

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 11 March 2015

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Robert Fremr

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 Kilolo Defence's Request « d'ordonner au Procureur
de présenter une version amendée du document de notification des charges et de
communiquer l'ensemble des preuves »***

Source: The Office of the Prosecutor

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

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I. Introduction

1. The Office of the Prosecutor (“Prosecution”) does not oppose the Accused, Aimé Kilolo Musamba (“Kilolo”) Defence’s request¹ for an amended Document Containing the Charges (“DCC”)² in accordance with the “Decision pursuant to article 61(7)(a) and (b) of the Rome Statute” (“Confirmation Decision”)³ — notwithstanding its inconsistency with the Court’s established practice. The Prosecution is currently working on an amended version of the DCC, which it intends to present in due course in accordance with instructions from the Trial Chamber VII (“Chamber”).

2. The Request presents a misleading account of the facts in relation to: (i) the timeline of the pre-trial proceedings;⁴ (ii) the disclosure process;⁵ and (iii) the timeline of the investigation.⁶ This Response thus briefly addresses these issues to ensure that the Chamber has an accurate picture of the record on which the Request is predicated.

II. Submissions

A. The Court’s established practice

3. In both the *Lubanga* and *Ruto and Sang* cases referenced in the Request,⁷ as well as in the *Kenyatta* and *Ntaganda* cases, an updated DCC was provided only after the first status conference.⁸ The Prosecution expects that once such a conference is convened, the Chamber will provide its guidance concerning the issuance of the

¹ ICC-01/05-01/13-830 (“Request”).

² ICC-01/05-01/13-526-Conf-AnxB1.

³ ICC-01/05-01/13-749.

⁴ Request, para.10.

⁵ Request, para.13.

⁶ Request, para.14.

⁷ Request, footnote 10.

⁸ ICC-01/09-01/11-439, para.3; ICC-01/04-01/06-1548, para.3; *See also*, ICC-01/09-02/11-450, para.3; ICC-01/04-02/06-390, para.1.

amended DCC, which the Prosecution will then file accordingly.

B. The Request distorts the record

4. First, the Kilolo Defence's contention that "*plusieurs mois se sont écoulés depuis la décision de confirmation partielle des charges à l'encontre de Monsieur Kilolo et que le Procureur n'a pas communiqué de version amendée du Document*"⁹ is misleading. Although several months have passed since the Confirmation Decision was issued, the Request omits that for more than half of this time, Pre-Trial Chamber II was seized of all five Accused's requests for leave to appeal.¹⁰ Following the rejection of their respective applications on 23 January 2015,¹¹ the case was referred to the Presidency, which assigned the Trial Chamber a week later, on Friday, 30 January 2015.¹²

5. There is no doubt that in the intervening month, Mr Kilolo has remained fully informed of the nature, cause and content of the charges against him, pursuant to article 67(1)(a) of the Rome Statute ("Statute"), particularly as the Confirmation Decision confirms all the charges alleged against him in the current DCC.

6. Second, the Request erroneously contends that "*à ce jour, la communication des éléments de preuve est, toutefois, restée lettre morte provoquant le ralentissement du travail de la Défense.*"¹³ To the contrary, the Prosecution has disclosed and continues to disclose material to the Defence in accordance with its obligations under the Statute, Rules of Procedure and Evidence ("Rules") and the Court's practice.¹⁴ The latest such

⁹ Request, para.10.

¹⁰ ICC-01/05-01/13-771 (Mr Kilolo's Application); ICC-01/05-01/13-768 (Mr Bemba's Application); ICC-01/05-01/13-769 (Mr Babala's Application); ICC-01/05-01/13-772 (Mr Arido's Application); ICC-01/05-01/13-755 (Mr Mangenda's Application).

¹¹ ICC-01/05-01/13-801.

¹² ICC-01/05-01/13-805.

¹³ Request, para.13.

¹⁴ As the Defence is aware, the Prosecution continued with its disclosure in this case before this Chamber even in advance of the adoption of a disclosure protocol. However, as the disclosure of material requiring redaction

disclosure took place on 25 February 2015,¹⁵ which followed a disclosure on 6 February 2015¹⁶—within one week of the Chamber’s assignment.

7. *Third*, the Request’s claim that “*le Bureau du Procureur a mené son enquête durant quatre années*”,¹⁷ simply does not conform to reality. As the Defence is fully aware, the Prosecution first came into the information which led to the investigation culminating in the charges in this case in mid-2012.¹⁸

III. Conclusion

8. Subject to the above clarifications, the Prosecution does not object to the Kilolo Defence’s Request. As noted, the Prosecution intends to provide an amended DCC in due course, in accordance with the established practice of the Court and pursuant to the direction of the Chamber.



Fatou Bensouda, Prosecutor

Dated this 11th Day of March 2015
At The Hague, The Netherlands

affects the Chamber’s independent obligation to ensure the security of victims and witnesses, such disclosure remains pending the Chamber’s adoption of a redaction protocol.

¹⁵ ICC-01/05-01/13-826; Trial INCR Package 20, 25 February 2015; Trial Rule 77 Package 16, 25 February 2015.

¹⁶ ICC-01/05-01/13-813; Trial INCR Package 19, 6 February 2015; Trial Rule 77 Package 15, 6 February 2015.

¹⁷ Request, para.14.

¹⁸ ICC-01/05-44-Conf-Red2, para.9.