

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/05-01/13

Date: 14 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 "Response to 'Prosecution's Motion to Exclude the Evidence of Witnesses D20-0002 and D21-0009, or, in the alternative, to Restrict the Scope of Witness D20-0002's Evidence' (ICC-01/05-01/13-1633)" (ICC-01/05-01/13-1648-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**

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Defence Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section Other**

I. INTRODUCTION

1. On 9 February 2016, as directed by the Trial Chamber, the Defence for Mr Kilolo filed a summary of proposed witness D21-0009.¹
2. On 17 February 2016 the Prosecution filed 'Prosecution's Motion to Exclude the Evidence of Witnesses D20-0002 and D21-0009, or, in the alternative, to Restrict the Scope of Witness D20-0002's Evidence' ['the Motion'].²
3. The Defence for Mr Kilolo hereby responds to the Prosecution's submissions regarding D-21-0009.³
4. In short, the Defence respectfully submits that the Prosecution's Motion with regards D21-0009 should be dismissed.⁴

II. SUBMISSIONS

5. At the outset it is noted that the Prosecution does not explain the basis upon which it disputes the relevance of D21-0009's testimony. The Prosecution's complaint, to the extent that it can be deciphered, appears to be limited to whether D21-0009 is designated as a witness of fact or as an expert witness. Whether he is described as an expert or a factual witness, his evidence should be admitted.

¹ ICC-01/05-01/13-1609-Conf-Exp.

² ICC-01/05-01/13-1633.

³ The Defence for Mr Kilolo respectfully adopt the submissions of Mr Bemba regarding D20-0002.

⁴ This document is confidential pursuant Regulation 23 (2) *bis* of the Regulations of the Court as it makes reference to information not accessible to the public.

6. As noted by the Prosecution itself, D21-0009 [REDACTED].⁵ His experience and expertise meant he was ideally placed to comment on and present his findings within that Report.
7. Moreover, it is incorrect for the Prosecution to say that the Defence has sought to circumvent the Registry's well-established process of screening experts.⁶ The Defence is currently taking steps to facilitate D21-0009's admission on to the Registry's List of Experts.
8. In any event, D21-0009 gives contextual, factual evidence as to the operation of the VWU during the relevant period. He will also explain the various working methods of the VWU during the relevant period. [REDACTED].
9. [REDACTED].
10. Either way, as the Prosecution does not explain how and why it disputes the relevance of his testimony it is inappropriate for them to seek to obstruct Defence efforts to present him to the Trial Chamber.
11. Contrary to the Prosecution's observations, D21-0009 is being called to give evidence about what he 'personally saw, heard or experienced'⁷ [EXPURGE] and of the working methods of the VWU during the relevant period. Notwithstanding his expertise, his evidence is factual. But, to the extent that he proffers an opinion, it is clearly based on his unique background and expertise and he should therefore be permitted to do so.

⁵ REDACTED.

⁶ ICC-01/05-01/13-1633,para. 7.

⁷ ICC-01/05-01/13-1633,para. 3.

III. RELIEF REQUESTED

12. For the reasons set out above, it is respectfully submitted that the Prosecution's Motion should be dismissed and the Defence be permitted to call D21-0009 as a factual witness or in the alternative as an expert witness.

13. In the alternative, the Defence respectfully requests that it be permitted to present D21-0009's evidence pursuant to Rule 68(2)(b) and for the Trial Chamber to rule on its admissibility thereafter.

Respectfully submitted,



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

Dated this 14 June 2016,
At The Hague, The Netherlands.