

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 1 May 2015

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuca
Judge Bertram Schmitt

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 and Kilolo Defence pursuant to the
Trial Chamber VII's 24 April 2015 Order**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

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Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section Others

I. Submissions

1. In compliance with Trial Chamber VII's ("Chamber") 24 April 2015 order¹ and in response to the Bemba and Kilolo Defence's requests regarding the monitoring of communications set out in their respective observations on the first status conference ("Requests"),² the Office of the Prosecutor ("Prosecution") confirms that: (1) other than what is already known to the Parties,³ the Prosecution has not monitored, nor requested any national authority to monitor the Accused, Counsel or anyone concerning this case; and (2) the Prosecution is not aware whether national authorities have otherwise undertaken such activities.

2. Although the Prosecution provides this information to facilitate the conduct of the proceedings, it reiterates that it has no obligation to do so, particularly where such information may prejudice further or ongoing investigations.⁴ This is even clearer in light of the absence of any showing that the unavailability of this information has had an adverse effect on the Defence.⁵

3. To clarify the record, and contrary to the Kilolo Defence's suggestion, the Prosecution has not engaged in any "illegal practices".⁶ The Statute does not protect telephone conversations between counsel, Defence teams and the accused, in furtherance of a crime or fraud.⁷ And, as emphasised in its response

¹ ICC-01/05-01/13-T-8-CONF ENG ET, p.6, lns.19-23.

² ICC-01/05-01/13-896-Red, para.6; ICC-01/05-01/13-904-Red, paras.48-49.

³ ICC-01/05-52-Red2.

⁴ See ICC-01/05-01/13-883, esp. paras.2, 6-7.

⁵ See e.g., ICC-01/05-01/13-896-Red, paras.13-14 (the Bemba Defence claims a concrete impediment to its investigations based on an unsubstantiated contingency, when it does not appear to have yet tested the waters).

⁶ ICC-01/05-01/13-904-Red, para.49.

⁷ ICC-01/05-52-Red2, paras.4-5.

to a similar request by the Babala Defence,⁸ the Prosecution engaged the relevant Chamber during its investigations, in particular whenever legal privilege was potentially implicated. There is no circumstance or precedent in this case to suggest that the Prosecution has done, or would do otherwise in any other circumstances.

II. Relief Requested

4. For the foregoing reasons, and given its response to the specific matters at issue, the Prosecution requests that the Chamber dismiss the Requests as moot.



Fatou Bensouda, Prosecutor

Dated this 1st day of May, 2015
At The Hague, The Netherlands

⁸ See ICC-01/05-01/13-883, para.10.