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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 with Confidential Annexes A, B and C

Motion to require corrected English translations

Source: Defence for Jean-Jacques Kabongo Mangenda

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

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

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I. INTRODUCTION

1. Jean-Jacques Mangenda requests the Trial Chamber to require the Prosecution to correct the thirteen English translations of intercepted conversations purportedly involving Mr Mangenda that it has produced on the basis of the French translations.¹ Two of these translations were tendered on 8 April 2016² and deemed submitted by the Trial Chamber on 29 April 2016.³ These translations, as set out in the attached annexes, contain a significant number of: (i) clear errors; (ii) discrepancies with official ICC translations of the same French words; and (iii) translations that create a misleading impression. The Prosecution, as the producing or submitting party, should be required to correct, at the very least, the clear errors and discrepancies with official ICC translations; and to review the translations that the Defence maintains create a misleading impression to ensure that they are impartial and fair translations.
2. This request is directed primarily at the three English translations that have been deemed “submitted”.⁴ However, the present request extends to the ten unsubmitted but disclosed translations to the extent that the Trial Chamber may rely thereon.⁵

II. APPLICABLE LAW

3. Article 54 of the Statute requires the Prosecution to “investigate incriminating and exonerating circumstances equally.” Article 29 of the Code of Conduct of the ICC Office of the Prosecutor declares that “[i]mpartiality is one of the core principles governing the work of the Office,” and that “[i]mpartial conduct encompasses the fair-

¹ The annexes hereto are filed confidential pursuant to Regulations 23bis(1) of the Regulations of Court as they refer to confidential documents.

² *Bemba et al.*, Annex A to Prosecution’s Sixth Request for Admission of Evidence from the Bar Table, ICC-01/05-01/13-1784-Conf-Anx A, 8 April 2016 (item 24 CAR-OTP-0092-5469 and item 25 CAR-OTP-0092-5477).

³ *Bemba et al.*, Decision on Outstanding Evidentiary Applications, ICC-01/05-01/13-1858, 29 April 2016, para.48.

⁴ CAR-OTP-0092-5469 (English version of intercept CAR-OTP-0074-0993); CAR-OTP-0092-5477 (English version of intercept CAR-OTP-0074-0997) and CAR-OTP-0080-0419 (English version of CAR-OTP-0074-1021).

⁵ CAR-OTP-0089-1391 (English version of intercept CAR-OTP-0074-0998); CAR-OTP-0091-0074 (English version of intercept CAR-OTP-0074-0995); CAR-OTP-0091-0084 (English version of intercept CAR-OTP-0074-0999); CAR-OTP-0091-0091 (English version of intercept CAR-OTP-0074-1001); CAR-OTP-0091-0122 (English version of intercept CAR-OTP-0074-1004); CAR-OTP-0089-1503 (English version of intercept CAR-OTP-0074-1009); CAR-OTP-0089-1271 (English version of intercept CAR-OTP-0074-1013); CAR-OTP-0089-1396 (English version of intercept CAR-OTP-0074-1024); CAR-OTP-0089-1402 (English version of intercept CAR-OTP-0080-1416) and CAR-OTP-0089-1422 (English version of CAR-OTP-0080-1329).

mindful and objective treatment of persons and issues, free from any bias or influence.”⁶ “Fair-minded and objective treatment” of translations would require corrections thereof where there are credible indications that the translations contain errors to the detriment of the accused.

4. Where translation issues have arisen in previous cases, in particular in respect of Registry translations, Trial Chambers have asked the parties to submit “good representative examples” of the translation issue in dispute.⁷ Parties have also been encouraged to settle translation issues arising from party-prepared translations on an *inter partes* basis.⁸ The Defence will, in that spirit, withdraw the present motion if the Prosecution produces *corrigenda* corresponding to the issues raised in the present filing or otherwise provides credible information justifying its translations.
5. The ICTY *Manual of Developed Practices* has underscored the importance of consistent and correct translations:

Given the serious nature of the crimes involved, the complexity of proceedings and the need to maintain clarity of language and consistency in terminology throughout long and closely interconnected trials, these services have to be of the highest standard.⁹

6. The *Lubanga* Trial Chamber, albeit in the context of transcripts of proceedings, has likewise confirmed the fundamental importance of accurate translation:

The responsibility for ensuring there is a complete and accurate record of the trial rests with the Chamber (Article 64(10) of the Statute), whilst it is for the Registrar – and not, the Chamber stresses, for the parties – to take measures to make and preserve a full and accurate record of all the proceedings, including the transcripts (Rule 137(1) of the Rules).¹⁰

[...]

The evidence indicates that the Chamber is potentially faced with a markedly flawed court record, which may well provide an unsatisfactory basis for any final judgment.¹¹

⁶ Code of Conduct for the Office of the Prosecutor, available at <https://www.icc-cpi.int/iccdocs/oj/otp-COC-Eng.PDF>

⁷ *Lubanga*, Transcript, ICC-01/04-01-06-T-254-Red-ENG, 5 March 2010, pp.16-17.

⁸ *Ntaganda*, Transcript, ICC-01/04-02/06-T-34-Red-ENG, 20 October 2015, pp.28-30.

