, The Netherlands

¹³ Trial Chamber V-A, *The Prosecutor v William Samoei Ruto and Joshua Arap Sang*, Decision on the Sang Defence's Request for Reconsideration of Page and Time Limits, 10 February 2015, ICC-01/09-01/11-1813, para. 19.