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No: ICC-01/05-01/13

Date: 24 June 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***

**Public redacted version of “Defence Request for the Replacement and
Substitution of an Approved Defence Expert Witness” (ICC-01/05-01/13-536-Conf-
Exp)**

Source: Defence for 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 the Victims

The Office of Public Counsel for the Defence

States' Representatives

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REGISTRY

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Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Section
Other**

I. INTRODUCTION

1. *Purpose*: This Request (“Request” or “Defence Request”) is submitted by the Defence of Mr Aimé Kilolo Musamba (“Defence” and “Mr Kilolo” respectively) to the Single Judge, respectfully requesting that the Single Judge authorize the replacement and substitution of an approved Expert Witness for the Defence in the upcoming confirmation of charges in case ICC-01/05-01/13.
2. *Confidentiality*: This Request is classified as “Confidential” as it references privileged Defence communications, discusses confidential Defence strategies, and discloses identifying, personal and contact data information. Furthermore, in light of the fact that this Request contains confidential and privileged data relating to the Defence’s present strategy, and that the Prosecution has only recently submitted the document containing the charges, this Request is filed *ex parte*, reserved solely for the Registry and Kilolo Defence, as per Regulation 23bis of the Regulations of the Court.
3. *Structure*: This Request will briefly discuss relevant sections of the procedural posture of this case (II), before addressing the legal basis and subject of the present Request (III).

II. PROCEDURAL HISTORY

4. On 15 April 2014, the Defence submitted its ‘Requête aux fins d’audition de témoins de la Défense à l’audience de confirmation des charges’¹, in which the Defence indicated its intention to call upon expert witnesses to testify as to the various allegations with which Mr Kilolo is charged.² Specifically, the Defence indicated that, “dans le cadre de l’Affaire connexe, appelée à faire oeuvre de pionnier dans un domaine où la jurisprudence internationale n’est pas encore établie. L’audition d’un témoin expert sur les différents problèmes juridiques soulevés par l’Affaire connexe est de nature, par le débat contradictoire que soulèvera sa déposition, à permettre à la

¹ ICC-01/05-01/13-339

² ICC-01/05-01/13-339, para. 6

Chambre préliminaire de rendre une décision éclairée sur la confirmation des charges alors que, pour la toute première fois de son histoire, la Cour est appelée à statuer sur des infractions autres que les crimes prévus aux articles 5 à 8 bis de son Statut."

5. Further, the Defence requested the Single Judge to authorize the *viva voce* testimony of witnesses,³ which the Single Judge subsequently rejected,⁴ thus opening the doors for the production of written statements only.
6. Accordingly, the Defence submitted to the Single Judge its desire to call as an expert witness [REDACTED], in his capacity as a renowned [REDACTED] of international criminal law, who would be able to articulate, elucidate and testify as to the novel points of law raised in the present case.

On 28 May 2014, the Single Judge issued a 'Decision amending the calendar for the confirmation of charges'⁵ by which the confirmation of charges was delayed by a full month. As a result, [REDACTED] is unable to appear before this Court in his capacity as an expert witness for the Defence.

III. DISCUSSION

7. Article 61(6) of the Statute affords an accused the right to challenge the evidence presented by the Prosecutor, as well as to present evidence at the hearing to confirm the charges. Read in conjunction with Article 61(5), it is clear that evidence may take the form of documentary or summary evidence or witness testimony.
8. In light of [REDACTED] unavailability, the Defence wishes to replace [REDACTED] with another expert witness, [REDACTED], similarly renowned and positioned in international law as an expert in international criminal law. [REDACTED] will testify and provide expertise as to the same legal points with which [REDACTED] was charged, namely on the questions as

³ ICC-01/05-01/13-339

⁴ ICC-01/05-01/13-363

⁵ ICC-01/05-01/13-443

to (i) the legality of wiretaps placed on the telephones of a practicing Lead Counsel before this Court, as well as (ii) the appointment of an Independent Counsel by the Single Judge.

9. [REDACTED] is an esteemed [REDACTED]
[REDACTED], who has [REDACTED] in this regard, and who will be able to provide objective expertise as to the legal points raised by the present case. Indeed, he is an appropriate authority to provide to the Court detailed, thorough, nuanced and objective observations on the questions raised in the present proceedings.
10. Specifically, in light of the fact that this case raises questions of first impression before this Court, and the consequent absence of any guiding jurisprudence, it falls to an academic well-versed in this field to provide testimony and expertise to guide this Court's interpretation and adjudication. The Defence contends that [REDACTED] will be able to do exactly that, and will prove seminal in the upcoming confirmation proceedings.
11. In the present case, [REDACTED] would submit a written report through which he would showcase his legal expertise in the field of international criminal law. As such, the Defence would not ask [REDACTED] to appear before the Court *viva voce*.
12. However, in order to fully and properly perform his duty as an expert witness, [REDACTED] will need to be afforded access to confidential documents in the present case. To that end, the Defence wishes to seek the Single Judge's authorization not only to replace and substitute former expert witness [REDACTED] [REDACTED] with [REDACTED], but also to provide [REDACTED] with the relevant and necessary case documents, which include confidential documents.

IV. RELIEF REQUESTED

13. The Defence for Mr Kilolo respectfully requests that the Single Judge:

- o Grant this present Request for the replacement and substitution of [REDACTED] with [REDACTED], to act as an expert witness for the Defense in the confirmation of charges; and
- o To authorize the provision of confidential materials to [REDACTED], to allow him to fulfil his duty in his capacity as an expert witness.

Maître Paul Djunga Mudimbi

Lead Counsel for Aimé Kilolo Musamba



Dated this 24 June 2016,

At Paris, France