

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 5 October 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
Public Annexes A and B**

**Prosecution Request for a Judicial Notice, Pursuant to Article 69(6)
of the Rome Statute**

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 take judicial notice of: (i) the existence and authenticity of trial transcripts in the Main Case and their audio-visual equivalents; and (ii) the happenings in the courtroom as shown therein (collectively, “Proposed Facts”), pursuant to article 69(6) of the Rome Statute (“Statute”) and the “Decision on Prosecution Motion for Clarification of Rule 68(3) Direction in Conduct of Proceedings Decision” (“15 September Decision”).¹ The Prosecution also requests that the material set out at Annex A be made part of the record in this case.

2. In its 15 September Decision, the Chamber indicated that the Proposed Facts are common knowledge within the meaning of article 69(6) of the Statute.² As such, they properly qualify for judicial notice.

3. The Proposed Facts are highly relevant to this case. Judicially noticing them will promote judicial economy and efficiency, and considerably streamline the proceedings. It will not unfairly prejudice the Defence; to the contrary, all the Parties will benefit from a more focused scope of litigation, and more expeditious trial.

II. Submissions

A. The nature and scope of the Proposed Facts

4. The Proposed Facts comprise: (i) the existence and authenticity of trial transcripts containing the testimony of 27 Defence witnesses³ and one Court witness

¹ ICC-01/05-01/13-1249.

² ICC-01/05-01/13-1249, paras. 5-6.

³ Confidential trial transcripts of D-64, D-57, D-55, D-54, D-45, D-29, D-26, D-25, D-23, D-15, D-7, D-4, D-3, D-2, available to the Parties in this case as per Trial Chamber III’s decision ICC-01/05-01/08-3074; confidential

in the Main Case,⁴ and attendant audio-visual versions of these transcripts for 16 Defence witnesses and one Court witness;⁵ and (ii) the recorded happenings in the courtroom.

B. The Proposed Facts are highly relevant to this case

5. Pre-Trial Chamber II committed the Accused to trial on multiple counts of offences against the administration of justice involving the testimony of 14 Main Case Defence witnesses.⁶ As such, the contents of their evidence, as well as the courtroom events occurring during its presentation are inherently material to these proceedings.

6. Certain transcripts proposed for judicial notice reflect testimonial sessions of other Defence witnesses. However, the contextual information they contain is equally relevant to this case, especially given that the alleged Overall Strategy is not limited to the 14 incidents.⁷ For example, the transcript of D-48's testimony reflects Trial Chamber III scheduling D-13's appearance between 19 November and 13 December 2012.⁸ D-13 eventually testified almost one year later.⁹ This fact specifically contextualises Kilolo's explanation to Mangenda on 10 November 2013 that D-13 required serious and lengthy re-coaching, as his testimony had been rescheduled: *"Moi, par exemple, je suis occupé avec LES COULEURS¹⁰ de cette personne parce que tu vois le type... comme ça faisait déjà longtemps, dans sa tête il savait qu'il n'allait plus venir, donc*

transcripts of D-4 and D-13, available to the Parties in this case as per Trial Chamber III's decision ICC-01/05-01/08-3098-Red; and public redacted transcripts of D-9, D-19, D-21, D-30, D-36, D-48, D-49, D-51, D-53, D-65, D-66.

⁴ Confidential trial transcripts of CHM-1, available to the Parties in this case as per Trial Chamber III's decision ICC-01/05-01/08-3074.

⁵ Confidential video recordings without protective measures of the testimony of D-64, D-57, D-55, D-54, D-45, D-29, D-26, D-25, D-23, D-15, D-7, D-4, D-3, D-2, available to the Parties in this case as per Trial Chamber III's decision ICC-01/05-01/08-3238.

⁶ See ICC-01/05-01/13-749.

⁷ See e.g. ICC-01/05-01/13-1110-Conf, para. 1; see also e.g. ICC-01/05-01/13-749, para. 52.

⁸ ICC-01/05-01/08-T-269-Red-ENG, 8 November 2011, p. 2, lns. 3-13.

⁹ See ICC-01/05-01/13-1110-Conf, para. 204.

¹⁰ "Les couleurs" is a code referring to the illicit coaching of witnesses, see ICC-01/05-01/13-1110-Conf-AnxA, paras. 113-129.

il avait... il n'avait plus ces choses-là dans sa tête. Donc j'ai juste essayé avec lui comme ça ... même ce qu'il nous avait dit lors de notre rencontre avec KATE, il n'en peut plus [...]. Donc j'ai dû tout recommencer à zéro, donc ça m'a pris du temps".¹¹

7. The Proposed Facts provide important context for the charges, in that they establish, *inter alia*: (i) the existence of the Main Case; (ii) the composition of Bemba's Defence team, including Kilolo's and Mangenda's roles in it; (iii) the dates and time of witnesses' testimonies, including their order of appearance, variations and/or modifications thereof – which had a direct impact on the timing of the alleged coaching and is further relevant to the alleged alignment of witnesses' evidence by the Accused;¹² and (iv) the contents of the witness evidence, without prejudging their truthfulness.

C. Taking judicial notice of the Proposed Facts is in the interests of justice

8. Requiring proof of the Proposed Facts at trial risks a process “unnecessarily drawn out by the introduction of evidence on matters that are patently of common knowledge”.¹³ On the other hand, judicially noticing them will advance the conduct of fair and expeditious proceedings, saving valuable Court time and resources.

9. The Proposed Facts are not dispositive of the charged offences or the Accused's criminal responsibility, and thus do not in any way encroach upon their presumption of innocence, or otherwise cause unfair prejudice.

¹¹ CAR-OTP-0082-1140 at 1142, lns. 10-16. See also ICC-01/05-01/13-1110-Conf, paras. 205-206, 208.

¹² See e.g. ICC-01/05-01/13-1110-Conf, para. 108.

¹³ *Prosecutor v. Semanza*, ICTR-97-20-I, Decision on the Prosecutor's Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54, 3 November 2000, para. 46.

III. Relief Requested

10. For the foregoing reasons, the Prosecution requests that the Chamber take judicial notice of the Proposed Facts, and order the inclusion of the material set out at Annex A as part of the factual record in this case.



Fatou Bensouda, Prosecutor

Dated this 5th Day of October 2015
At The Hague, The Netherlands