

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **25 April 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***

Confidential

**Response of Mr Fidèle Babala Wandu's Defence team to the "Defence Request for
Admission of Documents through a Bar Table Motion"
(ICC-01/02-01/13-1794-Conf)**

Source: Defence for Mr Fidèle Babala Wandu

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

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**Victims Participation and Reparations
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Other

I. BRIEF PROCEDURAL HISTORY

1. By an oral decision of 9 March 2016, the Chamber set 8 April 2016 as the deadline by which the Defence teams must file their requests to introduce evidence by means other than through a witness.¹
2. On 8 April 2016, Mr Bemba's Defence team filed its request "Defence Request for Admission of Documents through a Bar Table Motion"² ("the Submission"), with Annex A, which describes in detail and explains the relevance of each piece of evidence ("the Annex").

II. CONFIDENTIALITY

3. The present submission refers to confidential documents and, therefore, has been filed with the same level of confidentiality, in accordance with regulation 23 *bis*(2) of the Regulations of the Court.

III. APPLICABLE LAW

4. The Defence reiterates the arguments set out on the applicable law and the relevant case-law regarding the method of submitting evidence by way of a Bar Table Motion ("BTM"), as set out in its six responses to the Prosecution's BTM requests³ and in its own BTM request.⁴

¹ ICC-01/05-01/13-T-42-CONF-ENG (decision delivered at a public hearing), p. 42, line 23 – p. 43, line 4: "In order to ensure that the Defence evidence presentation finishes in a timely fashion after the last witness, the Chamber will set a deadline for filing of any applications related to adding or subtracting items of evidence from the record. In particular this deadline applies to (...) and second, to formally submit any items through the so-called Bar Table; [...]. This deadline is set for 8 April 2016."

² ICC-01/05-01/13-1794-Conf.

³ ICC-01/05-01/13-1073-Red, paras. 8-12, 18-28; ICC-01/05-01/13-1203-Red, paras. 4-7, 9, 11, 21-24, 27-28, 39-41, 60-64; ICC-01/05-01/13-1401-Red, paras. 4-9, 11, 13-16, 18, 23; ICC-01/05-01/13-1513-Red, paras. 6-8.

5. The Defence wishes to respond to the request of Mr Bemba's Defence team on the basis of regulation 24(1) of the Regulations of the Court.

IV. SUBMISSIONS

6. In line with its habitual and consistent position on the various parties' submissions on BTMs, the Defence for Mr Babala will address only evidence pertaining to the defence of Mr Babala's interests, and it will do so without prejudice to the admission of other evidence submitted in these requests.
7. Nearly all of the evidence submitted by the Defence for Mr Bemba has proven to be relevant and essential to the defence of Mr Babala's interests. Therefore, in regard to the evidence discussed in the following paragraphs, the Defence endorses the arguments presented by Mr Bemba's team that the criteria of relevance, probative value and estimated potential prejudice, which are required for the evidence to be admitted into the record through a BTM, have been met.

(i) *Evidence relevant to contextualising and correctly interpreting/understanding the conversations between Mr Bemba and Mr Babala*

8. Mr Bemba and Mr Babala are charged in the instant case among other things on the basis of telephone conversations tendered into the record and, specifically, on the basis of the Prosecution's assertions stemming from *its* understanding of the alleged code language used by the Accused persons. The whole of section A of the annex, entitled "Open source articles and photographs", addresses the

⁴ ICC-01/05-01/13-1781-Conf, paras. 5-10.

use of a “code language” by the Accused persons, Mr Bemba and Mr Babala, and shows among other things that the Prosecution’s interpretation of certain code words is erroneous. The same holds true for item 1 under section F, “Internal Bemba Defence team correspondence”.⁵

9. All of section J (“Audio and transcripts of detention unit recordings from 2009”) attests, among other things, to the fact that Mr Bemba and Mr Babala’s use of this “code language” predates the material period and accordingly cannot be considered to be connected to the operation of an alleged common plan to corruptly influence witnesses.
10. Under section I (“Translations provided by LSS in relation to specific extracts of evidence relied upon by the Prosecution”), item 1⁶ relates to the question of the translation of the transcripts of telephone conversations by the Court services. Similarly, items 36⁷ and 84⁸ in section E (“Correspondence between the Bemba Defence team and ICC sections, and related documentation (i.e. mission plans, invoices submitted to CSS)”) are important in demonstrating the translation errors – and, therefore, problems of reliability – affecting the transcriptions of the intercepted telephone conversations. Mr Babala, party to the conversations, is confronted with accusations based, in large part, on what he said during those conversations; every item that challenges the reliability of the translations of the transcriptions is, therefore, directly relevant to the effective defence of his interests.

⁵ CAR-D20-0006-1011.

⁶ CAR-D20-0006-1272.

⁷ CAR-D20-0006-0915.

⁸ CAR-D20-0006-2028.

11. Items 2⁹ and 3¹⁰ in section I concern the way in which certain telephone conversations tendered into the record were obtained in the Netherlands – in particular conversations protected by professional privilege. The relevance of this evidence is emphasised by the main thrust of the Defence teams’ submissions contesting the irregularities that arose during the process of obtaining evidence.¹¹
12. Considering that the charges to which it must respond are based on the recordings of telephone conversations and related documents – transcripts and translations – Mr Babala’s Defence is particularly attentive to any assertion revolving around these telephone conversations, whether it concerns the way in which they were obtained, their translation or their use.

