



Original: English

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

Date: 29 March 2016

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul C. 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

Public

**Decision on Kilolo Request for Reconsideration of the Chamber's Decision to
Reject D21-1 as a Witness**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Gosnell

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Others

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Trial Chamber VII ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Articles 64(2) and 67(1) of the Rome Statute and Regulation 23 *bis*(3) of the Regulations of the Court, issues the following 'Decision on Kilolo Request for Reconsideration of the Chamber's Decision to Reject D21-1 as a Witness'.

I. Procedural History and Submissions

1. On 21 January 2016, the defence for Mr Kilolo ('Kilolo Defence') filed, *inter alia*, its list of proposed witnesses, including D21-1.¹ Upon order by the Single Judge,² it filed further submissions on the relevance and propriety of its witness.³
2. On 4 February 2016, the Chamber issued a decision, rejecting, *inter alia*, the Kilolo Defence's request to call D21-1 as a witness ('Kilolo Defence Witness Decision').⁴ The Kilolo Defence request for leave to appeal the decision⁵ was rejected by the Chamber.⁶
3. On 9 March 2016, D21-9 testified as a witness on behalf of the Kilolo Defence.⁷
4. On 14 March 2016, the Kilolo Defence filed an application that the Chamber reconsider the Kilolo Defence Witness Decision and authorise the testimony of

¹ Soumissions de la défense de monsieur Aime Kilolo concernant sa liste de témoins et la liste de preuves, ICC-01/05-01/13-1562, with the witness list in the first annex, ICC-01/05-01/13-1562-Conf-AnxA.

² Directions Relating to Certain Defence Witnesses and Appearance Order, 26 January 2016, ICC-01/05-01/13-1578.

³ Kilolo Defence's submissions on relevance and propriety of certain defence witnesses, 29 January 2016, ICC-01/05-01/13-1585.

⁴ Decision on relevance and Propriety of Certain Kilolo Defence Witnesses, ICC-01/05-01/13-1600.

⁵ Application for Leave to Appeal 'Decision on Relevance and Propriety of Certain Kilolo Defence Witnesses (ICC-01/05-01/13-1600)', 9 February 2016, ICC-01/05-01/13-1614.

⁶ Decision on the 'Application for Leave to Appeal "Decision on Relevance and Propriety of Certain Kilolo Defence Witnesses (ICC-01/05-01/13-1600)"', filed on 17 February 2016 and notified on 18 February 2016, ICC-01/05-01/13-1635.

⁷ ICC-01/05-01/13-T-42-Conf-Eng.

D21-1 as a defence witness. Alternatively, it request that D21-1's testimony is admitted according to Rule 68(2)(b) of the Rules of Procedure and Evidence ('Request').⁸ The Kilolo Defence submits that '*deux éléments nouveaux*' warrant reconsideration: first, it notes that D21-9 was not able to provide testimony about the functioning, structure and mandate of defence teams at the Court⁹ and second, it points out that D21-9 was also not able to provide testimony on the issue of defence investigations.¹⁰

5. On 17 March 2016, the Prosecution filed its response, submitting that the Request be rejected, since it does not fulfil the requirements for reconsideration.¹¹

II. Analysis

6. As a preliminary matter, the Chamber notes that there is only a confidential version of the Request. The Chamber hereby instructs the Kilolo Defence to request its reclassification as 'public' or file a public-redacted version of its Request immediately following the conclusion of the judicial recess.
7. The Chamber recalls its prior decisions on reconsideration.¹² In the Kilolo Defence Witness Decision, the Chamber stated that 'the specialised knowledge offered by D21-001 is irrelevant and inappropriate in order for the Chamber to

⁸ Requête aux fins de reconsidération de la "Decision on Relevance and Propriety of Certain Kilolo Defence Witnesses" (ICC-01/05-01/13-1600), ICC-01/05-01/13-1719-Conf.

⁹ Request, ICC-01/05-01/13-1719-Conf, paras 9-14.

¹⁰ Request, ICC-01/05-01/13-1719-Conf, paras 15-18.

¹¹ Prosecution's Response to Kilolo's "Requête aux fins de reconsidération de la 'Decision on Relevance and Propriety of Certain Kilolo Defence Witnesses' (ICC-01/05-01/13-1600)", ICC-01/05-01/13-1726-Conf.

¹² Decision on Kilolo Defence Request for Reconsideration, 15 July 2015, ICC-01/05-01/13-1085; Decision on Defence Request for Reconsideration of or Leave to Appeal 'Decision on "Defence Request for Disclosure and Judicial Assistance"', 24 September 2015, ICC-01/05-01/13-1282, para. 8; Decision on Kilolo Defence Request for Reconsideration, 15 July 2015, ICC-01/05-01/13-1085-Conf, para. 4; Decision on Prosecution's Motion for Reconsideration of the Closing Submissions Directions, 15 January 2016, ICC-01/05-01/13-1552.

understand the evidence presented.’¹³ The Chamber did not make its decision dependent on the testimony (or expected testimony) of any other witness.

8. No testimony received since this decision persuades the Chamber that D21-1’s anticipated testimony is any less irrelevant or inappropriate. D21-9’s incapacity to answer certain questions does not affect the reasoning of the Kilolo Defence Witness Decision. Further, there was no indication in D21-9’s anticipated testimony that he would have been competent to testify on such matters – the Kilolo Defence can hardly claim surprise that he could not testify on these points.
9. The Kilolo Defence has not presented any new facts or arguments which justify the reconsideration of the Kilolo Defence Witness Decision in order to prevent an injustice. Given that the Chamber has already determined that D21-1’s testimony is irrelevant to this case, there is also no purpose in introducing his written statement pursuant to Rule 68(2)(b) of the Rules. Accordingly, the Chamber rejects the Request.

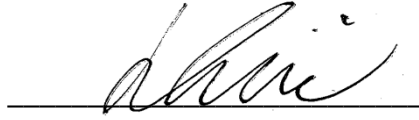
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ORDERS the Kilolo Defence to request the reclassification of the Request as ‘public’ or file a public-redacted version thereof immediately following the conclusion of the judicial recess; and

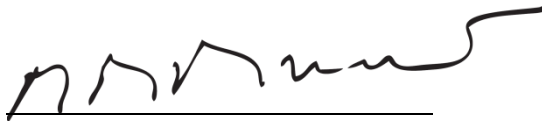
REJECTS the Request.

¹³ Kilolo Defence Witness Decision, ICC-01/05-01/13-1600, para. 11.

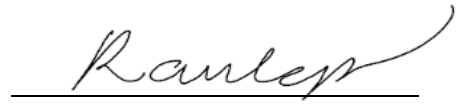
Done in both English and French, the English version being authoritative.

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Judge Bertram Schmitt, Presiding Judge

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Judge Marc Perrin de Brichambaut

A handwritten signature in black ink, appearing to be 'Raul', written over a horizontal line.

Judge Raul C. Pangalangan

Dated 29 March 2016

At The Hague, The Netherlands