

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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, AIME KILOLO MUSAMBA,
JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU AND
NARCISSE ARIDO**

Public Redacted Document

**Public redacted version of “Prosecution’s Request under Articles 64(6)(b) and 93 of
the Rome Statute to Summon a Witness”, 10 September 2015,
ICC-01/05-01/13-1237-Conf-Exp**

Source: The Office of the Prosecutor

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

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I. Introduction

1. The Office of the Prosecutor (“Prosecution”) requests that Trial Chamber VII (“Chamber”) compel the attendance and testimony of Witness P-0201 (D-54) pursuant to article 64(6)(b), [REDACTED] be requested to serve a summons on the witness, and to assist in his appearance pursuant to articles 93(1)(b) and 93(1)(d). The witness’s evidence is material to the confirmed charges, and he has refused to testify voluntarily. Absent such testimony, the Prosecution will be deprived of important evidence going to the heart of the charged offences. Further, the Chamber should hear his evidence to determine the truth.

2. P-0201 testified as a Defence witness in *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Main Case”).¹ He is a party to several conversations with Aimé Kilolo Musamba (“Kilolo”) prior to, and during the course of that testimony. P-0201 was allegedly extensively coached by Kilolo during these conversations and consequently testified falsely. As such, the information he possesses is not only material to the charges, but also unique.

3. [REDACTED]² [REDACTED]. Given that the requirements of relevance, specificity and necessity are met, P-0201’s compulsion should be effectuated by the Chamber [REDACTED].

II. Confidentiality

4. This document is filed as “Confidential, *Ex Parte*, only available to the Prosecution and VWU”, since it refers to information to which the Defence has no procedural right or interest. A confidential redacted version will be filed.

¹ ICC-01/05-01/08.

² [REDACTED].

III. Applicable law

5. The Appeals Chamber has confirmed that article 64(6)(b) gives Chambers the power to compel a witness' trial appearance, creating a legal obligation for the individual concerned.³

6. The Appeals Chamber has moreover determined that States Parties are obliged to cooperate with the Court (i) to serve summonses pursuant to article 93(1)(d);⁴ and (ii) to compel witnesses' appearance before a Trial Chamber *in situ* or *via* video-link, pursuant to article 93(1)(b), should those witnesses be unwilling to travel to the seat of the Court.⁵

7. To determine whether to issue such cooperation requests, Trial Chamber V(A) has held that they must satisfy the tripartite principles of (i) relevance, (ii) specificity and (iii) necessity. In this context, Trial Chamber V(A) considered whether: *"(i) the witness' anticipated testimony is potentially necessary for the determination of the truth (noting that the value of any witness's testimony in a case may not be prejudged by the judge ahead of that witness's testimony and its appropriate evaluation in due course) and (ii) a summons, as a compulsory measure, is necessary to obtain the testimony of the witness."*⁶

8. These requirements are met.

IV. Submissions

A. **Relevance: P-0201's anticipated testimony is potentially necessary for the determination of the truth**

9. P-0201 testified in the Main Case from 30 October to 1 November 2013.⁷ At the time of the events charged in the Main Case, [REDACTED]. [REDACTED]. [REDACTED]⁸ [REDACTED].⁹

10. Call Data Records of Kilolo's phone show that, between 29 October 2013 (the VWU contact cut-off date)¹⁰ and 1 November 2013, he spoke with P-0201 at least 21 times, totalling

³ ICC-01/09-01/11-1598, para.113.

⁴ ICC-01/09-01/11-1598, para.114.

⁵ ICC-01/09-01/11-1598, paras.128, 132. *See also* para.123.

⁶ ICC-01/09-01/11-1274-Corr2, paras.180-181.

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ CAR-OTP-0078-0290 at 0297.

over 4 hours and 59 minutes.¹¹ After his first day of testimony, Kilolo coached P-0201 to falsely testify that their last contact had been approximately a month before P-0201's testimony.¹²

[REDACTED].

11. With Kilolo present in the courtroom,¹³ P-0201 falsely testified that his last phone contact with Kilolo was one-and-a half to two months prior to his testimony.¹⁴

[REDACTED].