⁹ ICTY Manual on Developed Practices, p.184, available at https://www.un.org/ruleoflaw/files/icty-manual_on_developed_practices.pdf.

¹⁰ *Lubanga*, Decision on discrepancies between the English and the French Transcripts and related issues, ICC-01/04-01/06-1974, 18 June 2009, para.34.

¹¹ *Id.* para.36.

III. SUBMISSIONS

7. Annex A sets out errors in five of the English translations of French versions of intercepts that have been produced by the Prosecution. Two of these have been tendered by the Prosecution as evidence, and deemed “submitted” by the Trial Chamber.¹² The French versions are themselves translations, so the English versions appear to be a translation of a translation, rather than a direct translation from the original Lingala.
8. The errors identified in Annex A fall into three categories: (i) manifest mistakes such as, for example, inversion of the subject and object or insertion of words that do not appear in the French; (ii) translations of specific words that do not conform to the translations that have been provided by ICC translators; and (iii) translation choices amongst a number of possible translation choices to the disadvantage of the accused.
9. The Prosecution should, at the very least, be required to correct the translations in the first two categories without delay. The vehicle of the correction should be *corrigenda* issued by the Prosecution. Although Annex A addresses the errors in only five of the Prosecution’s thirteen English translations, the Prosecution should undertake to correct all instances of these or similar errors as they appear in the thirteen English translations that have been disclosed so far.
10. A third issue concerns translations that, while involving some subjectivity, are ultimately misleading. The French word “*histoire*,” for example, can be translated as “story”, a word that in English may be associated with concocting a false narrative. However, the French word “*histoire*” is far broader, encompassing meanings (such as “issue”, “matter”, or even just “thing”) that imply no such concoction or falsity. This is confirmed by the translations of “*histoire*” that have been used by the ICC translators throughout trial proceedings.¹³ The Prosecution’s frequent resort to “story” rather than these other words is tendentious and creates an impression that is not

¹²CAR-OTP-0092-5469 (English version of intercept CAR-OTP-0074-0993) and CAR-OTP-0092-5477 (English version of intercept CAR-OTP-0074-0997).

¹³ See Annex B.

mirrored in the French. The Prosecution should be required to adopt more neutral translations, or at least alert the reader of the ambiguity.

11. The translations at issue are not just minor quibbles. Another example of an erroneous connotation of falsity conveyed through the Prosecution's translation is its interpretation of the French word "*prétendre*" into the English "pretend." This is an incorrect translation. The ICC interpreters have correctly and consistently interpreted "*prétendre*" as "claim."¹⁴ "Claim" is neutral as to whether the proposition is false or true; the English word "pretend," on the other hand, usually conveys fabrication.
12. The potential prejudicial effect of these errors is heightened because these words are imputed to Mr Mangenda personally, or are used in conversations in which he is alleged to be an interlocutor. Counsel (including from the Prosecution itself) and judges may be led to false inferences on the basis of these incorrect translations.
13. The present motion, assuming that the Prosecution does not voluntarily correct its English translations and chooses to oppose the motion, is timely. The last of the English translations that is addressed by the present motion was submitted as potential evidence just fourteen days ago. Further, the Defence has no obligation and no burden to correct the Prosecution's translations, and reserves its continuing right to challenge the correctness of the Prosecution's translations at any time. Indeed, the Trial Chamber has recognised that translations, particularly of material that is already admitted in a more authentic form, are not to be treated as "evidence" in the true sense of the word.¹⁵ This reasoning is all the stronger when the translations in issue are only translations from French into English, where both the original Lingala and the French translations have already been deemed submitted by the Trial Chamber.¹⁶
14. The attached annexes, rather than purporting to be a comprehensive review of errors in the Prosecution's translations, constitute "good representative examples" that demonstrate the need for the Prosecution to correct its translations.

¹⁴ See Annex C.

¹⁵ *Bemba et al.*, Decision on Outstanding Evidentiary Applications, ICC-01/05-01/13-1858, 29 April 2016, para.48 ("[t]he Chamber recalls its previous finding that, in principle, recognising the formal submission of audio-visual material automatically includes recognising the formal submission of any associated transcripts or translations which were duly disclosed. The Chamber accordingly recognises the formal submission of these translations.")

¹⁶ *Bemba et al.*, Decision on Prosecution Requests for Admission of Documentary Evidence (ICC-01/05-01/13-1013-Red, ICC-01/05-01/13-1113-Red, ICC-01/05-01/13-1170-Conf), ICC-01/05-01/13-1285, 24 September 2015, para.16 ("[t]he Chamber considers these items to be submitted and discussed within the meaning of Article 74(2) of the Statute.")

IV. CONCLUSION AND RELIEF REQUESTED

15. The Defence requests that the Trial Chamber order the Prosecution to produce and submit *corrigenda* to its English translations of telephone intercepts corresponding to the representative errors noted in Annex A. These corrections should be made to both the “submitted” translations and any non-submitted translations upon which the Trial Chamber may, formally or informally, rely.



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Respectfully submitted this 12 May 2016,
At The Hague, The Netherlands