

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/05-01/13
Date: **14 November 2016**

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Single Judge

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

Corrected Version of

Decision on the Bemba Defence Request to Obtain Information from the Registry

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

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Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Gosnell

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Others

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber VII ('Single Judge' and 'Chamber', respectively) of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Rule 84 of the Rules of Procedure and Evidence and Regulations 23 *bis*(3) of the Regulations of the Court, issues the following 'Decision on the Bemba Defence Request to Obtain Information from the Registry'.

I. Procedural history and submissions

1. On 9 November 2016, the defence for Mr Bemba ('Bemba Defence') requested that the Chamber order the Registry to provide certain information it deems relevant for the sentencing phase ('Request').¹
2. The Bemba Defence, in an Email to the Registry, posed several questions concerning Mr Bemba's security measures ('Requested Information').² In its reply, the Registry responded that it could not provide the Requested Information, citing security concerns.³ The Bemba Defence now requests that the Chamber orders the Registry to provide the information, submitting that is necessary for the assessment of the appropriate sentencing.⁴
3. On 14 November 2016, the Registry provided its observations to the Request ('Registry Observations').⁵ Therein, it addresses part of the Requested Information and states that it could provide further information upon instruction of the Chamber.⁶ For the rest of the Requested Information, the

¹ Defence Request for Assistance with Confidential Ex Parte "Bemba Defence Only" Annexes A and B, ICC-01/05-1/13-2020-Conf-Exp, available only to the Bemba Defence and Registry, with two confidential *ex parte* annexes A and B.

² ICC-01/05-1/13-2020-Conf-Exp-AnxA.

³ ICC-01/05-1/13-2020-Conf-Exp-AnxB.

⁴ Request, ICC-01/05-01/13-2020-Conf-Exp, paras 2 and 6.

⁵ Registry's Observations on Mr Bemba's "Defence Request for Assistance with Confidential Ex Parte "Bemba Defence Only" Annexes A and B", ICC-01/05-01/13-2027-Conf-Exp, available only to the Registry and Bemba Defence, with one confidential *ex parte* annex 1.

⁶ Registry Observations, ICC-01/05-01/13-2027-Conf-Exp, paras 12-14.

Registry is of the view that it cannot provide it, since 'it pertains to the security and safety of the detained persons and the functional operation practices of the Court'.⁷

II. Analysis

4. As a preliminary matter, the Single Judge notes that the Registry took over two weeks to respond to the initial request by the Bemba Defence in order to deny it.⁸ It then missed the deadline set by the Chamber to file its observations.⁹ While it did provide a courtesy copy after work hours on 11 November, no explanation was given or request for extension of deadline was filed. The Single Judge hopes that this lateness will remain the exception.
5. Further, the Single Judge does not consider the classification of the Request and Registry Observations as confidential *ex parte* as necessary, given that all five convicted persons have been detained and have first-hand knowledge of the Court's detention centre. The Single Judge is aware of the sensitivity of the subject, but considers the information provided both in the Request and Observation of such general nature that it can be revealed to all parties. Accordingly, the Single Judge instructs the Registry to reclassify the Request and Registry Observations as 'confidential'.
6. The Single Judge notes that the Registry has effectively answered three of the eight questions by the Bemba Defence in its observations.¹⁰ In respect to the Registry submission that it could provide photographs of the holding cell, under the condition that no security features are displayed, the Single Judge orders the Registry to do so.

⁷ Registry Observations, ICC-01/05-01/13-2027-Conf-Exp, para. 9.

⁸ The Bemba Defence wrote to the Registry on 24 October 2016, the Registry denied the request on 8 November 2016. See, confidential *ex parte* annexes to the Request, ICC-01/05-01/13-2020-Conf-Exp-AnxA and ICC-01/05-01/13-2020-Conf-Exp-AnxB.

⁹ The deadline to file observations was set to 11 November 2016, E-mail from Trial Chamber VII to the Bemba Defence and the Registry, 9 November 2016, at 17:45.

¹⁰ Questions 4, 5 and 8 of the questions posed in the Email from the Bemba Defence to the Registry.

7. As a general consideration the Single Judges points out that the Bemba Defence itself submits that the Requested Information is 'known to Mr Bemba' and argues that its submission would 'enhance the accuracy of the proceedings and Defence submissions on such matters'.¹¹ Equally, the Registry argues that 'Mr Bemba himself would be in a position to provide much of the information requested'.¹² Therefore, the Single Judge does not consider that the Requested Information concerns hitherto unknown information whose provision could compromise the security features of the court. It is merely a question of confirmation by an impartial service provider, the Registry.
8. The Single Judge further underlines that this is without any prejudice on the actual assessment of the Requested Information or the question whether the Chamber will ultimately take it into account. The sole purpose is to enable the Bemba Defence to fully present the arguments it considers relevant in respect of the appropriate sentencing of Mr Bemba.
9. Nevertheless, the Single Judge notes that the Registry claims that it is not in a position to provide transport details of the detainees, since this is organised by the authorities of the Host State.¹³ Accordingly, the Single Judge is of the view that question number six, as put in the original email by the Bemba Defence, does not have to be answered by the Registry. However, the Single Judge considers that these considerations do not apply to questions one to three as posed by the Bemba Defence in its original email. These inquiries concern departure and arrival times from and to the detention unit, which necessarily have to be at least co-ordinated with the Registry. Accordingly, and taking into account the general considerations above, the Single Judge finds that the Registry is able to provide this information to Bemba Defence and instructs them to do so accordingly.

¹¹ Request, ICC-01/05-01/13-2020-Conf-Exp, para. 5.

¹² Registry Observations, ICC-01/05-01/13-2027-Conf-Exp, para. 5.

¹³ Registry Observations, ICC-01/05-01/13-2027-Conf-Exp, paras 8-9.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

INSTRUCTS the Registry to reclassify the Request (ICC-01/05-01/13-2020-Conf-Exp) and the Registry Observations (ICC-01/05-01/13-2027-Conf-Exp) as 'confidential';

FINDS part of the Request, as specified in paragraph 6, moot; and

INSTRUCTS the Registry to provide the remainder of the Requested Information, as specified in paragraphs 7 and 9 of this Decision.

Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, appearing to read 'Bertram Schmitt', is written over a horizontal line.

Judge Bertram Schmitt, Presiding Judge

Dated 14 November 2016

At The Hague, The Netherlands