

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 25/10/2016

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul C. 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***

**Confidential
With Confidential Annex A**

Defence request for authorisation to file 23 documents in case ICC-01/05-01/08

Source: Defence for Mr. Jean-Pierre Bemba Gombo in case ICC-01/05-01/08

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

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A. INTRODUCTION

1. Pursuant to the Appeals Chamber's direction in the *Decision on the Request of Legal Representative of Victims for Access to Documents* ("Decision"),¹ the defence for Mr. Jean-Pierre Bemba Gombo ("Defence") in case 01/05-01/08 (the "Main Case") respectfully requests that the Trial Chamber authorise the Defence to file in the record of the Main Case 23 documents classified as "confidential" in the present case 01/05-01/13.

B. PROCEDURAL HISTORY

2. On 19 September 2016, the Defence filed in the Main Case its *Appellant's document in support of the appeal* before the Appeals Chamber.²

3. On the same day, the Defence requested the Appeals Chamber to admit the 23 documents listed in confidential Annex A hereto ("23 Documents") as additional evidence in support of its appeal.³ The 23 Documents were not appended to this request.

4. On 3 October 2016, the legal representative of victims ("LRV") requested access to the 23 Documents.⁴

5. On 17 October 2016, the Appeals Chamber ordered the Defence to file in the record of the Main Case the 23 Documents sought to be introduced as additional evidence on appeal such that they are available to the Appeals Chamber and all

¹ 17 October 2016, ICC-01/05-01/08-3445-Conf (A).

² ICC-01/05-01/08-3434-Conf (A).

³ ICC-01/05-01/8-3435-Conf (A).

⁴ ICC-01/05-01/08-3438-Conf (A).

parties and participants, subject to any authorisation that may be necessary from this Trial Chamber.⁵

6. On 19 October 2016, the Judgment in case ICC-01/05-01/13 was delivered ("Article 70 Judgment").⁶ A public redacted version was also made available.⁷

7. The public version of the Article 70 Judgment refers to transcripts of intercepted conversations which, in some cases, are directly reproduced. In particular, the public version of the Article 70 Judgment cites to four of the 23 Documents.⁸

C. SUBMISSIONS

(i) Submissions concerning the 23 Documents

8. The 23 Documents fall into three categories: (i) documents arising out the Western Union investigation obtained by the Main Case Prosecution team while the trial was ongoing;⁹ (ii) documents relating to the funding of Defence investigations during the Main Case;¹⁰ and (iii) intercepted telephone conversations that came into the Main Case Senior Trial Attorney's possession while the Main Case was ongoing.¹¹

9. In the Decision, the Appeals Chamber notes that the 23 Documents support Mr. Bemba's first ground of appeal, wherein he argues that the proceedings in the Main

⁵ Decision, para. 1.

⁶ ICC-01/05-01/13-1989-Conf.

⁷ ICC-01/05-01/13-1989-Red.

⁸ CAR-OTP-0077-1407; CAR-OTP-0077-1414; CAR-OTP-0079-0114 and CAR-OTP-0080-0228.

⁹ CAR-OTP-0092-0018; CAR-OTP-0091-0351; CAR-OTP-0092-0021-R01; CAR-OTP-0092-0022-R01; CAR-OTP-0092-0024; CAR-OTP-0092-0892-R01; CAR-D24-0002-1363; CAR-OTP-0092-0028-R02; CAR-OTP-0092-0029; CAR-OTP-0092-0030; CAR-OTP-0092-0031; CAR-OTP-0092-0032.

¹⁰ CAR-D20-0005-0270; CAR-D20-0005-0280; CAR-D20-0005-0281.

¹¹ CAR-OTP-0080-1402; CAR-OTP-0077-1407; CAR-OTP-0077-1414; CAR-OTP-0082-0663; CAR-OTP-0080-1369; CAR-OTP-0080-1370; CAR-OTP-0079-0114; CAR-OTP-0080-0228.