12. Kilolo also coached P-0201 on numerous topics. For example, following the first day of P-0201's testimony, Kilolo coached the witness on Bemba's [REDACTED] role.¹⁵

[REDACTED].

13. Kilolo also coached P-0201 to testify in conformity with [REDACTED]'s (Defence Witness D-45)¹⁶ evidence concerning their movements on the 26th.¹⁷

[REDACTED].

14. Later in the evening of his first day of testimony, Kilolo continued the illicit coaching by providing P-0201's answers to questions he did not know.¹⁸

[REDACTED].

15. To bolster P-0201's credibility, Kilolo provided him with back-up information on the physical appearance of the individuals he was instructed to mention in his testimony.¹⁹

[REDACTED].

16. Kilolo also provided P-0201 with fabricated explanations to give, should his evidence come under suspicion of being "rehearsed". For instance, Kilolo instructed P-0201 to falsely testify that he misunderstood the question in response to an unsolicited answer that P-0201 gave in court.²⁰

[REDACTED]

¹¹ Call Sequence Tables, CAR-OTP-0090-0630 at 0715-0716, rows 61-81. For the phone attributions see CAR-OTP-0090-0831 at 0831, 0836.

¹² CAR-OTP-0080-1363 (Audio); CAR-OTP-0082-0866 at 0868-0869, lns.24-51(Translation); *See also* CAR-OTP-0080-1364 (Audio); CAR-OTP-0082-0877 at 0894-0895, lns.634-662; and at 0899, ln.814-826 (Translation); CAR-OTP-0080-1366 (Audio); CAR-OTP-0082-1087, at 1089-1092, lns.22-141 (Translation).

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ CAR-OTP-0080-1363 (Audio); CAR-OTP-0082-0866 at 0871, lns.121-127 (Translation).

¹⁶ [REDACTED].

¹⁷ CAR-OTP-0080-1363 (Audio); CAR-OTP-0082-0866 at 0872, lns.156-162 (Translation).

¹⁸ CAR-OTP-0080-1364 (Audio); CAR-OTP-0082-0877 at 0880, lns.44-57 (Translation).

¹⁹ CAR-OTP-0080-1364 (Audio); CAR-OTP-0082-0877 at 0882, lns.143-155 (Translation).

²⁰ CAR-OTP-0080-1364 (Audio); CAR-OTP-0082-0877 at 0883-0884, lns.191-206 and 214-231 (Translation).

17. Kilolo insisted that P-0201 falsely testify that Bemba's troops arrived in Bangui on 7 or 8 November 2002, even though P-0201 thought it was the end of November or beginning of December:²¹

[REDACTED].

18. On 31 October, P-0201 requested Kilolo to go through these dates again, concerned that he might forget the scripted answers in court:²²

[REDACTED].

19. Kilolo also instructed P-0201 to "correct" his "wrong" answer concerning the homogeneity of the different troops. P-0201 objected to some of Kilolo's instructions because they did not make sense [REDACTED]. Nevertheless, Kilolo emphasised that it did not matter:²³

[REDACTED].

20. In the same conversation, Kilolo reminded P-0201 never to admit he was coached:²⁴

[REDACTED].

21. Moreover, Kilolo instructed P-0201 to pretend that he did not know or had forgotten the answer to any question not broached in their conversations, discouraging any unrehearsed answers:²⁵

[REDACTED].

22. The next morning, before P-0201's second day of testimony, Kilolo gave details to the witness with respect to the authors of some of the crimes:²⁶

[REDACTED].

23. Kilolo instructed P-0201 to falsely testify that [REDACTED] the alleged crimes [REDACTED], in an effort to show why Bemba lacked knowledge concerning their commission:²⁷

[REDACTED].

²¹ CAR-OTP-0080-1364 (Audio); CAR-OTP-0082-0877 at 0886-0887, lns.303-304 and 307-333 (Translation).

²² CAR-OTP-0080-1366 (Audio); CAR-OTP-0082-1087 at 1093-1094, lns.183-201(Translation).

²³ CAR-OTP-0080-1364 (Audio); CAR-OTP-0082-0877 at 0888-0889, lns.377-393 and 411-430 (Translation).

²⁴ CAR-OTP-0080-1364 (Audio); CAR-OTP-0082-0877 at 0899, lns.814-823 (Translation).

