



Original: English

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

Date: 17/03/2016

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

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 with Confidential Annex A

Defence Request for Judicial Notice

Source: Counsel for Jean-Pierre Bemba Gombo

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Kweku Vanderpuye

Counsel for the Defence of Mr Jean-Pierre Bemba Gombo

Melinda Taylor

Counsel for the Defence of Mr Aimé Kilolo Musamba

Paul Djunga

Steven Powles

Counsel for the Defence of Jean-Jacques Mangenda Kabongo

Christopher Gosnell

Arthur Vercken De Vreuschmen

Counsel for the Defence of Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Roland Azama Shalie Rodoma

Counsel for the Defence of Mr Narcisse Arido

Charles Achaleke Taku

Beth Lyons

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section Other

Introduction

1. The Defence for Mr. Jean-Pierre Bemba respectfully requests the Honourable Trial Chamber to take judicial notice of the date and contents of the filings from the Main Case (ICC-01/05-01/08), which are set out in attached Annex A.

Submissions

2. In its decision of 15 September 2015, the Trial Chamber determined that Article 69(6) of the Statute, which regulates judicial notice of facts that are of common knowledge, could apply to the dates and contents of transcripts from the Main Case.¹

3. The logic underpinning this decision was that,²

these transcripts are part of ICC court records, the dates and contents of which are capable of ready determination by resort to sources whose accuracy cannot reasonably be questioned. As such, the Chamber could take judicial notice of this Main Case testimony without requiring recourse to Rule 68(3) of the Rules or Article 69(3) of the Statute. The Chamber emphasises that such a ruling would be limited to taking judicial notice of the dates and contents of the relevant witnesses' Main Case testimony, and not the truth or falsity of the testimony itself.

4. This rationale is equally applicable to the filings attached to this request.

5. The provenance, dates, and contents of these filings cannot reasonably be doubted.

6. The Defence is not seeking to admit the contents of these filings for the truth of their contents; rather, the purpose is limited to establishing the various positions of the parties, Registry, and Trial Chamber throughout the Main Case proceedings.

¹ ICC-01/05-01/13-1249.

² ICC-01/05-01/13-1249, paras. 5-6.

7. In a subsequent decision, the Trial Chamber further clarified that,³

The Chamber may take judicial notice of facts of common knowledge without first assessing the relevance of these facts to the case at hand, though it always has the discretion to decline to take judicial notice of clearly irrelevant facts. Consistent with the Chamber's approach to evaluating evidence generally, the Chamber will decide in its judgment how much it will rely on judicially noticed facts in its assessment of the evidence.

8. Notwithstanding the fact that it is not necessary for the Trial Chamber to rule on the relevance of the attached filings at this juncture, the Defence has included an item-by-item explanation of such relevance in the attached Annex.

9. In summary, this includes issues pertaining to:

- i. The funding allocated to the Main Case Defence team, and Defence investigations;
- ii. Logistical issues encountered during Defence investigations, and in connection with the ability of the Defence to ensure the availability of Defence witnesses;
- iii. Assessments by various entities in the Court concerning the security and military status of Defence witnesses;
- iv. The timing and scheduling for Defence witnesses;
- v. The protection of Defence witnesses, and security concerns regarding potential intimidation or retaliation;
- vi. The demarcation of responsibilities between the Defence and the Registry as concerns issues pertaining to Defence witnesses;
- vii. The use of intermediaries as part of the evidence gathering process amongst CAR victims and witnesses; and

³ ICC-01/05-01/13-1473, para. 6.

viii. The overall system and context of witness payments in CAR, the nexus between such payments and issues of credibility/veracity.

10. The Filings largely centre on matters, which either specifically concern the Defence team itself (i.e. funding) or the fourteen Defence witnesses, who are the subject of the incidents set out in the Article 70 charges.

11. The Defence has, however, included some filings which concern general structural matters, or which shed light on the overall context in which the charged incidents took place.

12. In this regard, although the charges in the Article 70 case are confined to incidents pertaining to 14 Defence witnesses, the Prosecution has introduced a significant amount of evidence concerning other Defence witnesses on the grounds that such information contextualises the Article 70 case, and provides specific details concerning the role of the different defendants, and the timing and variations in the scheduling of Defence witnesses.⁴

13. Trial Chamber VII has, in turn, granted a Prosecution request for judicial notice to be taken in relation to the contents of transcripts concerning 27 Defence witnesses in the Main Case, and one Chamber's witness.⁵

14. In granting the request, the Trial Chamber noted that the weight to be accorded to such transcripts will not be determined until the Chamber issues its judgment.⁶ In accordance with Counsel's duty of diligence, the Defence must therefore assume that a range of issues addressed in these transcripts *could* be relevant, and prepare the Defence case accordingly.

⁴ ICC-01/05-01/13-1473, para.7.

⁵ ICC-01/05-01/13-1473 (and related Prosecution request, ICC-01/05-01/13-1339).

⁶ ICC-01/05-01/13-1473, para. 6.

15. Apart from the broad ambit of information concerning the Defence Main Case which has been put in issue in the Article 70 case, Trial Chamber VII has further recognised that information concerning the “overall system of money transfers and payments of witnesses in the Main Case”, including as concerns Prosecution witnesses, can be relevant to Defence preparation in the Article 70 case.⁷ The Prosecution was therefore ordered to disclose any information in its possession concerning payments to P-169 and P-178.⁸

16. Although information concerning payments has been disclosed, the context under which P-169 and P178 requested such payments, and the reaction of the Prosecution to such requests is also directly relevant to this overall system of money transfers. Annex A therefore includes filings which concern the manner in which such requests for payment were handled by the Prosecution.

17. The filings set out in Annex A therefore concern matters which are of direct relevance to the charges in the Article 70 case.

⁷ The Trial Chamber concluded that “payments to certain witnesses, including but not limited to those mentioned in the decision confirming the charges, 'could be deemed useful in understanding the overall system of money transfer and payment of witnesses' in the Main case, ICC-01/05-01/13-1154, para 12, citing ICC-01/05-01/13-983-Conf, para.5.

⁸ ICC-01/05-01/13-1154.

Relief sought

19. For the reasons set out above, the Defence for Mr. Bemba requests the Honourable Trial Chamber to take judicial notice of the dates, and contents of the filings set out in Annex A.



Melinda Taylor
Counsel of Mr. Jean-Pierre Bemba

Dated this 17th day of March 2016
The Hague, The Netherlands