



Original: English

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

Date: 11/05/2016

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 Public Annexes A-D

**Public Redacted Version of “Observations on the Report of the Independent
Counsel dated 4 May 2016 (ICC-01/05-01/13-1868-Conf)”**

Source: Defence for Mr. 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 Jean-Pierre Bemba Gombo

Melinda Taylor

Counsel for Aimé Kilolo Musamba

Paul Djunga Mudimbi

Steve Powles

Counsel for Jean-Jacques Mangenda Kabongo

Christopher Gosnell

Arthur Vercken

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Roland Azama Shalie Rodoma

Counsel for 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 files the following observations concerning the Report of the Independent Counsel dated 4 May 2016 (the Report), and related annexes.

Submissions

2. As concerns the emails derived from the account of Mr. Arido, the Independent Counsel's concludes that apart from 10 emails, the remainder were "manifestly" irrelevant to the Article 70 proceedings.¹ This conclusion underscores the disproportionate nature of the Prosecution's seizure of the entirety of these emails.
3. With respect to the specific redactions proposed to the emails derived from the accounts of Mr. Arido and Mr. Mangenda, the Defence joins the position of the Defence for Mr. Mangenda that the redactions denude the materials of critical contextual and exculpatory information. At the same time, the Independent Counsel has omitted to redact information concerning witnesses, who fall outside the scope of the charges (such as [REDACTED]).
4. As concerns the contacts list, the format in which it has been provided prevents the Defence from being able to submit any meaningful observations.
5. The final column "*Work Phone*" purports to contain phone numbers. However, 10 of the 20 numbers² appear in scientific notation,³ which is an

¹ Report, para. 31.

² ICC-01/05-01/13-1868-Conf-Exp-Anx7, rows 1, 2, 6, 7, 12, 14, 15, 17, 18 and 19.

inaccurate manner of writing specific phone numbers. This change, firstly, renders it impossible to identify what the referenced numbers are and, secondly, has the unfortunate effect of changing the digits in the provided numbers as dictated by rounding rules when using scientific notation.

6. By way of example, if the number “12345678912” is put into Microsoft Excel,⁴ and the cell is then compressed, the number changes to 1.235E+10 (1.235×10^{10}).⁵ Of particular note is the fourth digit: a “4” is rounded to a “5” as it is followed by a 5 in the original number. Furthermore, 1.235×10^{10} equals 12350000000, not 12345678912 – effectively erasing the last 7 digits. Similarly when the number “12352222222” is put into Microsoft Excel,⁶ then the cell is compressed; the resulting scientific notation is also 1.235E+10.⁷ Scientific notation can cause two very different numbers to appear as the same scientific notation.

7. This loss of information also occurred in the Independent Counsel’s 4 May 2016 submission. For example, the first entry at row 1, in column “*Work Phone*”⁸ is listed as [REDACTED]. This would mean that the number represented in row 1, column “*Work Phone*” should equal [REDACTED]. Similarly, row 2, in column “*Work Phone*”⁹ contains the exact same value of [REDACTED] also equalling [REDACTED].

³ Scientific notation is a way in the natural sciences to handle large numbers as decimals. For example 1,987,000,000 can be written as 1.987×10^9 , or similarly, 123 can be written as 1.23×10^2 , 12.3×10^1 or 123×10^0 . <https://www.nyu.edu/pages/mathmol/textbook/scinot.html>
 In Microsoft Office, the scientific notation would be written as 1.987E+9. E represents the 10, while +9 represent taking 10 to the 9th power and that the resulting integer is a positive number. See <https://support.office.com/en-us/article/Display-numbers-in-scientific-exponential-notation-f85a96c0-18a1-4249-81c3-e934cd2aae25>

⁴ Annex A

⁵ Annex B

⁶ Annex C

⁷ Annex D

⁸ ICC-01/05-01/13-1868-Conf-Exp-Anx7, row 1.

⁹ ICC-01/05-01/13-1868-Conf-Exp-Anx7, row 2.

8. The redactions proposed by the Independent Counsel also appear to lack coherence, although the Defence agrees that numbers 17, 18, and 20 should be redacted.
9. In line with the Trial Chamber's former ruling,¹⁰ the Defence requests to receive copies of the raw data of the seized materials so that it can identify whether it contains exculpatory information, which the Independent Counsel may have overlooked, or categorised as irrelevant.
10. Finally, the current observations are without prejudice to any specific objection that the Defence may wish to advance as concerns the introduction of these items into evidence at this advanced stage of the proceedings.



Melinda Taylor

Counsel of Mr. Jean-Pierre Bemba

Dated this 11th day of May, 2016

The Hague, the Netherlands

¹⁰ ICC-01/05-01/13-947, para. 40.