



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***

**Public**

**Defence Response to Prosecution's Request for Leave to Reply (ICC-01/05-01/13-2283-Red)**

**Source:** Defence for Jean-Jacques Kabongo Mangenda

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

**The Office of the Prosecutor**  
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 Mr James Stewart  
 Mr Kweku Vanderpuye

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**Counsel for Fidèle Babala Wandu**

**Counsel for Narcisse Arido**

**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**

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**Registrar**  
 Mr Peter Lewis

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
 Section**

**Other**

1. Jean-Jacques Mangenda hereby opposes the Prosecution's Request for Leave to Reply.<sup>1</sup>
2. The Scheduling Order already comprehensively determines the submissions that would be entertained in this matter. Accordingly, no right to respond arises under Regulation 24(1), contrary to the alternative remedy sought by the Prosecution.<sup>2</sup>
3. A reply is not justified for any of the subjects for which leave is sought.
4. *First*, the impact of re-incarceration at re-sentencing is not an issue that "could not reasonably have [been] anticipated."<sup>3</sup> The Prosecution could have expected, given the novelty of the issue before this Court, that relevant international and domestic jurisprudence on re-sentencing would be presented. The specific content of the submissions was also foreseeable in light of their similarity to those made in the original sentencing submissions.<sup>4</sup> The Prosecution's anticipated arguments<sup>5</sup> also appear to have little merit and will, accordingly, not advance the proceedings: (i) the Prosecution has already offered submissions on gravity; (ii) the jurisprudence concerning re-sentencing practice, which has been provided to the Trial Chamber, speaks for itself; and (iii) the existence of the power to remand – or whether Mr Mangenda requested its exercise – is immaterial to the factors that should be taken into account in re-sentencing.
5. *Second*, the Prosecution's arguments concerning whether the conditions of suspension were applicable during the pendency of the appeal<sup>6</sup> could and should have been made in its submissions.

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<sup>1</sup> *Bemba et al.*, Public Redacted version of "Prosecution's Request for Leave to Reply to Bemba's, [REDACTED] and Mangenda's Sentencing Submissions", 4 June 2018, ICC-01/05-01/13-2283-Conf-Exp, ICC-01/05-01/13-2283-Red, 4 June 2018 ("Request for Leave to Reply").

<sup>2</sup> Request for Leave to Reply, paras. 4, 8.

<sup>3</sup> Regulation 24(5), Regulations of the Court. See *Bemba et al.*, Decision on the "Demande d'autorisation de répliquer à la 'Prosecution Response to the 'Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba' of 16 December 2013 and its Addendum of 7 January 2014 (ICC-01/05-01/13 and ICC-01/05-01/13-69)", ICC-01/05-01/13-112, 20 January 2014, p. 3 (holding that good cause exists "when one or more issues arising from the response could not have been anticipated in [the] initial submissions.")

<sup>4</sup> *Bemba et al.*, Response to Prosecution's Document in Support of Appeal against Trial Chamber VII's "Decision on Sentence pursuant to Article 76 of the Statute", ICC-01/05-01/13-2201-Red, 21 August 2017, paras. 41, 43, 44, 119; *Bemba et al.*, Submissions on Sentence, ICC-01/05-01/13-2088-Conf-Red, 8 December 2016, paras. 1, 3, 13-20, 60.

<sup>5</sup> Request for Leave to Reply, para. 6 (first bullet).

<sup>6</sup> Request for Leave to Reply, para. 7 (fourth bullet).

6. *Third*, no leave is justified to respond to Mr Mangenda's submissions that his sentence be reduced, and concerning his personal circumstances.<sup>7</sup> It is hard to think of submissions that were more foreseeable. Allowing a reply on these broadly-formulated subjects would also give the Prosecution *carte blanche* to offer submissions on any subject.
7. *Fourth*, whether the Prosecution's submissions fell within the scope of the remand<sup>8</sup> – especially in light of their wide-ranging and duplicative nature – was a foreseeable issue that it could have addressed. Almost half of the Prosecution's submissions do not relate to the errors identified by the Appeals Chamber. It was incumbent on the Prosecution to justify how these submissions fit within the framework of the remand, and foreseeable that opposing parties would raise this issue.
8. *Fifth*, scheduling is always a foreseeable issue, including the timing of an eventual decision on re-sentencing. Even assuming that this specific *argument* was not foreseeable, Rule 141(2) provides that "[t]he defence shall always have the opportunity to speak last." In the absence of oral submissions, this same principle should apply to written submissions. Accordingly, if the Prosecution is granted leave to reply on this question, then this might provoke a request for further submissions under Rule 141.




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**Christopher Gosnell**  
**Counsel for Mr. Jean-Jacques Kabongo Mangenda**

Respectfully submitted this 6 June 2018,  
 At The Hague, The Netherlands.

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<sup>7</sup> Request for Leave to Reply, para. 7 (fifth and seventh bullets).

<sup>8</sup> Request for Leave to Reply, para. 7 (sixth bullet).