

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/13
Date: 16 October 2015

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

**Public Redacted Document
with
Confidential Annex A**

**Public redacted version of “Prosecution’s Motion for the Admission of the
Previously Recorded Testimony of P-0264, pursuant to Rule 68(2)(b) of the Rules of
Procedure and Evidence”, 15 October 2015, ICC-01/05-01/13-1378-Conf**

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 admit the previously recorded statement of P-0264 *in lieu* of [REDACTED] *viva voce* testimony in this case, pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”) (“Motion”).

2. The previously recorded statement tendered comprises: (i) the transcript of P-0264’s 6 November 2014 interview;¹ and (ii) a note reflecting six minor non-substantive clarifications made by P-0264 during the certification procedure (collectively, “Statement”). It is attached at Annex A.

3. The Statement is *prima facie* relevant and probative of the charges, and does not concern the acts and conduct of the Accused. P-0264 has acknowledged its truthfulness and accuracy in an accompanying declaration meeting the conditions under rule 68(2)(b)(iii) of the Rules.

4. The nature and content of P-0264’s evidence is such that [REDACTED] appearance for cross-examination is unnecessary. Further, granting the Motion would not cause any unfair prejudice to the Accused. To the contrary, all Parties will benefit from an expedited presentation of the Prosecution’s case-in-chief. Admitting P-0264’s evidence would, therefore, best serve the interests of justice.

II. Confidentiality

5. This filing is classified as “Confidential”, as it refers to information that is not yet available to the public. The Prosecution will file a public redacted version.

¹ CAR-OTP-0085-0512; CAR-OTP-0085-0523; CAR-OTP-0085-0541.

III. Procedural Background

6. On 29 July 2015, the Chamber authorised the Registry Legal Counsel, or anyone delegated by him, to witness declarations made pursuant to rule 68(2)(b)(iii) of the Rules.²

7. On 7 October 2015, the Prosecution had P-0264 read the transcripts of [REDACTED] 6 November 2014 interview taken pursuant to rule 112 of the Rules.³ P-0264 made six minor clarifications to them, consigned in a note, which [REDACTED] acknowledged and signed.⁴

8. On 7 October 2015, P-0264 made a declaration to the Registry that the contents of [REDACTED] interview as clarified are true and correct to the best of [REDACTED] knowledge and belief. On 14 October 2015, the Registry filed this declaration in the record of the case.⁵

IV. Applicable Law

9. The Prosecution incorporates by reference the discussion of the law applicable to the introduction of a witness's previously recorded testimony set out at paragraphs 10 through 12 of the "Prosecution's Request for the Admission of the Previously Recorded Testimony of P-0270, pursuant to Rule 68(2)(b)".⁶

² ICC-01/05-01/13-1109, p. 5.

³ See Annex A.

⁴ See Annex A.

⁵ ICC-01/05-01/13-1371-Conf, paras. 1-3.

⁶ ICC-01/05-01/13-1247-Conf.

V. Submissions

A. The proposed evidence is *prima facie* relevant to the charges

10. P-0264's prior testimony is *prima facie* relevant to, and probative of: (i) the pattern of money transfers to witnesses through third parties;⁷ and (ii) the corrupt influencing of [REDACTED].⁸ [REDACTED], P-0264's [REDACTED],⁹ was a witness for Bemba in the Main Case and payments to [REDACTED] are the subject of one of the charged incidents in this case.¹⁰ In the proposed evidence, P-0264 admits to collecting money on [REDACTED]'s behalf and handing it over to [REDACTED].¹¹ [REDACTED] subsequently falsely testified that he received no money from, or on behalf of, the Bemba Defence.¹²

11. P-0264's evidence does not pertain to the acts and conduct of any of the Accused as [REDACTED] makes "[n]o mention [...] of acts and conduct by alleged co-perpetrators, subordinates, or indeed, of anybody else".¹³ Other evidence demonstrates that the payment came at the behest of the Accused. Specifically, Western Union records show that on [REDACTED], one day before [REDACTED]'s testimony in the Main Case, P-0264 received USD [REDACTED] from Caroline Bemba, Jean-Pierre Bemba's sister.¹⁴ In the proposed evidence, P-0264 admitted having collected this money on behalf of [REDACTED] and handed it over to [REDACTED].¹⁵ [REDACTED] subsequently falsely testified that [REDACTED]

⁷ See ICC-01/05-01/13-1110-Conf, paras. 47-49.

