



Original: English

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

Date: 29/06/2016

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

**Public Redacted Version of “Corrigendum of “Defence’s Response to
“Prosecution’s Request under Articles 64(6)(b) and 93 of the Rome Statute to
Summon a Witness”, ICC-01/05-01/13-1259-Conf-Red””**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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Introduction

1. The Prosecution request to call P-198 *via* a summons (the Request)¹ should be rejected due the absence of objective justification for such a measure, and the absence of any indication that the Prosecution has first exhausted all reasonable alternatives to such a measure.

2. This response has been filed on a confidential basis in order to accord with the level of confidentiality of the Request, and information cited from the Main Case.

Submissions

3. The Defence concurs that P-198 possesses information which is relevant to the charges, and that his testimony could shed light on such issues.

4. The Defence also incorporates by reference the arguments set out in its Response to ICC-01/05-01/13-1237-Conf-Red, concerning the need for concrete and objective justification as concerns the need to attend P-198's testimony by compulsion.

5. The Prosecution's justification for issuing a summons is extremely sparse, and does not reflect any obstructive behaviour on the part of P-198, which would justify the issuance of a summons.

6. Firstly, P-198 agreed to meet with the Prosecution on a voluntary basis. His request to meet in person was, in fact, consistent with best practices as concerns his security and protection, and was therefore reasonable.

¹ ICC-01/05-01/13-1259-Conf-Red.

7. The notes concerning his interview with the Prosecution evidence no obstructive conduct on his part, or unwillingness to provide information concerning the charges. To the contrary, notwithstanding his right to silence (and the fact that he was not represented by Counsel), P-198 volunteered a significant amount of information concerning his testimony in the Main Case.

8. Given that this information was potentially exculpatory, it is a matter of considerable concern that the Prosecution actively dissuaded D-15 from providing further details.

9. At that point in time, the Prosecution had no means of guaranteeing that D-15 would be available for future testimony, whether called by the Prosecution or the Defence. Considering the instability in the area and the fact that D-15 in a [REDACTED] [REDACTED], the Prosecution had an active duty to investigate and collect any information he could have provided to them, with a view to fulfilling its duty to investigate exonerating circumstances.

10. The Defence also have the right to receive exculpatory information as soon as practicable. The Prosecution's proposed course of action – which is to refrain from any engagement with P-198 until he testifies *via* a summons – is not consistent with this right.

11. Rather than facilitating his ability to contribute to the 'truth', the proposed avenue for calling his testimony *via* the [REDACTED] authorities may also have a chilling effect as concerns his willingness to express any sentiments which could be perceived as favourable to a political opponent to the current [REDACTED] regime.

12. It would also appear from the notes that P-198 was confused by the approach of the Prosecution. He apparently indicated that he could not accept to testify without knowing what it concerned, and for whom he was testifying.

13. Again, this is not an expression of obstructive behaviour but a perfectly reasonable request. The meeting of 24 June 2015 was conducted by an investigator appointed to the Prosecution in the Main case, which could have raised reasonable apprehensions on the part of the witness concerning the purpose and scope of the meeting, and any subsequent testimony.

14. P-198 is also a suspect, and he did not have a lawyer present. Any lawyer would also have requested the same details, in order to provide informed advice as to whether P-198 should waive his right to silence, and the consequences which could result from any decision to do so.

15. Many civil law countries allow suspects to access some information from the case file before formal interviews, and the case law of the ICC itself allows for Duty Counsel to access relevant information in order to advise their clients in relation to issues of self-incrimination.² A suspect also has a right to know what they are suspected of, before being interrogated.

16. In this regard, the note does not indicate that P-198 was advised that he was a suspect. Moreover, although the note states that P-198 volunteered information concerning his testimony in the Main case, there is no indication that the investigators interrupted, and informed him of his right to silence. If such warning were not provided, P-198's request for further particulars before providing consent was not only reasonable, but necessary in order to protect his rights.

17. It would indeed, be highly inappropriate for the Prosecution to obtain a person's consent to testify if the person has not first been apprised of their status as a suspect and right to silence, and then provided with an effective opportunity to seek advice.

² ICC-01/05-01/13-1222, para. 52.

18. P-198 also faced significant security concerns in relation to his testimony as a Defence witness in the Main Case. The principle of witness consent is, primarily, a witness protection measure.³ The Court has limited means to guarantee protection; it can never provide 100% protection *in situ*, particularly if the witness does not wish to be relocated. The effective operation of the Court is therefore dependent on witnesses making an informed choice to interact with the Court. In such circumstances, a witness cannot be considered to be unwilling or obstructive in light of a reasonable request for further particulars concerning the scope of their future testimony, and the party for which they will be appearing.

P-198 was also informed explicitly, that the process was a ‘voluntary’ one;⁴ he was never put on notice that he could be called pursuant to a summons should he fail to testify on a consensual basis. At present, apart from the record of the meeting of 24 June 2015, there is no indication that the Prosecution has considered addressing P-198’s request for further particulars, or has informed him of their intention to compel his attendance via a summons.

19. In these circumstances, it is premature and unnecessary to resort to a coercive mechanism, such as a summons.⁵

Relief sought

20. For the reasons set out above, the Defence for Mr. Bemba requests the Trial Chamber to dismiss the Request.

³ ICC-01/04-01/07-412, pp. 7-8.

⁴ CAR-OTP-0090-1780.

⁵ ICC-01/05-01/13-1222, paras. 11 and 12.



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Dated this 29th day of June 2016

The Hague, The Netherlands