Case were rendered unfair by alleged violations of his rights related to the investigation in the present case.¹²

10. The 23 Documents are in the possession of the Defence and the Prosecution in the Main Case having been disclosed by the Prosecution after the close of the Main Case evidence.¹³ The 23 Documents are confidential to the parties to the present case.¹⁴

11. The Appeals Chamber considers that the personal interests of the victims are affected by the proposed admission of the 23 Documents because the documents are adduced to support arguments on the basis of which Mr. Bemba seeks to vacate the Article 74 judgment.¹⁵ Accordingly, the Appeals Chamber finds that the LRV should in principle have access to the 23 Documents.¹⁶

12. Having regard to this Trial Chamber's duty to protect the confidentiality of the proceedings, and the security of victims and witnesses, in the submission of the Defence, there is nothing in the content of the 23 Documents which would prevent their transmission to the LRV in the Main Case, or to the Appeals Chamber, on a confidential basis. The witnesses' identities revealed therein are known to both the LRV and the Appeals Chamber. Moreover, "the Prosecution does not object to the LRV's access to the documents relating to the Defence Application on a confidential basis."¹⁷

(i) Submissions concerning the four documents cited in the Article 70 Judgment

¹² Decision, para. 7.

¹³ ICC-01/05-01/8-3435-Conf (A), fn. 14.

¹⁴ The level of confidentiality of these documents is marked as "Confidential" on Ecourt. (Last accessed 25 October 2016).

¹⁵ Decision, para. 8.

¹⁶ Decision, para. 8.

¹⁷ ICC-01/05-01/08-3441-Conf, para. 5(i).

13. As noted above, four of the 23 Documents are referred to in the public redacted version of the Article 70 Judgment.

14. CAR-OTP-0077-1407, being the transcript of an intercepted conversation dated 12 September 2013 is cited seven times in the public Article 70 Judgment,¹⁸ with lines 198 to 200, 201 and 212 being directly reproduced.¹⁹ CAR-OTP-0077-1414, being a transcript of an intercepted conversation dated 13 September 2013 is cited 11 times in the public Article 70 Judgment,²⁰ with lines 238 to 257 being directly reproduced.²¹ CAR-OTP-0079-0114, being a French transcript of intercepted conversation dated 27 August 2013, is cited seven times in the public Article 70 Judgment.²² Lines 104-107;²³ 108-111;²⁴ 153-160;²⁵ 179-180;²⁶ are directly reproduced. CAR-OTP-0080-0228, being a French transcript of an intercepted conversation dated 26 August 2013 is cited seven times in the public Article 70 Judgment.²⁷ Lines 28-35;²⁸ 59;²⁹ 60;³⁰ 78-96³¹ are reproduced directly.

15. Given this Trial Chamber's reliance on, and reproduction in part, of these four documents in a public filing, the Defence understands that they have been reclassified as public. Should the documents in fact remain confidential, the Defence includes these in its overall request for variation of the confidentiality orders of the 23 Documents, to permit their filing as confidential documents in the record of the Main Case.

¹⁸ Footnotes 1170, 1251, 1253, 1257, 1258, 1259, 1260.

¹⁹ Footnotes 1259 and 1260.

²⁰ Footnotes 1171, 1280, 1284, 1285, 1290, 1291, 1293, 1294, 1295, 1296, 1297.

²¹ Footnote 1294.

²² Footnotes 1013, 1015, 1017, 1018, 1020, 1860, 1904.

²³ Footnotes 1018, 1860, 1904. See also, para. 161.

²⁴ Footnote 1020.

²⁵ Footnote 1017.

²⁶ Footnote 1017.

²⁷ Footnotes 999, 1001, 1002, 1003, 1006, 1008, 1009.

²⁸ Footnote 1009.

²⁹ Paragraph 159.

³⁰ Footnote 1003.

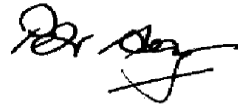
³¹ Footnote 1008. See also, para. 159 for line 96.

D. RELIEF SOUGHT

16. For the reasons set out above, the Defence respectfully requests the Trial Chamber to vary the confidentiality orders in order to permit the Defence to file the 23 Documents as confidential documents in the record of the Main Case so that they are available to the Appeals Chamber and all parties and participants in the Main Case.

17. Pursuant to Regulation 23*bis*(2) of the Regulations of the Court, this filing is submitted confidentially as it refers to the Decision and other filings that were submitted with the same classification. However, given that no confidential information is disclosed in this filing, the Defence requests that the Trial Chamber reclassify it as "public".

The whole respectfully submitted.



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The Hague, The Netherlands

25 October 2016