⁸ See ICC-01/05-01/13-749, p. 47-54; ICC-01/05-01/13-1110-Conf, paras. 155-163.

⁹ CAR-OTP-0085-0523-R01 at 0529, l. 199-215.

¹⁰ See ICC-01/05-01/13-749, p. 47-54; ICC-01/05-01/13-1110-Conf, paras. 155-163.

¹¹ CAR-OTP-0085-0523-R01 at 0532-0535, l. 315-444.

¹² [REDACTED].

¹³ *Prosecutor v. Milošević*, IT-02-54-T, Decision on Prosecution's Request to Have Written Statements Admitted under Rule 92 bis, 21 March 2002, para. 22. See also ICC-01/05-01/13-1288-Conf-Corr, para. 8.

¹⁴ CAR-OTP-0074-0855, Tab 28 Caroline Bemba Wale, row 7; CAR-OTP-0074-0855, Tab 28 Caroline Bemba Wale, row 7.

¹⁵ CAR-OTP-0085-0523-R01 at 0532-0535, l. 315-444.

received no money from, or on behalf of, the Bemba Defence.¹⁶

B. The proposed evidence is sufficiently probative and reliable

12. P-0264's Statement bears sufficient indicia of reliability¹⁷ and probative value. It was obtained by the Prosecution in the ordinary course of its investigations.¹⁸ The witness provided it voluntarily,¹⁹ acknowledged its truthfulness and accuracy, and in the language that [REDACTED] fully speaks and understands.²⁰ The Statement is internally consistent, and, as noted above, is corroborated by other evidence in the case.

13. Moreover, Kilolo has acknowledged the transfer in question was done "[REDACTED]" and relates to [REDACTED] testifying in the Main Case.²¹ As such, the core of P-0264's evidence – that the transfer occurred, and its linkage to a member of the Overall Strategy – is not materially in dispute.

14. The six clarifications that P-0264 made to [REDACTED] interview are minor and non-substantive. They clarify, for instance, that [REDACTED], [REDACTED], and [REDACTED] were in contact with each other; that P-0264 met [REDACTED] through [REDACTED] and not on Facebook; and that [REDACTED] was in contact with [REDACTED] before being interviewed by the Prosecution.²²

C. Admitting the proposed evidence is in the interests of justice

15. Granting the Motion would best serve the interests of justice.²³ *First*, rule 68 of the Rules is designed to ensure that the Accused are tried without undue delay.²⁴

¹⁶ [REDACTED].

¹⁷ Rule 68(2)(b)(i) of the Rules.

¹⁸ See ICC-01/09-01/11-1938-Red-Corr, para. 66.

¹⁹ CAR-OTP-0085-0512 at 0516, l. 148-152.

²⁰ CAR-OTP-0085-0512 at 0516, l. 153-159.

²¹ ICC-01/05-01/13-600-Conf-Corr2, paras. 399-402.

²² See Annex A.

²³ Rule 68(2)(b)(i) of the Rules.

²⁴ ICC-01/09-01/11-1938-Red-Corr, para. 60.

Here, dispensing with P-0264's live testimony would appropriately expedite the proceedings.

16. *Second*, the Statement is manifestly relevant to the proper adjudication of salient issues in this case. As described above, the Statement is relevant to establishing the corrupt influencing of [REDACTED]'s and [REDACTED] false statements in the Main Case.

17. *Third*, as noted, the terms of rule 68(2)(b) in general do not cause any prejudice to the Accused. P-0264's statements were disclosed to the Defence on 4 June 2015. P-0264's clarifications are minor and non-substantive. Moreover, as noted above, Kilolo has acknowledged the transfer in question. In this case,²⁵ there is no prejudice, and even if there were, it would be minimal and substantially outweighed by the probative value of the Statement.

VI. Relief Requested

18. For the foregoing reasons, the Prosecution requests the Chamber to admit into evidence P-0264's Statement *in lieu* of [REDACTED] *viva voce* testimony.



Fatou Bensouda, Prosecutor

Dated this 16th Day of October 2015
At The Hague, The Netherlands

²⁵ ICC-01/09-01/11-1938-Red-Corr, para. 27.