

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 April 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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO

Public Document

**Prosecution's Response to the Bemba Defence's "Urgent Defence Request for
Extension of Time" (ICC-01/05-01/13-1769-Conf)**

Source: The Office of the Prosecutor

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

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1. The Office of the Prosecutor (“Prosecutor”) defers to Trial Chamber VII (“Chamber”) regarding the disposition of the Bemba Defence’s “Urgent Defence Request for Extension of Time” (“Request”).¹

2. However, the Chamber should take into account two significant factors in determining the Request: (1) the express terms of regulation 35 of the Regulations of the Court (“RoC”) which delimit the Chamber’s exercise of discretion to circumstances where good cause has been demonstrated; and (2) consistency between the Chamber’s Decision on the Second Mangenda Request for Cooperation² and the disposition of this Request — in particular, the Chamber’s determination that “any extension of the 8 April Deadline is not justified at this point in time.”³

3. Given that the Bemba Defence joined⁴ in the Mangenda Defence’s Second Request for Disclosure of Information from Dutch Authorities⁵ – thus comprising a request of its own – granting the Request would be incongruous with the Decision. This is even more so, given that the Bemba Defence’s explanations for the delay in its efforts to acquire the material that it now avers justifies an urgent extension of the 8 April Deadline are not substantively distinguishable from those proffered by the Mangenda Defence in its Second Cooperation Request. Nor are the documents recently received by the Bemba Defence apparently different than those requested by the Mangenda Defence, as revealed in Mangenda’s Notice in Relation to Decision 1768.⁶

¹ ICC-01/05-01/13-1769-Conf (“Request”).

² ICC-01/05-01/13-1768 (“Decision”).

³ Decision, para. 14.

⁴ ICC-01/05-01/13-1749-Conf.

⁵ ICC-01/05-01/13-1727-Conf (“Second Cooperation Request”).

⁶ ICC-01/05-01/13-1770-Conf.

4. Independently of Bemba's standing in the Dutch domestic proceedings concerning the disposition of the intercepted communications,⁷ the Bemba Defence was fully aware of the existence of the "case file"⁸ concerning Kilolo and Mangenda since 26 May 2014 at the very latest, when the Decision of the Hague District Court was notified to the Parties by Pre-Trial Chamber II.⁹ Notably, the Request does not particularise the specific efforts made by the Bemba Defence to acquire the material that it wishes to review and analyse.¹⁰ Regardless of whether or not the information is material to the Bemba Defence's preparation, "the lapse of time ... casts doubt on the expected importance of these documents",¹¹ and hence the necessity for – and propriety of – the requested extension.

5. If the Chamber grants the Request, the Prosecution requests that either: (a) the 8 April Deadline for all Parties be extended by four days to harmonise the filing schedule; (b) the Prosecution be extended additional time so that it can file a consolidated response to Bemba's filing and filings by other Accused covering the same issue; or (c) the Accused be directed to join a motion filed by a co-Accused prior to any response deadline, so that the Prosecution can file a single response addressing arguments concerning the same relief.¹²

⁷ See Request, para. 4.

⁸ See Request, paras. 4, 6, 8, 9, 11, 14.

⁹ See ICC-01/05-01/13-424-Anx1 (originally notified on 26 May 2014, re-stamped 17 September 2015).

¹⁰ See Request, paras. 3 (alleging that Bemba "has consistently and repeatedly made efforts to obtain access to relevant documents"), 6 (alleging that "[t]hroughout the course of 2015, the Defence for Mr. Bemba nonetheless repeatedly inquired as to whether other Defence teams were in a position to obtain either the entire case file or specific documents referenced in Requests for Assistance (RFAs)"). However, as noted, the Bemba Defence was fully aware of the fact that a case file for the interception process existed as early as May 2014 – the Request thus fails to account for any action on the part of the Defence for the better part of a year, at minimum.

¹¹ Decision, para. 14.

¹² See *e.g. Prosecutor v. Milan Milutinović et al.*, Order on Procedure and Evidence, Case No. IT-05-87-T, 11 July 2006, para. 12 ("Wherever they find it possible, the Accused should file joint motions and responses. The deadline for any Accused to join a motion filed by a co-Accused shall be seven days from the filing of that motion. The Prosecution should file a single response, within fourteen days of the initial motion.").

6. Either remedy would reduce the number of potential filings by the Parties and promote efficiency in the proceedings as it appears that multiple Parties may file motions and/or responses supporting the same relief and with similar arguments.



Fatou Bensouda, Prosecutor

Dated this 6th Day of April 2016
At The Hague, The Netherlands