

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: **ICC-01/05-01/13**
Date: **14 September 2015**

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
With
Confidential Annex A

**Kilolo Defence Response to "Prosecution's Third Request for the
Admission of Evidence from the Bar Table".**

Source: Defence of Mr. Aimé Kilolo Musamba

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

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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

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Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

I. INTRODUCTION

1. On 21 August 2015 the Prosecution filed 'Prosecution's Third Request for the Admission of Evidence from the Bar Table' ['the Bar Table motion'].¹
2. In short, the Prosecution seeks the admission of 104 items of evidence. The material derives from a variety of sources: (i) Materials disclosed by the Defence; (ii) Statements from the Accused; (iii) Materials obtained from the Accused; (iv) VWU; (v) Independent Counsel Report and related materials; (vi) Detention Centre materials; (vii) Open source materials; (viii) Photographs, and (ix) Other materials.²
3. We do not propose to repeat the submissions made in response to the Prosecution's First and Second Requests for the Admission of Evidence from the Bar Table on the propriety of the Prosecution's attempt to adduce evidence from the Bar Table.³
4. We simply adopt, *mutatis mutandis*, the relevant submissions made in reply in our 'Response de la Défense de M. Aimé Kilolo à la 'Prosecution's First Request for the Admission of Evidence from the Bar Table'⁴ and 'Response to 'Prosecution's Second Request for the Admission of Evidence from the Bar Table'.⁵
5. Moreover, we respectfully refer the Trial Chamber to Confidential Annex A in which specific objections are taken in relation to individual items of evidence that the Prosecution seeks to admit.

¹ ICC-01/05-01/13-1170-Conf, 21 August 2015; ICC-01/05-01/13-1170-Conf-AnxA, 21 August 2015.

² Ibidem.

³ ICC-01/05-01/13-1075-Conf, 9 July 2015 para. 10-13 We also adopt the relevant submissions made on behalf of other Defendants to the propriety of admitting evidence at trial from the Bar Table rather than seeking to adduce the evidence concerned through a relevant witness: See ICC-01/05-01/13-1073-Conf, ICC-01/05-01/13-1074-Conf, ICC-01/05-01/13-1076-Conf, ICC-01/05-01/13-1077-Conf, .

⁴ ICC-01/05-01/13-1075-Conf, 9 July 2015.

⁵ ICC-01/05-01/13-1201-Conf, 24 August 2015.

II. SUBMISSIONS

6. In short, the objections can be summarized as follows:

(i) *Materials disclosed by the Defence*

Even though the documents were disclosed by the Defence, that was for the purpose of the Confirmation Hearing. The interpretation that the Prosecution now seeks to put on them is inaccurate and therefore means that they should not be admitted for the purposes that the Prosecution seeks.

(ii) *Statements of Accused*

Before admitting the statements of any accused, it is respectfully submitted that the Prosecution must ensure that the requirements of Rule 68(2) of the Rules of Procedure and Evidence are satisfied. Moreover, for the reasons set out in our Response to the Prosecution's Second Bar Table Motion⁶, the statements of other accused should not be admissible against any one else unless and until that person gives evidence and is thereby available for cross-examination.

(iii) *Materials obtained from the Accused*

Anything said in emails to which Mr. Kilolo was not a party should not be admissible against him unless and until the author of the email gives evidence at trial and make themselves available for cross-examination. Moreover, both such emails and emails to which Mr. Kilolo is said to be a party should be admitted into evidence by a relevant witness rather than way of Bar Table motion.

(iv) *Victims and Witness Unit*

⁶ ICC-01/05-01/13-1201-Conf 31 August 2015 para. 7-9.

There is no reason why such material has not been formally exhibited/produced by someone from VWU explaining the provenance and authenticity of it. Moreover, it is maybe helpful for someone from VWU to give evidence regarding the material produced.

(v) *Independent Counsel Report and related materials*

The documents should be tendered through the Independent Counsel and additional relevant witnesses.

(vi) *Detention Centre materials*

This material should not be admitted, for the same reasons as set out in our Response to the Prosecution's Second Bar Table Motion.⁷

(vii) *Open Source materials*

Where the author of any open source material is known, the Prosecution should first seek to obtain a statement from that person regarding the issues contained in the article/publication. At the very least the person should be asked to formally exhibit/produced the article/publication concerned.

(viii) *Photographs*

The FaceBook photographs of D-6 and P-0264 should be exhibited by either of them. P-0264 is a Prosecution witness and the photographs can, presumably, be produced by her.

⁷ ICC-01/05-01/13-1201-Conf para. 6; *see also* ICC-01/05-01/13-1201-Conf-AnxA

(ix) *Other materials*

The CDR between Mr. Mangenda and Mr. Kilolo should not be admitted for the same reason as set out in our Response to the Prosecution's First Bar Table Motion.⁸

The other six items do not appear to relate to Mr. Kilolo. In addition to any other arguments submitted on behalf of other accused, we simply add that these items should be formally exhibited/produced by a relevant witness.

III. RELIEF SOUGHT

7. We respectfully seek the following relief:

- (i) That, for the reasons set out above, the Prosecution's Third Bar Table Motion be rejected.
- (ii) In the event that statements/materials made by co-accused are admitted against them, that they be admissible only against them unless and until such time as they give evidence and make themselves available for cross-examination.

⁸ ICC-01/05-01/13-1075-Conf, paras. 26-28.

Maître Paul Djunga Mudimbi
Lead Counsel of Mr. Aimé Kilolo Musamba



Mr. Steven Powles
Associate Counsel of Mr. Aimé Kilolo Musamba



Dated this 14 September 2015,
At The Hague, The Netherlands.