

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/05-01/13
Date: 30 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

Kilolo Defence Response to 'Prosecution's Revised Order of Witnesses' (ICC-01/05-01/13-1304-Conf).

Source: Defence for Mr. Aimé Kilolo Musamba

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-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Mr Steven Powles

Counsel for Jean-Jacques Kabongo Mangenda

Mr Christopher Gosnell

Mr Arthur Vercken

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 Laroche

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 Other
Section**

I. INTRODUCTION

1. On 24th September 2015, the Prosecution informed the five defence teams that it intended to change the order of its witnesses. On 28th September 2015 filed its formal request (hereinafter "Request")¹.
2. Pursuant to the order of the Trial Chamber of 28th September 2015, the Defence for Mr. Kilolo (hereinafter "Kilolo Defence" or "Defence") hereby seeks to respond to the Request of the Prosecution.

II. SUBMISSIONS

3. At the outset, the Kilolo defence does not object to the general revised witness order set out in the Request. With regards to P-0361, the Defence supports the Bemba defence's submissions in that it objects to the proposed timing and testimony of this witness².
4. In this respect, the Kilolo defence is also of the view that, the late disclosure of evidence and information related to P-0361 and his report, and the fact that the translation of documents relied upon in P-0361's report have yet to be communicated, are factors warranting a later appearance of P-0361. Indeed, if P-0361 were to give evidence on the 5th and 6th October 2015, the Defence would not have adequate time to prepare for the witness and its cross-examination. This would be contrary to the provisions of Article 67 (1) (b) of the Rome Statute. It is thus respectfully submitted that P-0361 gives evidence at a later stage, that is at least after the Defence has received and has had adequate time to go through the above-mentioned translated documents relied upon by P-0361 in his report.

¹ ICC-01/05-01/13-1304-Conf.

² ICC-01/05-01/13-1313-Conf-Red.

5. Moreover, the estimated dates of testimony of the Prosecution's first six witnesses are days on which the present Trial Chamber will not be sitting. For instance, the Trial Chamber has previously indicated that it will not be sitting on Friday 2nd October 2015, but the Prosecution proposes to call P-0261 on that day. Similarly, it is proposed that P-0267 gives evidence on Sunday 25th October 2015³. Accordingly, it is also respectfully submitted that the Prosecution amends and provides the Trial Chamber and the Defence with more accurate estimations compatible with the Trial Chamber's calendar.

III. RELIEF SOUGHT

6. For the reasons set out above, the Defence for Mr. Kilolo respectfully,
- i. Requests that the Prosecution calls P-0361 after it has had time to analyze the translated documents relied upon in his report,
 - ii. Requests that the Prosecution amends and files a proposed order of witnesses reflecting the Trial Chamber's calendar.

Respectfully submitted.



Paul Djunga Mudimbi
Lead Counsel of Mr. Aimé Kilolo Musamba



Steven Powles
Associate Counsel of Mr. Aimé Kilolo Musamba

Dated this 30 September 2015,
At The Hague, The Netherlands.

³ ICC-01/05-01/13-1304-Conf, para. 4.