

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13

Date: 6 June 2018

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 Ex Parte
(OTP and Kilolo Defence only)***

**Aimé Kilolo Musamba's Response to Prosecution's Request for Leave to Reply to
Bemba's, Kilolo's and Mangenda's Sentencing Submissions**

Source: Counsel for Aimé Kilolo Musamba

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Amicus Curiae

REGISTRY

Registrar

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Defence Support Section

Victims and Witnesses Unit

Detention Section

Mr. Aimé Kilolo Musamba, through his Counsel (“the Kilolo Defence”), hereby submits his Response to the Prosecution’s Request for Leave to Reply to Bemba’s, Kilolo’s and Mangenda’s Sentencing Submissions (“Request”)¹ pursuant to Regulation 34(c) of the Regulations of the Court. This Response is filed confidential *ex parte* (OTP and Kilolo Defence only) pursuant to Regulation 23*bis* because it responds to a confidential *ex parte* submission.²

I. ARGUMENT

1. The OTP seeks leave to reply to Mr. Kilolo’s Sentencing Submission on Remand³ in order to “address and clarify” some of his arguments that the OTP considers to be based on an incorrect interpretation of the sentencing proceedings, the Appeal Judgments, and its own Sentencing Submissions.⁴ It claims that: **a.** its reply will fulfill Regulation 24(5)’s criteria⁵ because it will address “new and unforeseen issues;” **b.** the Defence misrepresented the Appeals Chamber’s Judgments and the OTP’s Sentencing Submissions; **c.** Mr. Kilolo’s updated circumstances are “belated, irrelevant and self-serving;” and **d.** its reply will assist the Chamber because of the OTP’s “intimate knowledge of the complex and intense appeal litigation.”⁶
2. The OTP’s reasons for seeking leave to reply lack merit. The OTP:
 - a. Raises no new or unforeseen issues in its Request but rather seeks to expand on issues that it could have anticipated and addressed in its Sentencing Submissions;⁷
 - b. Merely indicates disagreements with the Kilolo Defence’s interpretation of the Appeals Chamber’s Judgments and arguments made in the Kilolo Defence’s

¹ ICC-01/05-01/13-2283-Conf-Exp.

² Regulation 23*bis*(2): “Unless otherwise ordered by a Chamber, any response, reply or other document referring to a document, decision or order marked ‘*ex parte*’, ‘under seal’ or ‘confidential’ shall be filed with the same classification.”

³ ICC-01/05-01/13-2282-Conf-Exp.

⁴ ICC-01/05-01/13-2283-Conf-Exp, paras. 1-2, 7.

⁵ Regulation 24(5): “Participants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.”

⁶ ICC-01/05-01/13-2283-Conf-Exp, paras. 1-2, 5.

⁷ See ICC-01/05-01/13-2283-Conf-Exp, para. 7. See also Regulation 24(5).

Sentencing Submission on Remand that the Trial Chamber can resolve without further written or oral submissions;⁸

- c. Ignores that Rule 145(1)(b) and (c) requires the Trial Chamber to assess, weigh, and balance *all* relevant factors, including the Convicted Person's individual circumstances in determining a sentence,⁹ which necessarily involves considering the Convicted Person's behavior since the Sentencing Decision;¹⁰ and
- d. Ignores that the Judges of the Trial Chamber are professional judges and do not need to be lectured on appellate procedure.¹¹

II. CONCLUSION

3. The OTP fails to show any good cause as to why a reply is warranted. The Trial Chamber already has all the evidence and arguments before it. The Single Judge purposely designed a procedural scheme to allow the Parties present *all* arguments in their sentencing submission on remand and make their case as to why an oral hearing is necessary, and in procedural fairness, gave the Defence teams the last word by scheduling the deadline for their sentencing submissions one month after the OTP's.¹² Granting the OTP's request would only unduly delay the proceedings, inviting further written submissions from the Parties. The Trial Chamber should dismiss the OTP's Request because it fails to meet the criteria for leave to reply under Regulation 24(5) and fails to show any good cause as to why a reply is necessary.

⁸ See ICC-01/05-01/13-2283-Conf-Exp, paras. 2, 7. In its Request, the OTP merely indicates disagreements with the Kilolo Defence's interpretation of the Appeal Judgments and arguments that the Trial Chamber should consider, for the purposes of resentencing, that Mr. Kilolo has effectively served one third of his probationary period, that his sentence should be reduced based on the quashing of the Article 70(1)(b) convictions, and that his original sentence of imprisonment was the 11-month period of incarceration.

⁹ See ICC-01/05-01/13-2123-Corr, paras. 21-26. See also ICC-01/05-01/13-2276-Red. Notably, the Appeals Chamber found no error of law or fact or abuse of discretion in the Trial Chamber's identification of relevant sentencing factors.

¹⁰ ICC-01/05-01/13-1989-Conf, para. 13; ICC-01/05-01/13-2123-Corr, paras. 182-89. See also *Prosecutor v. Lubanga*, ICC-01/04-01/06-2901, Decision on Sentence pursuant to Article 76 of the Statute, paras. 25, 54; *Prosecutor v. Bemba*, ICC-01/05-01/08-3399, Decision on Sentence pursuant to Article 76 of the Statute, 21 June 2016, para. 12; *Prosecutor v. Lubanga*, ICC-01/04-01/06-3122, Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the "Decision on Sentence pursuant to Article 76 of the Statute, 1 December 2014, Key Finding 1, para. 42 ("a Trial Chamber's failure to consider one of the mandatory factors listed in rule 145 (1) (b) of the Rules of Procedure and Evidence can amount to a legal error in the context of challenging the Trial Chamber's discretionary authority in sentencing"). See also ICC-01/05-01/13-2282-Conf-Exp, fn. 84 (regarding the principle of individualized sentencing).

¹¹ See ICC-01/05-01/13-2283-Conf-Exp, para. 5: "[T]he Trial Chamber would benefit from the Prosecution's intimate knowledge of the complex and intense appeal litigation...."

¹² The Single Judge scheduled the OTP's deadline for its Sentencing Submissions for 30 April 2018 and the Defence's Sentencing Submissions for 30 May 2018. See ICC-01/05-01/13-2277, p. 4.

Respectfully submitted, 6 June 2018,

In The Hague, the Netherlands.

A handwritten signature in black ink, appearing to read 'M. Karnavas', is centered on the page. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mr. Michael G. Karnavas
Counsel for Mr. Aimé Kilolo Musamba