

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/05-01/13

Date: 22 April 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

**Response on behalf of Mr Kilolo to Article 69(7) Applications submitted by other
Defence teams.**

Source: Defence for 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

Mrss Beth Lyons

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for the 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

I. INTRODUCTION

1. On 8 April 2016 the Defences for Mr Mangenda, Mr Babala and Mr Arido filed applications pursuant to Article 69(7) of the Statute in relation to evidence obtained pursuant to an unlawful request to Western Union.¹
2. On the same date the Defence for Mr Kilolo filed 'Motion on behalf of Aimé Kilolo Musamba pursuant to Article 69(7) of the Statute to exclude evidence obtained in violation of the Statute and/or internationally recognized human rights'.² In that application the Defence for Mr Kilolo sought the exclusion of (i) the Western Union material and (ii) telephonic and intercepted communications.
3. On 12 April 2016 the Defence for Mr Bemba filed an application pursuant to Article 69(7) of the Statute seeking exclusion of the Dutch intercept evidence and call data records.³

II. SUBMISSIONS IN RESPONSE TO MANGENDA, BABALA AND ARIDO APPLICATIONS

4. The Defence for Mr Kilolo supports many of the points made in the applications regarding the Western Union process on behalf of Mr Mangenda, Mr Babala and Mr Arido.
5. It is respectfully submitted that the additional points made in those submissions compliment the arguments made on behalf of Mr Kilolo for the exclusion of the Western Union evidence.

¹ ICC-01/05-01/13-1791-Conf, ICC-01/05-01/13-1785-Conf, ICC-01/05-01/13-1795.

² ICC-01/05-01/13-1796-Conf.

³ ICC-01/05/13-1799-Conf .

III. SUBMISSIONS IN RESPONSE TO BEMBA APPLICATION

6. The Bemba Defence seeks the exclusion of data collected and intercepted communications obtained by the Dutch authorities during the course of August until November 2013.
7. The application is made on the basis that the collection of the Dutch intercepts and call data records violated the Statute and/or internationally recognised human rights law because:
 - (i) The absence of any legal basis as concerns the interception of the '18' number in August and September 2013;⁴ and
 - (ii) The absence of adequate safeguards.⁵
8. The application argues that the violations cast doubt on the reliability of the intercepts and that their admission would damage the integrity of proceedings.⁶
9. It is respectfully submitted that if the intercept evidence is excluded against Mr Bemba, it should also be excluded against the other accused.

RESPECTFULLY SUBMITTED,

⁴ ICC-01/05-01/13-1799-Conf paras. 23 to 39.

⁵ ICC-01/05-01/13-1799-Conf paras. 40 to 84.

⁶ ICC-01/05-01/13-1799 paras. 85 to 99. The Defence for Mr Kilolo notes the arguments at paras. 97 and 98. It is submitted that there is no basis and that it is purely speculative to assert that 'the two co-defendants had a subsequent incentive to incriminate others in order to exculpate or diminish their own responsibility'.



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



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

Dated this 22 April 2016,
At The Hague, The Netherlands.