

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 18 September 2015

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Single Judge

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 Contact P-198

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

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber VII ('Single Judge' and 'Chamber', respectively) 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 Regulation 23 *bis*(3) of the Regulations of the Court ('Regulations'), issues the following 'Decision on Kilolo Defence Request to Contact P-198'.

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' ('Protocol').¹
2. On 16 September 2015, the defence of Mr Kilolo ('Kilolo Defence') requested the Chamber to order the Victims and Witnesses Unit ('VWU') to contact witness P-198 ('Witness') to inquire as to his consent to be interviewed by the Defence, pursuant to paragraph 37 of the Protocol ('Request'). The Defence further requests leave to contact the Witness directly, in the event that the VWU is unable to contact the Witness.²
3. The Kilolo Defence submits that it notified the Office of the Prosecutor ('Prosecution') of its intention to contact the Witness on 4 September. On 14 September 2015, the Prosecution informed the Kilolo Defence that it was unable to reach the Witness.³

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

² Requête URGENTE aux fins d'obtenir la communication des coordonnées du témoin P-0198, ICC-01/05-01/13-1255-Conf-Exp, together with one confidential *ex parte* annex.

³ ICC-01/05-01/13-1255-Conf-Exp-Anx.

4. On 17 September 2015, the Prosecution submitted its response, in which it deferred to the discretion of the Chamber, as it was unable to reach the Witness ('Response').⁴
5. As a preliminary matter, the Single Judge notes that the Request is classified as 'confidential *ex-parte*'. The Single Judge finds that the basis for this classification no longer exists and therefore, in accordance with Regulation 23 *bis*(3) of the Regulations, hereby reclassifies the Request, along with its annex and the Response, as confidential.
6. Regarding the Request to order the VWU to contact the Witness, the Single Judge notes that the Prosecution has informed the Defence that it was not able to reach the Witness.⁵ The Single Judge is satisfied that all attempts have been made *inter partes* to contact the Witness to justify the intervention of the VWU. Accordingly, the Single Judge grants the Request and directs the VWU to contact the Witness, enquiring if he consents to being contacted by the Kilolo Defence.
7. In regards to the Request to contact the Witness directly should the VWU be unsuccessful, the Single Judge notes the Prosecution submission that the Kilolo Defence has already had direct contact with P-198 prior to the issuance of the Protocol.⁶ The Single Judge therefore grants the Request to contact the Witness directly, in the event that the VWU is unable to reach the Witness. The initial contact must strictly be confined to obtain the Witness's consent to speak further to the Kilolo Defence.

⁴ Prosecution Response to "Requête URGENTE aux fins d'obtenir la communication des coordonnées du témoin P-0198", 17 September 2015, ICC-01/05-01/13-1264-Conf-Exp.

⁵ Request, ICC-01/05-01/13-1255-Conf-Exp-Anx.

⁶ Request, ICC-01/05-01/13-1264-Conf-Exp, para. 2.

FOR THE FOREGOING REASONS THE SINGLE JUDGE HEREBY

INSTRUCTS the Registry to re-classify the following filings as 'confidential':

ICC-01/05-01/13-1255-Conf-Exp; ICC-01/05-01/13-1255-Conf-Exp-Anx; ICC-01/05-01/13-1264-Conf-Exp;

INSTRUCTS the VWU to contact the Witness within five days of notification of the present decision, enquiring if he consents to being contacted by the Kilolo Defence;

INSTRUCTS the VWU to communicate its efforts by official filing; and

GRANTS the Kilolo Defence request to contact the Witness directly, in the event that the VWU is unable to contact him, under the conditions specified in paragraph 7 above.

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

A handwritten signature in black ink, appearing to be 'BS', written over a horizontal line.

Judge Bertram Schmitt, Single Judge

Dated 18 September 2015

At The Hague, The Netherlands