

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/05-01/13

Date: 20 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**

Confidential

**Kilolo Defence Position Regarding Non-Standard Redactions to Disclosed "Kilolo
Dutch Materials".**

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

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

Mr Steven Powles

Counsel for Jean-Jacques Kabongo Mangenda

Mr Christopher Gosnell

Mr Arthur Vercken

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Mr Roland Azama Shalie Rodoma

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Ms. Beth Lyons

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. PROCEDURAL BACKGROUND

1. The Defence for Mr Kilolo, like the Defence teams for Mr Bemba and Mr Mangenda, has been exploring the legality of the Dutch intercept process.
2. The Kilolo Defence requested and obtained materials regarding the Dutch intercept process from Mr Kilolo's former lawyer in the Dutch proceedings.
3. The materials provided were in Dutch and ran to many hundreds of pages. As a consequence the Defence for Mr Kilolo was unaware as to the content of the file.
4. Naturally, at that stage, the Defence could not provide the material to any other party without knowing what the file contained and what was being provided.
5. The Defence for Mr Kilolo took steps to find a Dutch speaker, familiar with legal materials (and willing to work without payment from the Kilolo team) to go through the materials in the Kilolo file to help identify at least the general nature of the Dutch documents in the file before providing them to other Defence teams.
6. The Kilolo team obtained an English index to the file on 1 April 2016. Plainly, given the huge volume of material, the actual documents themselves were not translated.
7. As the Kilolo team did not itself know the exact detail of what was contained in the Dutch documents, the Defence, quite reasonably, requested that if either the Bemba or Mangenda team wished to disclose any particular

document to a third party that the Kilolo team first be given an opportunity to review the document and determine its exact content.

8. The Mangenda team agreed to this request. The Bemba team did not reply.
9. On 6 April 2016 the Trial Chamber 'directed' the Kilolo Defence to make the Kilolo material available to any other defence team should it be requested to do so.¹
10. As set out above, the Defence for Mr Kilolo had already provided the entirety of the material to Mr Bemba and Mr Mangenda's Defence on the basis described.
11. The material concerned was provided to the Kilolo Defence team by Mr Kilolo's Dutch lawyer. As well as various orders, the file appears to contain correspondence between Mr Kilolo's lawyer and other parties. Even so, the Defence for Mr Kilolo had full confidence in the teams for Mr Bemba and Mr Mangenda to use the material responsibly.
12. On 13 April 2016 the Bemba team submitted its 'Defence Application for non-standard redactions'.² The Defence for Mr Bemba assert 'the benefit of the parties having access to the case file in its entirety' and that 'there does not *appear* to be any privileged or personal information in the case file which would warrant redaction/non-disclosure'.³ The Application states that the

¹ICC-01/05-01/13-1774. On 14 April 2016 in ICC-01/05-01/13-1807 the Single Judge stated that this direction was limited only to 'the elements from a Dutch national case file which related to a recently granted cooperation request from the defence for Mr Mangenda' (at para. 1).

² ICC-01/05-01/13-1804.

³ At para. 7 [Emphasis added].

Bemba defence 'favour the disclosure of the entirety of the file'.⁴ The Application also submitted attached proposals for non-standard redactions to be implemented to elements of the case file.⁵

13. On 14 April 2016 the Single Judge issued 'Decision on Bemba Defence Request to Authorise Non-Standard Redactions to Dutch Case File'.⁶ The Decision states that the 6 April 2016 Decision related only to 'the elements from the Dutch national case file which related to a recently granted cooperation request from the defence for Mr Mangenda'.⁷ As set out above, the Defence for Mr Kilolo had indeed already provided in excess of what was required to the Bemba and Mangenda teams.

14. The Single Judge dismissed the Bemba Defence request for non-standard redactions and stated that 'unless a properly motivated non-standard redactions request is made by one of the parties within five days of notification of the present decision, the Bemba Defence may lift its proposed redactions to the Case File'.⁸

II. SUBMISSIONS

15. As explained above, the Defence for Mr Kilolo is in entirely the same position as the Single Judge in that 'it is impossible ... to evaluate' the proposed redactions in the annexes of the Bemba Application as they are not 'in either of the Court's working languages'.⁹

⁴ Footnote 2.

⁵ At para. 8.

⁶ ICC-01/05-01/13-1807.

⁷ At para. 1.

⁸ At para. 5.

⁹ At para. 4.

16. On the face of it there is to the Defence no obvious reason why the redactions should remain in place. That said, the redacted portions apparently 'fall potentially outside of the Dutch cooperation request'¹⁰ and the Single Judge has only required those 'elements from [the] Dutch national case file which related to a recently granted cooperation request from the defence for Mr Mangenda' to be provided to any other defence team.¹¹

17. It is respectfully submitted therefore that, the preferred course, if the redactions are to be lifted, is for the requisite portions to be translated into one of the working languages of the Court so that a proper determination can be made.

18. The Single Judge is respectfully reminded of the difficulties that the STIC identified when being asked to translate various Dutch annexes to Mr Pluijmers report.¹² On that occasion, the Defence for Mr Kilolo was able to assist all parties, and the Chamber, by obtaining an informal translation of the documents.¹³

19. On this occasion the Defence for Mr Kilolo is unfortunately not in a position to obtain a translation of the proposed redactions in the time available. However, rather than delay the process and seek an extension of time, if the Single Judge is minded to allow lifting of the redactions, the Defence for Mr Kilolo, reluctantly, takes no formal position.

¹⁰ ICC-01/05-01/13-1804 at para. 8.

¹¹ ICC-01/05-01/13-1807 at para. 1.

¹² See email from Trial Chamber VII Communications to all parties on Monday October 5 2015 9:19 AM.

¹³ ICC-01/05-01/13-T-17-Conf-ENG, lns. 18-23.

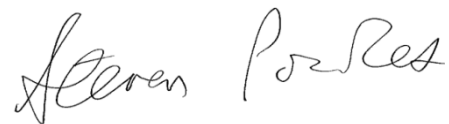
20. While the Defence for Mr Kilolo takes this position in relation to the proposed redactions, we respectfully submit that it would be wrong for the 'entirety of the file', or indeed any other part of the materials provided by the Kilolo defence to other Defence teams, to be disclosed to any third party.

21. The Defence for Mr Kilolo respectfully submits that, if any Defence team wishes to disclose any item in the file to a third party, this should be done only after the Kilolo defence has had a proper opportunity to review the item concerned in a working language of the Court.

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 20 April 2016,
At The Hague, The Netherlands.