

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **16 March 2016**

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 Prosecution's Application for Non-Standard Redactions
Related to Records on Collection of Telecommunication Evidence**

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

Others

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

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 54(3)(f) and 64(6)(c) of the Rome Statute ('Statute') and Rule 81 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on Prosecution's Application for Non-Standard Redactions Related to Records on Collection of Telecommunication Evidence'.

I. Procedure background and relief sought

1. On 17 February 2016, the Single Judge granted the request of the defence for Mr Bemba ('Bemba Defence') for disclosure and lifting of redactions related to the collection of telecommunication evidence by the Dutch authorities ('17 February 2016 Decision').¹
2. On 26 February 2016, the Office of the Prosecutor ('Prosecution') disclosed to the defence records comprising email correspondence between the Prosecution and the Dutch authorities pursuant to the 17 February 2016 Decision.²
3. On the same date, the Prosecution applied for non-standard redactions related to names of certain staff members of the Dutch public prosecutor's office and police mentioned in the email correspondence disclosed ('Application').³
4. On 4 March 2016, the Bemba Defence responded to the Application, requesting that it be rejected ('Response').⁴ On the same date the defence for Mr Kilolo

¹ Decision on Bemba Defence Request for Disclosure and Lifting of Redactions Related to Collection of Telecommunication Evidence, ICC-01/05-01/13-1632.

² Prosecution's Communication of Incriminatory Evidence and Rule 77 Material Disclosed to the Defence on 26 February 2016, ICC-01/05-01/13-1670, with confidential annexes A and B.

³ Prosecution's Application for Non-Standard Redactions, 26 February 2016, ICC-01/05-01/13-1669-Conf-Exp.

⁴ Defence Response to Prosecution's Request for Application of Non-Standard Redactions (ICC-01/05-01/13-1669-Conf), 4 March 2016, ICC-01/05-01/13-1698-Conf.

(‘Kilolo Defence’) joined the submission of the Bemba Defence and fully adopted all its arguments.⁵

II. Submissions and Analysis

5. The Single Judge recalls the applicable law on disputed and non-standard redactions as set out in previous decisions of the Single Judge and Chamber.⁶
6. The Prosecution argues that the proposed redactions are limited in scope and necessary to protect the confidentiality, safety, and privacy of the concerned individuals and that, prior to making this request, the Prosecution consulted the Dutch authorities as a matter of due diligence and was informed that in The Netherlands the names of public servants are not normally disclosed in these circumstances.⁷
7. The Bemba Defence argues that Articles 54(3)(f) and 64(6)(c) of the Statute and Rule 81(3) of the Rules - cited by the Prosecution - do not provide a legal foundation for redactions related to the identity of persons involved in the interception process.⁸ It further argues that the requested redactions would be unduly prejudicial, as it would hamper the possible conduct of interviews of persons involved in the interception and recording process in order to challenge the legality of such process.⁹ The Bemba Defence also submits that the Chamber previously authorised redactions to the identity of police officers, but that this was done only on a temporary basis.¹⁰

⁵ Kilolo Defence Joinder to ‘Defence Response to Prosecution’s Request for Application of Non-Standard Redactions, 4 March 2016, ICC-01/05-01/13-1698- Conf’, ICC-01/05-01/13-1699-Conf.

⁶ Decision on Modalities of Disclosure, 22 May 2015, ICC-01/05-01/13-959, paras 10-11 (with annex).

⁷ Application, ICC-01/05-01/13-1669-Conf, para. 5.

⁸ Reponse, ICC-01/05-01/13-1698-Conf, paras 7 and 8.

⁹ Reponse, ICC-01/05-01/13-1698-Conf, paras 9-11.

¹⁰ Reponse, ICC-01/05-01/13-1698-Conf, para. 12, *referencing* Decision on Prosecution’s Application for Non-Standard Redactions, 17 June 2015, ICC-01/05-01/13-1015, para 10.

8. In its 17 February 2016 Decision, the Single Judge specified that if the Prosecution was of the view that discrete information not covered by standard redactions could adversely affect cooperation with The Netherlands then it could request non-standard redactions accordingly.¹¹
9. The Single Judge recognises the interest of not disclosing the names of the staff of national authorities who cooperated with the Prosecution if this is against standard national procedure. This is especially the case given that these officials work for the state hosting the Court and the likelihood of the Dutch authorities being involved in future international cooperation and judicial assistance. Considering the above, the Single Judge is of the view that a disclosure of the information in question could constitute a risk to further investigations within the meaning of Rule 81(2) of the Rules.
10. The Single Judge further notes that the unredacted portions of these documents still allow the defence to identify the institutions for which these individuals work. The names of those who appear to be the senior civil servants involved in the proceedings are likewise unredacted. Unlike past documents involving redactions to the identities of national police officers,¹² even without the information in question the defence teams still have sufficient information to contact the relevant Dutch authorities connected to this investigation and seek information from them as they wish. Accordingly, the Single Judge finds that the proposed redactions are not unduly prejudicial to the accused.

¹¹ Application, ICC-01/05-01/13-1632, para. 16.

¹² Decision on Prosecution's Application for Non-Standard Redactions, 17 June 2015, ICC-01/05-01/13-1015-Conf, para 10.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Application.

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

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

Judge Bertram Schmitt, Single Judge

Dated 16 March 2016

At The Hague, The Netherlands