²⁵ CAR-OTP-0080-1364 (Audio); CAR-OTP-0082-0877 at 0901, lns.909-913 (Translation).

²⁶ CAR-OTP-0080-1366 (Audio); CAR-OTP-0082-1087 at 1098, lns.356-379 (Translation).

²⁷ CAR-OTP-0080-1366 (Audio); CAR-OTP-0082-1087 at 1103-1104, lns.558-583 and 612-627 (Translation).

24. In the evening, after the second day of testimony, Kilolo asked P-0201 to “differentiate” some of his previous answers, including regarding Bemba’s powers:²⁸

[REDACTED].

25. Kilolo instructed P-0201 to falsely testify that the authors of the crimes spoke Swahili, not Lingala:²⁹

[REDACTED].

26. Kilolo scripted the answers to each question to be posed by the legal representatives of victims.³⁰ Here again, Kilolo corrected the “wrong” answers P-0201 intended to provide:³¹

[REDACTED].

27. P-0201 acknowledged Kilolo’s instructions and wrote them down.³² P-0201 testified falsely as instructed.³³

B. *Specificity: the witness is clearly identified* [REDACTED]

28. [REDACTED].³⁴ Given that the witness is clearly identified [REDACTED], the requirement of specificity is satisfied.³⁵

C. *Necessity: a summons, as a compulsory measure, is necessary to obtain the testimony of the witness*

29. The Prosecution has exhausted all avenues to secure P-201’s voluntary attendance. After multiple attempts, the Prosecution first established communication with P-0201 on 3 July 2015. When asked whether he was willing to testify before the Court, P-0201 unequivocally stated that he did not want to testify and had already said what he had to say during his testimony in the Main Case.

30. [REDACTED], thus far, and for unspecified reasons, P-0201 has refused to cooperate with the Prosecution, and will not testify unless compelled.

²⁸ CAR-OTP-0080-1367 (Audio); CAR-OTP-0082-1109 at 1112-1114, lns.38-59 and 93-131 (Translation).

²⁹ CAR-OTP-0080-1367 (Audio); CAR-OTP-0082-1109 at 1133-1134, lns.813-832 (Translation).

³⁰ CAR-OTP-0080-1367 (Audio); CAR-OTP-0082-1109, at 1122-1139, lns.420-1025 (Translation) and CAR-OTP-0080-1368 (Audio); CAR-OTP-0082-0659, at 0661, lns.1-27 (Translation).

³¹ CAR-OTP-0080-1367 (Audio); CAR-OTP-0082-1109 at 1137-1138, lns.976-1010 (Translation).

³² CAR-OTP-0080-1364 (Audio); CAR-OTP-0082-0877 at 0887, lns.346-348 (Translation).

³³ See e.g. above, para.11. See also the Prosecution’s Pre-Trial Brief: ICC-01/05-01-13-1110, para.105.

³⁴ [REDACTED].

³⁵ ICC-01/09-01/11-1274-Corr2, paras.180-181. [REDACTED].

D. Conclusion

31. P-0201's participation in recorded conversations goes to the core of the Prosecution's case. His evidence is material and unique, given his alleged complicity in the charged offences and direct interaction with, and illicit coaching by, Kilolo concerning his testimony. The witness's evidence is important to the Prosecution's presentation of its case and to the Chamber's determination of the truth. The interests of justice are therefore best served by having P-0201 appear and testify. Absent his compulsion, the Chamber will be deprived of key evidence bearing on the Accused's culpability.

32. [REDACTED].

V. Relief requested

33. For the above reasons, the Prosecution requests the Chamber to compel P-0201's appearance.

34. The Prosecution requests that the Chamber thus direct the Registrar to prepare and transmit a request for assistance to [REDACTED], pursuant to article 93(1)(b) and (d):

- to serve a summons on the witness; and
- to compel and ensure the witness' appearance to give testimony before the Court on [REDACTED] (*i.e., in situ* or by *via* video-link).

35. [REDACTED] government should be further requested to take all available measures in accordance with the applicable national laws to ensure the witness' compliance with the summons pursuant to article 99(1).



Fatou Bensouda, Prosecutor

Dated this 13th Day of June 2016
At The Hague, The Netherlands