

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/05-01/13
Date: 17 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

**Request for Leave to Reply to Prosecution Response to Motion for Severance or, in the
Alternative, Adjournment or Appearance Pursuant to Rule 134bis of the Rules**

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
Mr Arthur Vercken

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi
Mr Steven Powles

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila
Mr Roland Azama Shalie Rodoma

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 respectfully requests¹ leave, pursuant to Regulation 24(5) of the Regulations of the Court, to reply to the Prosecution Response to the “Motion for Severance or, in the Alternative, Adjournment or Appearance Pursuant to Rule 134bis of the Rules.”² Leave is requested to address two concrete issues raised in the Response that constitute “new issues,”³ “arguments,”⁴ and even relate to a veiled request for the issuance of an arrest warrant:⁵
 - (i) the propriety of assessing flight risk based on legal submissions on behalf of an accused, especially when those submissions are based on the express language of the Statute and Rules of the ICC; and
 - (ii) the definition of “presence” espoused by the Prosecution.



Christopher Gosnell
Counsel for Mr. Jean-Jacques Kabongo Mangenda

Respectfully submitted this 17 September 2015,

At The Hague, The Netherlands.

¹ The present submission is filed confidentially pursuant to Regulation 23bis (2) of the Regulations of the Court as it cites a submission of the same classification.

² ICC-01/05-01/13-1266-Conf (“Response”). See *Bemba et al.*, Motion for Severance, or, in the Alternative, Adjournment or Appearance Pursuant to Rule 134bis of the Rules, ICC-01/05-01/13-1253-Conf, 15 September 2015.

³ *Bemba*, Decision on “Defence Request for Leave to Reply to the ‘Consolidated Response to the Defence Requests’”, ICC-01/05-01/08-3049, 17 April 2014, para. 5; *Mbarushimana*, Decision on the Prosecution’s request for leave to reply to the “Defence Response to Prosecution’s Request for the Review of Potentially Privileged Material”, ICC-01/04-01/10-61, 24 February 2011, p. 3 (granting the Prosecution’s leave to reply where the Defence Response raised “new and distinct issues of law and fact, which the Prosecutor had not had the opportunity to address”); *Bemba et al.*, Decision on the “Demande d’autorisation de répliquer à la ‘Prosecution Response to the ‘Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba’ of 16 December 2013 and its Addendum of 7 January 2014 (ICC-01/05-01/13 and ICC-01/05-01/13-69)”, ICC-01/05-01/13-112, 20 January 2014, p. 3 (holding that good cause exists “when one or more issues arising from the response could not have been anticipated in [the] initial submissions.”)

⁴ *Banda and Jerbo*, Order on the defence’s application for leave to reply, ICC-02/05-03/09-261, 24 November 2011, para. 5 (granting the defence leave to reply where the Prosecution’s response raised certain legal issues that were – as argued by the Defence – unforeseeable and warranted a reply).

⁵ Response, para. 5 (“[t]he Chamber should thus take such affirmative and immediate steps as is necessary to ensure that Mangenda abides by the terms and conditions of his release, and to prevent his failure to do so from derailing the trial proceedings.”)