



Original: English

No: **ICC-01/05-01/13**
Date: **23 November 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 with Confidential Annex A

Request for the Admission of Evidence for the Purposes of Sentencing

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

Ms Fatou Bensouda
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Mr Charles Achaleke Taku

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

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. Jean-Jacques Mangenda hereby submits, as indicated in Annex A, 17 additional items of evidence to be considered for sentencing.¹ The proposed evidence has probative value and is relevant to the criteria for sentencing. The categories of documents for which admission is sought are: (i) documents demonstrating a substantial likelihood of Mr. Mangenda's removal from the UK as a result of the present proceedings; (ii) documents demonstrating that Mr. Mangenda's family is legally resident and settled in the United Kingdom; (iii) documents showing the restrictions on Mr. Mangenda's movement that have been in place during his provisional release; and (iv) documents evidencing an ongoing health condition. This information, in conjunction with and in addition to materials already submitted, is relevant to the Chamber's consideration of an appropriate sentence.
2. The Defence is also in the process of attempting to obtain a document believed to exist within the ICC confirming that Mr. Mangenda, at the time of his employment with the Office of Public Counsel for the Defence in 2006, had no criminal record. The Defence has not yet been able to confirm the continued retention of this document or to obtain the document, and respectfully advises the Trial Chamber and the parties that it may at some point in the near future seek to tender this one additional document.

II. PROCEDURAL HISTORY

3. On 19 October 2016, the Chamber rendered its Judgment pursuant to Article 74 of the Statute,² convicting Mr. Mangenda on 37 counts of offences against the administration of justice under Article 70. On 20 October 2016, the Presiding Judge established a Sentencing Calendar requiring the parties to submit and disclose any additional evidence to be considered for sentencing by 23 November 2016.³

¹ *Bemba et al.*, Sentencing Calendar, ICC-01/05-01/13-1990, 20 October 2016 ("Sentencing Calendar"), para. 2 (ii) ("[a]side from witnesses, the parties must both disclose and formally submit any additional evidence to be considered for sentencing by **23 November 2016**."). All future references to "Article", unless otherwise indicated, refer to Articles of the Rome Statute. Annex A is classified as "confidential" as it refers to confidential and personal material about Mr. Mangenda and his family.

² *Bemba et al.*, Judgment pursuant to Article 74 of the Statute, ICC-01/05-01/13-1989-Red, 19 October 2016.

³ Sentencing Calendar, para. 2 (i), fn 3.

4. The Chamber also noted that it “may intervene in the selection and presentation of [the parties’] evidence in order the fair and expeditious conduct of the trial.”⁴

III. SUBMISSIONS

5. The materials set out at Annex A all bear the requisite indicia of reliability to be received as evidence by the Trial Chamber,⁵ especially given the standards of proof applicable for sentencing.⁶ Almost all of the documents bear facial indications of reliability, including letterheads, signatures, and other marks of authenticity;⁷ are corroborated by other documents;⁸ and/or are sufficiently reliable in relation to the particular burden of proof applicable at sentencing.
6. The materials are relevant to the criteria for sentencing set out in Rule 145(1)(c) of the Rules of Procedure and evidence, including the “social and economic condition of the convicted person.”⁹ Family situation – and the impact of a sentence on family life – is a consideration relevant to sentencing, as is the particular situation of an accused in relation to consequences for the convicted person.
7. Evidence already submitted to the Trial Chamber may also be relied upon for the purpose of sentencing proceedings.

⁴ *Id.* para. 2 (i).

⁵ *Ruto and Sang*, Decision on the Prosecution’s Request for Admission of Documentary Evidence, ICC-01/09-01/11-1353, 10 June 2014, para. 15.

⁶ *Bemba*, Decision on Sentence pursuant to Article 76 of the Statute, ICC-01/05-01/08-3399, 21 June 2016, para. 19 (“[t]he Chamber must be convinced of the existence of mitigating circumstances on a balance of probabilities”); *Lubanga*, Decision on Sentence pursuant to Article 76 of the Statute, ICC-01/04-01/06-2901, 10 July 2012, para. 34 (“[a]s to the standard of proof, the Chamber is of the view that the *in dubio pro reo* principle applies at the sentencing stage of the proceedings, and any mitigating circumstances are to be established on a balance of probabilities”); *Katanga*, Decision on Sentence pursuant to article 76 of the Statute, ICC-01/04-01/07-3484-tENG, 23 May 2014, para. 34 (“[t]he Chamber may, however, consider a mitigating circumstance where, on a balance of probabilities, the Defence establishes the existence of such a circumstance.”)

⁷ See e.g. CAR-D23-0010-0024, CAR-D23-0010-0025 and CAR-D23-0010-0026.

⁸ See e.g. the information, including dates of birth, provided in CAR-D23-0010-0025 and CAR-D23-0010-0026 (Trial Sentencing Disclosure Pack 10) as against CAR-D23-0004-0211 and CAR-D23-0004-0212 (disclosed in Mangenda Trial Pack 4 on 19 January 2016, and admitted from the bar table on 6 April 2016, as per the Chamber’s decision in ICC-01/05-01/13-1772).

⁹ *Lubanga*, Decision on Sentence pursuant to Article 76 of the Statute, ICC-01/04-01/06-2901, 10 July 2012, para. 25.

IV. CONCLUSION AND RELIEF REQUESTED

8. Jean-Jacques Mangenda respectfully requests the admission into evidence of the 17 items specified in the attached annex.



Christopher Gosnell
Counsel for Mr. Jean-Jacques Kabongo Mangenda

Respectfully submitted this 23 November 2016,
At The Hague, The Netherlands