

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 August 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 to Obtain Contact Information of P-201 and
P-264**

**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

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 Articles 67(1) and 68(1) of the Rome Statute and Regulations 23 *bis*(3), 29 and 33 of the Regulations of the Court ('Regulations'), issues the following 'Decision on Kilolo Defence Request to Obtain Contact Information of P-201 and P-264'.

I. PROCEDURAL HISTORY

1. On 20 July 2015, the Chamber adopted the 'Protocol on the Handling of Confidential Information during Investigations and Contact Between a Party and Witnesses of Other Parties' ('the Protocol').¹
2. On 23 July 2015, the defence of Mr Kilolo (the 'Kilolo Defence') notified the Office of the Prosecutor (the 'Prosecution') of its intention to contact several Prosecution witnesses, pursuant to paragraph 35 of the Protocol.²
3. On 3 August 2015, the Prosecutor informed the Defence that it was unable to reach P-201 and P-264 ('the Witnesses').³
4. On 4 August 2015, the Defence requested the Chamber to order the Victims and Witnesses Unit ('VWU') to contact the Witnesses to inquire as to their consent to transmit their contact details to the Defence, pursuant to paragraph 37 of the Protocol ('the Request').⁴

¹ Decision adopting a Protocol on the Handling of Confidential Information during Investigations and Contact Between a Party and Witnesses of the Other Parties, 20 July 2015, ICC-01/05-01/13-1093, and its annex containing the protocol, ICC-01/05-01/13-1093-Anx.

² Annex to Requête aux fins d'obtenir la communication des coordonnées des témoins P-0201 et P-0264 ICC-01/05-01/13-1120-Conf-Exp-Anx ('Request Annex'), pages 2 to 3.

³ Request Annex, ICC-01/05-01/13-1120-Conf-Exp-Anx, page 4.

⁴ Requête aux fins d'obtenir la communication des coordonnées des témoins P-0201 et P-0264, ICC-01/05-01/13-1120-Conf-Exp.

5. On the same day, the Prosecution informed the Defence that P-264, when contacted by the Prosecution that morning, had declined contact with the Defence.⁵
6. On 12 August 2015, VWU observations were notified, in which it stated that it is ready to comply with the Chamber's instructions, should it find that all efforts have been exhausted to facilitate the *inter partes* request.⁶
7. On the same day, the Prosecution response was notified, in which it reiterated P-264's refusal to be contacted by the Defence.⁷

II. ANALYSIS

Preliminary issues

8. The Chamber notes that though it set a deadline for responses for 11 August 2015,⁸ both the VWU and the Prosecution filings were only submitted after 16:00 o'clock.⁹ The Chamber nevertheless finds it beneficial to consider the submissions, despite the belated filings, and reminds the parties of Regulation 33(2) and (3) of the Regulations.
9. Further, the Chamber notes that the Defence classified the Request as confidential *ex parte* because it refers to information only accessible to the Kilolo Defence and the Prosecution.¹⁰ The Chamber does not find that the basis of this classification exists anymore and therefore, in accordance with article 23 *bis*(3) of the Regulations, hereby reclassifies the Request, along

⁵ Prosecution's email to the Trial Chamber VII Communications of 5 August 2015 at 12:20.

⁶ Victims and Witnesses Unit's Observations on the « Requête aux fins d'obtenir la communication des coordonnées des témoins P-0201 et P-264 », 11 August 2015, ICC-01/05-01/13-1143-Conf-Exp ('VWU Observations')

⁷ Prosecution's response to "Requête aux fins d'obtenir la communication des coordonnées des témoins P-0201 et P-0264", 11 August 2015, ICC-01/05-01/13-1142-Conf-Exp.

⁸ Email from Trial Chamber VII Communications to the Defence, Prosecution and VWU, sent on 05 August 2015, at 15:13.

⁹ The VWU notified the Chamber of its submission via email the day of the deadline, email from VWU to Trial Chamber VII Communications, sent on 11 August 2015, at 16:37.

¹⁰ Request, ICC-01/05-01/13-1120-Conf-Exp, para 4.

with the Prosecution's response and VWU's observations, as confidential. The annex to the Request however shall remain confidential *ex-parte*.

The Request

10. Regarding P-264, the Chamber notes that the Prosecution informed the Defence of the witness's refusal to be contacted prior to the submission of the Request.¹¹ According to paragraph 34 of the Protocol, a party who seeks to interview a witness of the other party can only do so if the witness consents to the interview. The Chamber therefore rejects the Request in regards to P-264.

11. Regarding P-201, the Chamber notes that the Prosecution has informed both the VWU and the Defence¹² 'that it was not able to reach the Witness P-201, with last attempt made on 27 July 2015.'¹³ The Chamber is satisfied that all attempts have been made *inter partes* to contact the witness to justify the intervention of the VWU. The Chamber therefore grants the Request regarding P-201.

FOR THE FOREGOING REASONS THE CHAMBER HEREBY

DIRECTS the VWU to contact P-201 to inquire if he consents to providing his contact information to the Kilolo Defence;

REJECTS the remainder of the Request; and

INSTRUCTS the Registry to reclassify the following filings from confidential *ex-parte* to confidential:

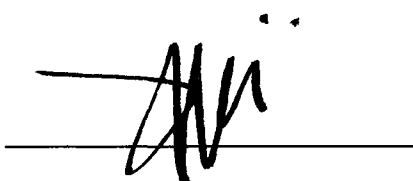
¹¹ The Prosecution informed the defence via email on 4 August 2014 at 10:08, just before the Kilolo Defence submitted its request the same day at 11:14.

¹² Request Annex, ICC-01/05-01/13-1120-Conf-Exp-Anx.

¹³ VWU Observations, ICC-01/05-01/13-1143-Conf-Exp, para. 4.

- ICC-01/05-01/13-1120-Conf-Exp;
- ICC-01/05-01/13-1142-Conf-Exp; and
- ICC-01/05-01/13-1143-Conf-Exp.

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



Judge Chile Eboe-Osuji, Presiding



Judge Olga Herrera Carbuca



Judge Bertram Schmitt

Dated 17 August 2015

At The Hague, The Netherlands