

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 29 August 2014

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song, Presiding Judge
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka
Judge Sanji Mmasenono Monageng

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 Redacted Version

Public redacted version of "Prosecution's Request for Reclassification of ICC-01/05-01/13-481-Conf", ICC-01/05-01/13-493-Conf-Exp, 12 June 2014

Source: The 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
 Fatou Bensouda
 James Stewart
 Kweku Vanderpuye

Counsel for the Defence of Jean-Pierre Bemba

Counsel for the Defence of Aimé Kilolo Musamba

Counsel for the Defence of Jean – Jacques Mangenda Kabongo

Counsel for Fidèle Babala Wandu

Counsel for Narcisse Arido

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

States Representatives

Amicus Curiae

REGISTRY

Registrar
 Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Others
 Section**

I. Introduction

1. The Office of the Prosecutor (“Prosecution”) requests the reclassification of “Prosecution Response to the Kilolo Defence’s Addendum to its Request for the disqualification of the Prosecutor, the Deputy Prosecutor and the other members of the Office of the Prosecutor”¹ (“Prosecution Response”) pursuant to Regulation 23*bis* (3) of the Regulations of the Court.

2. The Prosecution Response was inadvertently filed with the wrong classification on 10 June 2014.

II. Confidentiality

3. This filing is classified as “Confidential, *Ex Parte*” as there is reference to filings so designated.

III. Submissions

4. The Prosecution Response was in response to a public addendum with a confidential and *Ex Parte* annex filed by the Kilolo Defence. The Prosecution Response was inadvertently filed as “Confidential”. Instead, it should have been classified as “Confidential, *Ex Parte*, only available to the Prosecution and the Kilolo Defence”.

5. The result of the incorrect classification is that the Prosecution Response was notified to all Defence teams in the CAR Article 70 case.

¹ ICC-01/05-01/13-481-Conf.

6. The Prosecution Response (i) reveals information contained in an annex to the Kilolo Defence's 2 June "Addendum à la Requête aux fins de récusation de l'Accusation dans le cadre de l'enquête et des poursuites visant M. Aimé Kilolo Musamba".² That annex is classified as Confidential, *Ex Parte*, available to the Kilolo Defence and the Prosecutor only;³ (ii) [REDACTED]; and (iii) references and quotes from [REDACTED].⁴

7. However, the consequence of the erroneous classification of the Prosecution Response is limited. D-18's status as a former *Bemba* Defence witness is already known to the parties from a previous Defence filing notified to all parties to the CAR Article 70 case.⁵

8. Currently, all but two Defence teams have accessed the Prosecution Response through TRIM (one of which is the Kilolo Defence team). Although reclassifying the filing now as, Confidential *Ex Parte*, only available to the Prosecution and the Kilolo Defence, would only exclude the remaining Defence team from having knowledge of the filing, this is the only practical means to prevent the further dissemination of the filing and to mitigate any potential harm.

9. The Prosecution acknowledges its error and apologises for the inadvertence and the inconvenience to the parties and the Appeals Chamber.

IV. Requested Relief

10. The Prosecution requests that (i) the Prosecution Response be reclassified as "Confidential, *Ex Parte*, only available to the Prosecution and the Kilolo Defence";

² ICC-01/05-01/13-233-Conf.

³ ICC-01/05-01/13-449-Conf-Exp-Anx1-Red.

⁴ ICC-01/05-01/13-307-Conf-Exp.

⁵ ICC-01/05-01/13-450-Conf.

and (ii) the Appeals Chamber direct the parties to treat the filing as if were classified as such from the beginning.



Fatou Bensouda, Prosecutor

Dated this 29th Day of August 2014

At The Hague, The Netherlands