

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 25 September 2015

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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

**Public Document
with**

Confidential, *EX PARTE*, only available to the Prosecution, Annex A

**Prosecution Urgent Request for Reclassification of the Material Intended for Use
in the Course of its Opening Statement**

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”) requests Trial Chamber VII (“Chamber”) to reclassify as “Public” the material the Prosecution intends to use in the course of its opening statement, pursuant to article 67(1) of the Rome Statute and regulations 20(1), 21(1) and (7) and 23*bis*(3) of the Regulations of the Court, (“Request”). This material, contained in Annex A, comprises of excerpts of oral and written communications involving the Accused and Main Case Defence witnesses (“Proposed Material”).

2. This Request should be granted for two principal reasons. *First*, the current classification of this material is no longer justified. *Second*, granting the Request ensures an uninterrupted and public opening of the trial.

II. Confidentiality

3. Annex A to this filing is classified as “Confidential, *EX PARTE*, only available to the Prosecution” to preserve the Prosecution’s opening statement until the commencement of the trial. This classification does not cause unfair prejudice to the Defence, as it already received general notice of the materials that the Prosecution intends to use in its opening statement.¹

¹ See ICC-01/05-01/13-1275.

III. Submissions

A. The current classification is no longer justified

4. The Prosecution intends to read into the record and display in written or audio-visual form excerpts from Kilolo's communications with other Accused and Defence witnesses in the Main Case. This material was provided to the Prosecution by Pre-Trial Chamber II and this Chamber as "Confidential",² to preserve the ongoing investigations and/or the identities of the protected or innocent third parties. Although this classification may still be appropriate in respect of certain items from this group, it is no longer justified as concerns the Proposed Material.

5. The Proposed Material does not identify the protected witnesses involved, except in three instances to which redactions will be applied, as set out at Annex A. The Prosecution will ensure that the witnesses' voices in the recorded conversations are distorted in broadcasts outside the courtroom. As such, their anonymity *vis-à-vis* the public will not be exposed.

6. In addition, Pre-Trial Chamber II has already cited substantial parts of Kilolo's communications, some of which are included in the Proposed Material.³ Others appear within the same or sequential conversations regarding the same issue. This underscores the absence of any compelling reason to maintain the confidentiality of the Proposed Material.

² ICC-01/05-01/13-6-Red; ICC-01/05-01/13-39; ICC-01/05-01/13-403; ICC-01/05-01/13-947.

³ See e.g. ICC-01/05-01/13-749, fn. 54: "In a conversation with D-54, Mr Kilolo states that "[...] si tu dis lingala, ils établiront le lien" and that "[l']essentiel comme tu dis [...] le swahili est la langue principale qu'ils parlaient. C'est la chose la plus importante que nous retiendrons" (CAR-OTP-0082-1109, at 1134). While D-54 is listening, Mr Kilolo continues: "Bon. Je ne sais pas ce que nous pouvons faire à ce niveau. Pour moi, tu feras apparaître les autres ... comme étant les gens de MUSTAPHA, tu diras ceci "Non, la plupart parlait le swahili, parmi ceux qui ont traversé; parce que le plus grand nombre était de la Brigade de MUSTAPHA, il venait de l'est. Ils parlaient souvent le swahili. Un petit groupe parlait lingala" (CAR-OTP-0082-1109 at 1133)". See also, ICC-01/05-01/13-749, fn. 78: "CAR-OTP-0079-0131, at 0139 (Mr Kilolo to Mr Mangenda: "...tu vois pour moi le problème très important, est que tu me fasses toujours les rapports de gens qui sont en train de passer. Pourquoi? Parce que tu vois comme moi je suis en train de faire les couleurs...")"; ICC-01/05-01/13-749, fn. 79: "CAR-OTP-0080-0228, at 0231 (Mr Kilolo: "Mais ma question est maintenant de savoir si la personne a suivi les enseignements"; Mr Mangenda: "Ah ... oui, oui, il a bien suivi, il a bien suivi")".

B. The Request is in the interests of justice

7. Given the scope of the Proposed Material, granting the Request will obviate the need for repeated transitions from public to private session during the opening statement. It will also ensure that the publicity of this trial, to which the Accused are entitled, is not unnecessarily abridged.

8. There is no countervailing interest regarding the use of the material set out at Annex A warranting restriction. To the contrary, the transparency of opening statements in this case is fully consonant with the Accused's article 67 rights and is in the interests of the Court. The same considerations militate for the reclassification of the Proposed Material. The Prosecution thus seeks to publicly broadcast excerpts from the Proposed Material, subject to such redactions as the Chamber may deem appropriate, in accordance with the relevant protocol.⁴

IV. Relief Requested

9. For the foregoing reasons, the Prosecution requests the Chamber to reclassify the material set out at Annex A as "Public". Given the established trial schedule, the Prosecution asks that the Request be considered on an urgent basis.



Fatou Bensouda, Prosecutor

Dated this 25th Day of September 2015
At The Hague, The Netherlands

⁴ See ICC-01/05-01/13-959.