

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **07 April 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***

Public Redacted Version

**Motion on behalf of Mr Aimé Kilolo for the Admission of the Previously
Recorded Testimony pursuant to Rule 68(2) (b) of the Rules of Procedure
and Evidence**

Source: Defence for Mr. Aimé Kilolo Musamba

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

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**Unrepresented Applicants
(Participation/Reparation)**

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

I. Introduction

1. The Defence for Mr Aimé Kilolo respectfully requests the admission of the previously recorded testimony of witnesses D21-0004, D21-0005, D21-0006, D21-0007 and D21-0008 *in lieu* of their *viva voce* testimony in this case.
2. This application is made pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence.
3. The previously recorded statements of these witnesses comprises of:
 - (i) *Attestation du* [REDACTED] (D21-0006)¹
 - (ii) *Déclaration de* [REDACTED] (D21-0004)²
 - (iii) *Déclaration de* [REDACTED] (D21-0005)³
 - (iv) *Déclaration du* [REDACTED] (D21-0007)⁴
 - (v) *Déclaration du* [REDACTED] (D21-0008)⁵
4. The previously recorded statements are *prima facie* relevant and probative of the charges, and do not concern the acts and conduct of the Accused in dispute in this case. Witnesses D21-0004, D21-0005 and D21-0006 have each acknowledged the truthfulness and accuracy of their previously recorded statements in corresponding declarations that meet the conditions under Rule 68(2) (b)(ii).

¹ See ICC-01/05-01/13-1767- Conf-Anx I.

² See CAR-D21-0016-0001. See confidential Annex A.

³ See ICC-01/05-01/13- 1767-Conf-AnxII.

⁴ CAR-D21-0016-0005. See confidential Annex B.

⁵ CAR-D21-0016-0007. See confidential Annex C.

5. Witnesses D21-0007 and D21-0008 [REDACTED] for the certification of their respective previously recorded statements in accordance with Rule 68(2)(b)(ii). The Trial Chamber is respectfully requested to admit their previously recorded statements in anticipation and on condition of their subsequent acknowledgement in due course⁶.
6. The nature of and content of each witness' evidence is such that their appearance for cross-examination is unnecessary. Further, granting this application will not cause any unfair prejudice to any party. [REDACTED]

II. Confidentiality

7. This filing is classified as "Confidential" in accordance with Regulation 23 *bis* of the Regulations of the Court as it refers to information that is not yet available to the public. The Defence will file a public redacted version in due course.

III. Procedural Background

8. On 29 July 2015, the Chamber authorized the Registry Legal Counsel, or anyone delegated by him, to witness declarations made pursuant to Rule 68(2)(b)(iii) of the Rules⁷.
9. [REDACTED].⁸
10. [REDACTED].⁹

⁶ See confidential annexes B and C.

⁷ ICC-01/05-01/13-1109.

⁸ [REDACTED].

⁹ [REDACTED].

11. [REDACTED].

12. [REDACTED].

13. [REDACTED].

IV. Applicable Law

14. Rule 68(2)(b) of the Rules allows the introduction of a witness's previously recorded testimony that goes to proof of a matter other than the acts and conduct of the accused. The term 'previously recorded testimony' includes statements and transcripts of interviews taken pursuant to Rules 111 and 112 of the Rules, respectively, together with any associated exhibits.

15. Rule 68(2) (b) does not unfairly prejudice any party by permitting the introduction of evidence unrelated to the acts and conduct of the accused that has not been subject to cross-examination.

V. Submissions

(i) *The proposed evidence is prima facie relevant to the charges*

16. The evidence of each witness pertains to the character and professional integrity of Mr Aimé Kilolo. It is plainly relevant to the case in assisting the Trial Chamber in assessing the allegations against Mr Kilolo.

17. With regards to further arguments as to why the five character witnesses' evidence is relevant, the Defence for Mr Kilolo seeks to incorporate and rely upon its previous submissions.¹⁰

¹⁰ See ICC-01/05-01/13-1585-Conf, paras. 21 to 23 and ICC-01/05-01/13-1614, paras. 21 to 31.

18. Also, the Defence notes that the Trial Chamber has previously ruled that the appropriate method of adducing the evidence of these witnesses is pursuant to Rule 68(2) (b).¹¹

(ii) The proposed evidence is sufficiently probative and reliable

19. The previously recorded statements of each witness bear sufficient indicia of reliability and probative value. Each previously recorded statement was obtained by the Defence for Mr Kilolo during the ordinary course of defence investigations.

20. Each witness voluntarily provided their previously recorded statements and three witnesses already acknowledged the truthfulness and accuracy of their statements in a language they fully speak and understand. In addition to this, each witness was prepared and ready to testify in person before the Chamber.

(iii) Admitting the proposed evidence is in the interests of justice

21. Granting this motion will best serve the interests of justice. Rule 68 is designed to ensure that proceedings progress without undue delay. While it is respectfully submitted that it may have been preferable for these witnesses to give *viva voce* evidence, dispensing with their live testimony will expedite the proceedings.

22. The previously recorded statement of each witness is relevant to the proper adjudication of the issues in this case and does not relate to issues that are materially in dispute.

¹¹ ICC-01/05-01/13-1600, paras. 16 and 17.

23. There is no prejudice caused to any party as a result of admitting the five previously recorded statements pursuant to Rule 68 (2) (b).

RELIEF REQUESTED

1. For the forgoing reasons, the Defence for Mr Kilolo respectfully requests the Chamber to admit into evidence witnesses D21-0004, D21-0005, D21-0006, D21-0007 and D21-0008's previously recorded statements *in lieu* of their *viva voce* testimony.

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 7 April 2016,
At The Hague, The Netherlands.