

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 20 July 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

Decision on Bemba Defence Request for Access to Communications

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, 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(6)(c) and (f) of the Rome Statute, issues the following ‘Decision on Bemba Defence Request for Access to Communications’.

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 11 June 2015, the defence team for Mr Bemba (the ‘Bemba Defence’) in the present case filed a request for access to certain communications between the Registry and the previous defence team for Mr Bemba in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (the ‘Main Case’).¹ The communications in question are said not to be in the possession of the current defence teams in either case, due to the absence of a formal handover of documents after the unexpected arrest of former lead counsel and the case manager in the Main Case.²
2. The Bemba Defence submits that it has exhausted other avenues, having previously requested this information from the Registry³ and been met with the response that: it was necessary for Mr Bemba to consent to each and every document or piece of information; that it was in keeping with practice not to disclose information relating to a legal team to third parties; and that the Registry would only act further to an order from the Chamber.⁴ The Bemba Defence submits that being provided with every document is a pre-condition to providing consent to the disclosure of each and every document, and that in any event Mr Bemba has provided express consent to the Bemba Defence accessing the communications.⁵ It further submits that the Bemba Defence

¹ ICC-01/05-01/13-996-Conf-Exp.

² ICC-01/05-01/13-996-Conf-Exp, paras 10-11.

³ ICC-01/05-01/13-996-Conf-Exp, para. 12; ICC-01/05-01/13-996-Conf-Exp-AnxA.

⁴ ICC-01/05-01/13-996-Conf-Exp, para. 14; ICC-01/05-01/13-996-Conf-Exp-AnxA.

⁵ ICC-01/05-01/13-996-Conf-Exp, para. 16; ICC-01/05-01/13-996-Conf-Exp-AnxB.

cannot be considered a third party to communications between the Registry and the former defence team in the Main Case, as Mr Bemba is the owner of all documentation concerning his defence.⁶ The Bemba Defence further annexes to the present request, the express consent of lead counsel for the defence in the Main Case for the communications to be provided to the Bemba Defence.⁷ It also submits that the requested information is relevant to the preparation of the Bemba Defence.

3. On 18 June 2015, the Chamber invited the Registrar to make submissions on the request in accordance with regulations 24*bis*, 33 and 34(b) of the Regulations of the Court.⁸
4. On 3 July 2015, the Registrar submitted his observations, reiterating that the requested communications constitute privileged documents of the defence team in the Main Case, and may not be disclosed outside that team without prior authorisation of both Mr Bemba and his current counsel in the Main Case 'for each and every piece of document or information.'⁹ The Registrar further observes that the Bemba Defence is in the position of a third party in the Main Case, and that in a previous case, disclosure to a third party without prior consent of the suspect and defence team was prohibited.¹⁰ The Registrar also submits that he cannot decide on disclosure without specific leave from the Chamber, as this would go against longstanding Registry practice.¹¹

II. ANALYSIS

5. The Chamber is requested to order the Registry to transmit to the Bemba Defence '[a]ll correspondence between the Registrar, Deputy Registrar, their representatives, or the Counsel Support Section (CSS), and current or former

⁶ ICC-01/05-01/13-996-Conf-Exp, paras 17-18.

⁷ ICC-01/05-01/13-996-Conf-Exp, para. 19; ICC-01/05-01/13-996-Conf-Exp-AnxB.

⁸ Email Communication from a Legal Officer of the Chamber to the Registry dated 18 June 2015 at 14:17.

⁹ ICC-01/05-01/13-1056-Conf-Exp, para. 3.

¹⁰ ICC-01/05-01/13-1056-Conf-Exp, para. 3.

¹¹ ICC-01/05-01/13-1056-Conf-Exp, para. 4.

members of the Bemba Defence, or Mr. Bemba, between the time period of 1 January 2011, and 31 November 2013'.¹²

6. Mr Bemba and his defence team in the Main Case were privy to the requested communications. In the present circumstances, the Chamber regards it as overly burdensome to require Mr Bemba to consent to each and every separate document, particularly as Mr Bemba does not have access to each communication and where the disclosure is to his other defence team, who owe Mr Bemba professional duties of confidentiality.
7. Noting that the Bemba Defence has annexed the consent of Mr Bemba authorising, *inter alia*, the Bemba Defence 'à accéder à toute communication entre le Greffier, le Greffier adjoint, leur représentants délégués ainsi la Section d'appui aux Conseils (SAC) et moi-même ou les membres, anciens ou actuels de cette équipe, pendant la période allant du 1er janvier 2010 au 31 novembre 2013',¹³ and the consent of his lead counsel in the Main Case to the Registry providing the requested correspondence,¹⁴ the Chamber considers these declarations of consent sufficient to authorise disclosure of the requested communications.

FOR THE FOREGOING REASONS THE CHAMBER HEREBY

GRANTS the Request; and

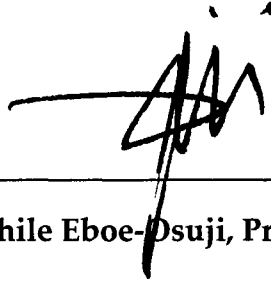
INSTRUCTS the Registry to disclose to the Bemba Defence the requested communications forthwith.

¹² ICC-01/05-01/13-1056-Conf-Exp, pages 5-6.

¹³ ICC-01/05-01/13-996-Conf-Exp-AnxB, p. 3.

¹⁴ ICC-01/05-01/13-996-Conf-Exp-AnxB, p. 2.

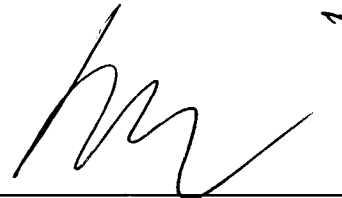
Done in both English and French, the English version being authoritative.

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Judge Chile Eboe-Osuji, Presiding

A handwritten signature in black ink, featuring a large 'C' and 'H' followed by a period, positioned above a horizontal line.

Judge Olga Herrera Carbuccia

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a horizontal line.

Judge Bertram Schmitt

Dated 20 July 2015

At The Hague, The Netherlands