

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/13
Date: 27 February 2015

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Robert Fremr

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 Request for Leave to Reply to the Kilolo
Defence's «Réponse de la Défense à la "Prosecution Submission on the
Appointment of the Defence Counsel"» (ICC-01/05-01/13-193-Conf-Exp)", 21
February 2014, ICC-01/05-01/13-216-Conf-Exp**

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Others
Section**

I. Introduction

1. Pursuant to Regulation 24(5) of the Regulations of the Court (“RoC”), the Office of the Prosecutor (“Prosecution”) requests the Chamber’s leave to reply to the Kilolo Defence’s Response (“Response”)¹ to the “Prosecution Submission on the Appointment of the Defence Counsel” (“Submission”).²

2. A limited and focused reply may benefit the Chamber and assist in the proper determination of the Submission.

II. Confidentiality

3. This document is classified as “Confidential, *Ex parte*, only available to Prosecution, Registry and the Defence of Mr. Kilolo”, as it responds to a sequence of filings of the same designation.

III. Submissions

4. In its Response, the Defence advances several arguments. The Prosecution seeks to reply only to three issues:

- (1) Whether, contrary to the Response, the broad information provided to Counsel concerning his former clients’ evidence in the Main Case as was necessary to his role as Duty Counsel, in view of Rule 74 of the Rules of Procedure and Evidence, gives rise to a conflict of interest;

¹ ICC-01/05-01/13-193-Conf-Exp, *Réponse de la Défense à la “Prosecution Submission on the Appointment of the Defence Counsel”* (ICC-01/05-01/13-157-Conf-Exp), 14 February 2014. See also ICC-01/05-01/13-167-Conf-Exp.

² ICC-01/05-01/13-157-Conf-Exp, Prosecution Submission on the Appointment of the Defence Counsel, 7 February 2014.

- (2) Who bears the burden to overcome or establish an impediment to representation (as opposed to an application for disqualification of counsel, for example) on the basis of a conflict or incompatibility of interests among former and current clients in the substantially related case;
- a. Whether the steps taken by Counsel in the Response, if any, fulfil the requirements of Articles 12(1)(a) and 16(3) of the Code of Professional Conduct for Counsel ("Code");
- (3) Does an actual conflict or incompatibility need be established or disproved;
- a. The Prosecution possesses evidence recently provided by Witness [REDACTED] in the Main Case³, whom Counsel represented, which confirms the existence of a concrete conflict of interest.

IV. Requested Relief

5. For the foregoing reasons, the Prosecution requests that the Chamber grant it leave to reply to the Defence Response, pursuant to Regulation 24(5) of the RoC.



Fatou Bensouda, Prosecutor

Dated this 27th Day of February 2015
At The Hague, The Netherlands

³ After the Prosecution Submission on the Appointment of Defence Counsel on 7 February 2014, the transcript and audio of the interview with Defence witness [REDACTED] were disclosed to the Defence as incriminatory evidence on 14 February (ICC-01/05-01/13-194).