

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/05-01/13
Date: 4 February 2016

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, AIMÉ KILOLO MUSAMBA,
JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA WANDU AND
NARCISSE ARIDO**

**Confidential
With
Confidential Annexes A, B and C**

**Kilolo Defence Request to Replace an Item on its list of Evidence and for Various
Orders.**

Source: Defence for Mr. Aimé Kilolo Musamba

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

The Office of the Prosecutor

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

I. INTRODUCTION

1. On 21 January 2016, the Defence for Mr. Kilolo submitted both a confidential¹ and a confidential *ex parte* version of its list of evidence.²
2. On the same day, the Defence disclosed some material to the parties.³ A document was also disclosed *ex parte* to the Prosecution, the Bemba Defence and the Mangenda Defence (hereinafter "*ex parte* document").⁴
3. On 22 January 2016, the Prosecution disclosed pursuant Rule 77 of the Rule of procedure and evidence, a lesser redacted version of the *ex parte* document to all parties under the ERN CAR-OTP-0072-0504-R01.⁵
4. On 26 January 2016, the Defense for M. Kilolo filed an application to amend its list of evidence.⁶
5. On 27 January 2016, Trial Chamber granted the request.⁷ An amended version of the list of evidence was filed accordingly by the Defence on 28 January 2016.⁸
6. The Defence respectfully requests the Trial Chamber's authorization to replace CAR-D21-0014-0302 with CAR-OTP-0072-0504-R01 and the reclassification as confidential of *ex parte* annex B. The Defence also seeks the authorization to add 3 items.

¹ ICC-01/05-01/13-1562-Conf-AnxC.

² ICC-01/05-01/13-1562-Conf-Exp-AnxD.

³ Trial Disclosure Kilolo Package 10 21 January 2016.

⁴ Trial Disclosure Ex Parte Kilolo Package 11 21 January 2016.

⁵ Trial Rule 77 Package 39 22 January 2016.

⁶ ICC-01/05-01/13-1577-Conf.

⁷ ICC-01/05-01/13-1579.

⁸ ICC-01/05-01/13-1581-Conf-AnxA and ICC-01/05-01/13-1581-Conf-Exp-AnxB.

II. DEFENCE SUBMISSIONS

A. Request to replace item CAR-D21-0014-0302

7. The Defence initially disclosed item CAR-D21-0014-0302 *ex parte* with the intention to file a request for reclassification before the Trial Chamber III in order to guarantee access to this document to all parties in the 'Article 70 case'.
8. However it has come to the attention of the Defence that CAR-D21-0014-0302 was actually disclosed by the Prosecution in a different version on 22 January 2016.⁹
9. The Defence therefore submits that there is good cause to authorize a variation of its list as item CAR-OTP-0072-0504-R01 was disclosed a day after the deadline set by the Trial Chamber for the Defence to file its list of evidence.
10. Furthermore, the Defence also submits that granting the request will not prejudice the parties in any way as the document was initially included in its list but with a different number. The version disclosed by OTP being less redacted will only allow the Defence to use it more effectively during the presentation of its case.

⁹ Trial Chamber VII e-mail of 3 February 2016.

B. Request to reclassify confidential *ex parte* annex B

11. Should the Trial Chamber authorize the replacing of item CAR-D21-0014-0302, it will no longer be necessary to maintain the confidential *ex parte* classification. Thus, the Defence respectfully requests the reclassification as 'confidential' of annex B.¹⁰

C. Request to add 3 items in the list of evidence

12. The Defence also seeks the Trial Chamber's authorization to add 3 items (CAR-OTP-0072-0508-R01, CAR-OTP-0083-1212-R01, and CAR-OTP-0083-1303-R01) to its list of evidence. The documents are all related to witness P-169 and were equally disclosed pursuant to the Rule 77 on 22 January 2016.¹¹

13. The Defence submits that there is good cause to allow the insertion of these 3 items in its list of evidence as they were disclosed after the 21 January deadline set by the Trial Chamber.

14. Furthermore, the Defence notes that content of item CAR-OTP-0072-0508-R01 is partially identical to CAR-OTP-0072-0504-R01.¹²

15. Finally, the rights of the parties will not be prejudiced as only three items will be added.

¹⁰ ICC-01/05-01/13-1581-Conf-Exp-AnxB.

¹¹ See confidential annexes A, B, and C.

¹² See from CAR-OTP-0072-0511 to CAR-OTP-0072-0513.

III. RELIEF REQUESTED

16. For the reasons above, the Defence respectfully requests the Trial Chamber to authorize the Defence to:

- (i) Replace item CAR-D21-0014-0302
- (ii) Reclassify *ex parte* Annex B (ICC-01/05-01/13-1581-Conf-Exp-AnxB)
- (iii) Add three items to its list of evidence.

Respectfully submitted,



Maître Paul Djunga Mudimbi
Lead Counsel of Mr. Aimé Kilolo Musamba



Mr. Steven Powles
Associate Counsel of Mr. Aimé Kilolo Musamba

Dated this 4 February 2016,
At The Hague, The Netherlands.