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No.: ICC-01/05-01/13
Date: 11 December 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***

Public

**Decision on the Requête de la Défense Kilolo visant à obtenir l'autorisation
d'effectuer des expurgations non standards**

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

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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

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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

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REGISTRY

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Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Others

Judge Bertram Schmitt, Single Judge of Trial Chamber VII ('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* ('Bemba et al. case'), having regard to Articles 64(2), 64(6), and 74(2) of the Rome Statute and Rules 78 and 81 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on the "Requête de la Défense Kilolo visant à obtenir l'autorisation d'effectuer des expurgations non standards"'.

I. Procedural History and Submissions

1. On 1 December 2015, the Defence for Mr Kilolo ('Kilolo Defence') requested the Chamber to authorise the implementation of non-standard redactions concerning information identifying protected defence witnesses in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ('Main Case') in a number of documents to be disclosed to the parties in the *Bemba et al.* case ('Application').¹ Pursuant to the Protocol Establishing a Redaction Regime ('Redaction Protocol'),² the Kilolo Defence argues that the information sought to be redacted is irrelevant to the charges and that, consequently, such redaction poses no prejudice to the parties.³ It is further argued that the private life and security of the concerned witnesses, who are subject to protective measures ordered by Trial Chamber III, must be preserved.⁴
2. On 9 December 2015, the Defence for Mr Bemba ('Bemba Defence') filed a response ('Bemba Response') arguing that any protective measures ordered by Trial Chamber III in the Main Case should remain in place in the *Bemba et al.*

¹ Requête de la Défense Kilolo visant à obtenir l'autorisation d'effectuer des expurgations non standards, ICC-01/05-01/13-1505-Conf, paras 4, 5 and 8.

² Annex to Decision on Modalities of Disclosure, 22 May 2015, ICC-01/05-01/13-959-Anx.

³ Application, ICC-01/05-01/13-1505-Conf, para. 7.

⁴ Application, ICC-01/05-01/13-1505-Conf, para. 8.

case in accordance with Regulation 42(1) of the Regulations of the Court.⁵ The Bemba Defence further argues that persons unconcerned with the scope of the charges in the *Bemba et al.* case, and who will not be called as witnesses in relation thereto, should be treated as ‘innocent third parties’ within the meaning of the Redaction Protocol, and thereby such redactions should fall within the standard redaction regime.⁶ Finally, the Bemba Defence argues that, in the absence of any waiver of confidentiality, ‘discussions or commentary by Defence team members’ would fall under redactions protecting internal work product.⁷

3. Also on 9 December 2015, the Office of the Prosecutor (‘Prosecution’) filed a response opposing the redactions (‘Prosecution Response’) on the grounds that the identities of Main Case defence witnesses were potentially relevant to the confirmed charges in order to demonstrate the existence of an overall strategy in the defence of Mr Bemba in the Main Case, consistent with the Prosecution’s allegation of the existence of a common plan amongst the accused in the *Bemba et al.* case. The Prosecution further argues that there is no justification for withholding the identities of the concerned persons from the Prosecution since the latter already has access to that information as a party to the Main Case.⁸

II. Conclusions

4. Pursuant to paragraphs 48 to 50 of the Redaction Protocol, the disclosing party shall apply to the Chamber for redactions outside of the standard categories of redactions listed therein. The Chamber will thereafter rule on the requested redactions in light of the justifications advanced and any observations of the receiving party.

⁵ Response to Requête de la Défense Kilolo visant à obtenir l’autorisation d’effectuer des expurgations non standards (ICC-01/05-01/13-1505-Conf), ICC-01/05-01/13-1519-Conf.

⁶ Bemba Response, ICC-01/05-01/13-1519-Conf, para 7.

⁷ Bemba Response, ICC-01/05-01/13-1519-Conf, para 8.

⁸ Prosecution’s Response to «Requête de la Défense Kilolo visant à obtenir l’autorisation d’effectuer des expurgations non standards», ICC-01/05-01/13-1505-Conf, ICC-01/05-01/13-1520-Conf, paras 3-5.

5. The Single Judge recalls that '[r]edactions are granted if they satisfy the following requirements: (i) the existence of an objectively justifiable risk to the safety of the person or interest concerned, or which may prejudice further or ongoing investigations; (ii) the risk must arise from disclosing the particular information to the receiving party, as opposed to the public; (iii) the infeasibility or insufficiency of less restrictive protective measures and (iv) an assessment as to whether the redactions sought are prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.'⁹
6. In the instant case, the Single Judge notes that the protective measures ordered by Trial Chamber III did not include withholding the identities of protected defence witnesses from the Prosecution. Nor has the Kilolo Defence demonstrated how, if at all, the disclosure of the identities of these witnesses to the other defence teams in the *Bemba et al.* case, as opposed to the public, would present an objectively justifiable risk to their safety. The Single Judge is similarly unpersuaded, with reference to the argument of the Bemba Defence, that the specific redactions being sought by the Kilolo Defence contain, at first glance, any specific work product of the defence for Mr Bemba in the Main Case in accordance with Rule 81(1) of the Rules, any more than the information being disclosed to the parties in unredacted form. On these bases, the Single Judge sees no need to authorise the totality of the requested non-standard redactions. However, to the extent that information relating to the places of abode and whereabouts of protected defence witnesses might compromise the Protection Programme and the security of witnesses who have been admitted into that programme, those specific redactions may be effected.

⁹ Decision on Modalities of Disclosure, 22 May 2015, ICC-01/05-01/13-959, para. 11

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

PARTIALLY GRANTS the Application.

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



Judge Bertram Schmitt, Single Judge

Dated 11 December 2015

At The Hague, The Netherlands