(ii) The financial situation of Mr Bemba’s Defence team in the main case

13. As has been reiterated since the beginning of the trial, Mr Babala made transfers in good faith to Mr Bemba’s Defence team, which received no legal aid. Under section E, entitled “Correspondence between the Bemba Defence team and ICC sections, and related documentation (i.e. mission plans, invoices submitted to CSS)”, Mr Babala’s Defence supports, in particular, items 1,¹² 2,¹³ 4,¹⁴ 12,¹⁵ 13,¹⁶ 18,¹⁷ 20,¹⁸ 21,¹⁹ 22,²⁰ 25,²¹ 29,²² 35²³ and 73,²⁴ and item 27²⁵ in section F, which are

⁹ CAR-D20-0006-1283.

¹⁰ CAR-D20-0006-1295.

¹¹ ICC-01/05-01/13-1791-Conf, paras. 49 *et seq.*; ICC-01/05-01/1796-Conf, paras. 55 *et seq.*; ICC-01/05-01/13-1799-Conf.

¹² CAR-D20-0005-0212.

¹³ CAR-D20-0005-0214.

¹⁴ CAR-D20-0005-0232.

¹⁵ CAR-D20-0005-0249.

¹⁶ CAR-D20-0005-0251.

¹⁷ CAR-D20-0005-0270.

¹⁸ CAR-D20-0005-0276.

¹⁹ CAR-D20-0005-0280.

²⁰ CAR-D20-0005-0281.

indicative of the financial situation of Mr Bemba's Defence team and the difficulties encountered to find the necessary funds to carry out investigative missions in the main case. Therefore, Mr Babala's Defence considers this evidence to be fundamental.

(iii) Evidence aimed at justifying the legitimacy of the expenditure of Mr Bemba's Defence team in the main case

14. Mr Babala has affirmed since the beginning of the case that he transferred money in good faith to cover only Mr Bemba's legitimate needs at the detention centre and those necessary for his Defence team, whose financial difficulty is attested to by the documents discussed in the previous section. Given that he was never part of Mr Bemba's Defence team, Mr Babala relies on Mr Bemba and Mr Kilolo's teams to tender into the record any justification for payments made once the money was transferred.
15. From this perspective, the tendering into the record of section E items 3,²⁶ 5-11,²⁷ 14-17,²⁸ 19,²⁹ 23-24,³⁰ 26³¹ and 30-34,³² which justify the legitimate expenditure of Mr Bemba's Defence team in the context of its legal activities, is crucial for the defence of Mr Babala's interests.

²¹ CAR-D20-0005-0284.

²² CAR-D20-0005-0288.

²³ CAR-D20-0005-0305.

²⁴ CAR-D20-0005-0762.

²⁵ CAR-D20-0005-0756.

²⁶ CAR-D20-0005-0222.

²⁷ CAR-D20-0005-0233; CAR-D20-0005-0234; CAR-D20-0005-0235; CAR-D20-0005-0237; CAR-D20-0005-0239; CAR-D20-0005-0245; CAR-D20-0005-0246.

²⁸ CAR-D20-0005-0258; CAR-D20-0005-0262; CAR-D20-0005-0263; CAR-D20-0005-0264.

²⁹ CAR-D20-0005-0272.

³⁰ CAR-D20-0005-0282; CAR-D20-0005-0283.

³¹ CAR-D20-0005-0771.

³² CAR-D20-0005-0293; CAR-D20-0005-0297; CAR-D20-0005-0298; CAR-D20-0005-0299; CAR-D20-0005-0302.

(iv) Allocation of telephone number “1111”

16. Also under section E, documents 37-47,³³ 77,³⁴ 82³⁵ and 83³⁶ concern the allocation of number “1111” and offer insight into the circumstances in which this number was added to the list of Mr Bemba’s privileged contacts at the detention centre, along with the reasons why and the periods for which it was added. Given that this number was wrongly attributed to Mr Babala at a given point in the proceedings on the basis solely of a handwritten list produced by the Independent Counsel, admitting these items into the record is vital to ensure an effective defence. Items 82 and 83, in particular, underline the lack of probative value of the evidence used by the Prosecution to artificially create this allocation.

(v) Miscellaneous

17. Items 50³⁷ and 74³⁸ in section E demonstrate the chain of transmission of documents provided by the Court services – the Registry and CSS – to the Defence for Mr Bemba. Given that some of these items are supported above and in the Defence response to the Kilolo Defence request on the same topic, it goes without saying that Mr Babala’s Defence supports both items.

³³ CAR-D20-0006-0478; CAR-D20-0006-0465; CAR-D20-0006-0479; CAR-D20-0006-0480; CAR-D20-0006-0485; CAR-D20-0006-0482; CAR-D20-0006-2009; CAR-D20-0006-2010; CAR-D20-0006-2011; CAR-D20-0006-2012; CAR-D20-0006-2013.

³⁴ CAR-D20-0006-0476.

³⁵ CAR-D20-0006-2020.

³⁶ CAR-D20-0006-2021.

³⁷ CAR-D20-0006-1036.

³⁸ CAR-D20-0005-0428.

FOR THE FOREGOING REASONS,

May it please Trial Chamber VII to:

FIND this request admissible and well-founded; and

Consequently, to

ADMIT as evidence all documents in **sections A, I and J; items 1 to 26, 29 to 47, 50, 73, 74, 77, 82 and 83 in section E; and items 1 and 27 in section F** of the annex to the Bemba team's BTM request.

AND JUSTICE WILL BE DONE.

RESPECTFULLY SUBMITTED,

[signed]

Mr Jean-Pierre Kilenda Kakengi Basila
Lead Counsel for Mr Fidèle Babala Wandu

Dated this 25 April 2016

At Brussels