

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/05-01/13

Date: 25 June 2015

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

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

**Response to “Requête de la défense de monsieur Aimé Kilolo Musamba aux fins de
divulgence d’informations relatives au témoin de l’Accusation (ICC-01/05-01/13-1023-
Conf)”**

Source: Defence for Jean-Jacques Kabongo Mangenda

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-Jacques Kabongo Mangenda

Mr Christopher Gosnell

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku
Mr Philippe Larochelle

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
Section**

Other

1. Jean-Jacques Mangenda hereby¹ joins and supports the request of Mr. Kilolo for disclosure from the Prosecution of materials relating to P-169.²
2. The information requested is “material to the preparation of the Defence” pursuant to Rule 77, and “may affect the credibility of prosecution evidence” pursuant to Article 67(2) of the Statute. The words “may affect” is the relevant standard,³ and must be assessed in relation, *inter alia*, to the defence’s submissions about its intended defences.⁴
3. The Office of the Prosecutor sought highly intrusive and unrestricted surveillance of Mr. Mangenda and others by the Dutch and other governments. The Mangenda Defence questions the basis on which that surveillance was granted and is in the process of trying to obtain the decisions, in particular, of Dutch judicial authorities authorising such surveillance, as well as any and all submissions made by the Office of the Prosecutor of the ICC. The legality of such surveillance, either under national or international standards, is highly relevant to the admissibility of any information collected.
4. The Defence understands that the Prosecution relied heavily on payments of Defence witnesses as the basis for asserting before ICC, Dutch and other judicial authorities a reasonable suspicion of the commission of offences under Article 70. Whether the Prosecution made such payments in the past and on what terms, is, accordingly, relevant to the reasonableness of its suspicion at the time. Any records of payments to P-169, or the terms on which such payments were promised, falls within the ambit of such information.

¹ The present submission is filed confidentially pursuant to Regulation 23bis (2) of the Regulations of the Court to correspond with the classification of the filing to which it refers and supports.

² *Prosecutor v. Bemba et al.*, Requête de la défense de monsieur Aimé Kilolo Musamba aux fins de divulgation d’informations relatives au témoin de l’Accusation 169, ICC-01/05-01/13-1023-Conf, 19 June 2015.

³ *Prosecutor v. Krajišnik*, No. IT-00-39-T, *Decision on Defence Motion on Rule 68 of the Rules of Procedure and Evidence*, 2 June 2006, para. 9 (“The disclosure obligation under Rule 68 is not limited to material which is exculpatory on its face. For material to fall within the ambit of Rule 68, it is not required that it in fact suggests the innocence of the accused; it is sufficient that it *may* so suggest”); *Prosecutor v. Gotovina et al.*, No. IT-06-90-T, *Decision on Ivan Čermak’s Motion Requesting the Trial Chamber to Order the Prosecution to Disclose Rule 68 Material to the Defence*, 7 August 2009, para. 11.

⁴ *Prosecutor v. Lukić & Lukić*, No. IT-98-32/1-A, *Decision on Milan Lukić’s Motion for Remedies Arising out of Disclosure Violations by the Prosecution*, 12 May 2011, para. 14 (“The standard for assessing whether material is considered to be exculpatory is whether there is any possibility, *in light of the submissions of the parties*, that the given information could be relevant to the defence of the accused”) (*italics added*).

5. The material is also disclosable because the Prosecution can reasonably be expected to argue during trial, as it already has in previous submissions,⁵ that such payments are, as such, circumstantially indicative of misconduct. Establishing that there is an established practice of providing payments to witnesses at the ICC, and on what terms, is also relevant to the reasonableness of this inference. The purpose of such information is not to establish a fallacious *tu quoque* defence, but to establish that this is an accepted practice at the ICC under certain circumstances.
6. For this, as well as the reasons identified by the Kilolo Defence, the information is disclosable both under Articles 67(2) and 77 of the Statute.



Christopher Gosnell
Counsel for Mr. Jean-Jacques Kabongo Mangenda

Dated this 25 June 2015

At The Hague, The Netherlands

⁵ *Prosecutor v. Bemba et al.*, Prosecution's Application for Warrant of Arrest, ICC-01/05-01/13-19-Conf, 27 November 2013, paras. 8, 26, 45, 59, 70, 74, 82, 99, 101; *Prosecutor v. Bemba et al.*, Document Containing the Charges, ICC-01/05-01/13-526-Conf-AnxB1, 30 June 2014, paras. 28, 32, 34, 41, 76, 87, 111, 114, 116, 119, 122, 131; *Prosecutor v. Bemba et al.*, Confidential Annex B to Prosecution's Notification of Filing of Submission on the Confirmation of Charges, ICC-01/05-01/13-597-Conf-Anx B, 30 July 2014, paras. 22, 34, 37, 91, 98, 168, 238, 303, 308, 326, 352, 426; *Prosecutor v. Bemba et al.*, Prosecution's Response to Defence Confirmation Submissions, ICC-01/05-01/13-646-Conf, 21 August 2014, paras. 52, 75, 88, 90, 120, 142; *Prosecutor v. Bemba et al.*, Prosecution's Response to the Kilolo Defence's Request for Disclosure of Information Relating to the Reimbursement of the Prosecution Witnesses, ICC-01/05-01/13-542, 7 July 2014, para. 6.