

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/05-01/13
Date: 25 January 2016

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
Confidential annex A**

**Defence Response to 'Prosecution's Motion For Lifting Redactions And The Release
Of Information Contained In Independent Counsel's Reports' (ICC-01/05-01/13-
1537-Conf).**

Source: Defence for 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

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

I. Introduction

1. On 7 January 2016 the Prosecution filed 'Prosecution's Motion for Lifting Redactions and the Release of Information Contained in Independent Counsel's Report'.
2. On 19 January 2016 the Trial Chamber ordered that the Defence reply to the Prosecution's Motion by 25 January 2016.¹
3. The Defence position in relation to each specific item the Prosecution asserts redactions should be lifted is set out in Annex A to this Response.

II. Defence submissions

4. The Defence Response in relation to the various categories of material can be summarised as follows:
 - (i) Where redacted material is already in the possession of the Prosecution as a result of other means, there is obviously no objection to the redactions being lifted.

That said, it is questionable whether lifting such redactions is truly necessary as the Prosecution plainly already has the material in question in any event.

¹ See Trial Chamber's e-mail of 19th January 2016.

- (ii) The Prosecution has had ample time to reflect upon and challenge the previous decisions of the Trial Chamber on this issue.² The last being on 20 July 2015.

It is respectfully submitted that there is no justification for seeking a reconsideration of the Trial Chamber's previous decisions. The reasons and rationale for applying the redactions was clear.

No such challenge was made at the appropriate time and no such challenge or re-assessment of the decision should be made now.

- (iii) While some of the redacted material may relate to witnesses who are to be called as part of the Defence case, this does not, of itself, render the material disclosable to the Prosecution.

The material was, for good reason, previously considered to be irrelevant to the Prosecution's investigations and/or protected by privilege.

The fact that it may relate to Defence witnesses to be called by the Defence does not alter the Prosecution's entitlement to it. Even if Mr Kilolo communicated with any of the witnesses he now intends to call in his Defence during the *Bemba* proceedings, the Trial Chamber has already assessed the communication in question to be either *irrelevant* to the

² ICC-01/05-01/13-893-Conf and ICC-01/05-01/13-947.

Prosecution's case or privileged. That a person is to be called in Mr Kilolo's defence cannot materially change that assessment.

5. Finally, the Defence reiterates that the Trial Chamber has already previously rendered a decision on the March 2015 report on April 9 2014.³ The Prosecution has not previously requested the disclosure of annex D. Such a request at this stage is tardy and impairs the rights of the Accused."

III. Relief Requested

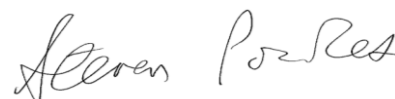
6. The Trial Chamber is respectfully asked to reject the Prosecution's Motion in its entirety.

RESPECTFULLY SUBMITTED.

³ ICC-01/05-01/13-893-Conf.



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



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

Dated this 25 January 2016,
At The Hague, The Netherlands.