

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 22 May 2015

**TRIAL CHAMBER VII**

**Before:** Judge Chile Eboe-Osuji, Presiding Judge  
Judge Olga Herrera Carbuccion  
Judge Bertram Schmitt

**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**

**Order setting the commencement date for trial**

**Order to be notified, in accordance with Regulation 31 of the Regulations of the Court, to:**

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr James Stewart  
Mr Kweku Vanderpuye

**Counsel for Jean-Pierre Bemba Gombo**

Ms Melinda Taylor

**Counsel for Aimé Kilolo Musamba**

Mr Paul Djunga Mudimbi

**Counsel for Jean-Jacques Mangenda Kabongo**

Mr Christopher Gosnell

**Counsel for Fidèle Babala Wandu**

Mr Jean-Pierre Kilenda Kakengi Basila

**Counsel for Narcisse Arido**

Charles Achaleke Taku

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for 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 Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations Section**

**Others**

**Trial Chamber VII** (the ‘Chamber’) of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Article 64 of the Rome Statute (the ‘Statute’) and Rule 132 of the Rules of Procedure and Evidence (the ‘Rules’), issues the following ‘Order setting the commencement date for trial’.

### **I. Procedural history and submissions**

1. On 23 February 2015, the Chamber issued an order seeking submissions from the parties on potential agenda items for the first status conference.<sup>1</sup>
2. On 20 March 2015, the Office of the Prosecutor (the ‘Prosecution’) and the Registry filed their observations on the agenda of the first status conference.<sup>2</sup>
3. On 8 and 13 April 2015, the defence teams filed their observations in preparation for the first status conference.<sup>3</sup>
4. On 24 April 2015, during the first status conference, the Chamber heard oral submissions from the parties on, among other issues, the commencement date for trial.<sup>4</sup>
5. During the first status conference, the Chamber observed that, in their written submissions, none of the parties considered themselves able to commit to a trial

<sup>1</sup> Order seeking submissions in advance of first status conference, ICC-01/05-01/13-824.

<sup>2</sup> Prosecution’s Observations on the Agenda of the First Status Conference, ICC-01/05-01/13-859-Conf, with public Annexes B, C and D and confidential Annex A. A public redacted version of this filing was submitted on 24 March 2015 (ICC-01/05-01/13-859-Red); Registry submission to the Chamber regarding trial preparation, ICC-01/05-01/13-860.

<sup>3</sup> Observations de la Défense de M. Fidèle Babala Wandu en vue de la première conférence de mise en état, ICC-01/05-01/13-890; Observations of the Defence for Mr. Jean-Pierre Bemba Gombo on the Agenda of the First Status Conference, ICC-01/05-01/13-896-Conf + Conf-AnxA (a public redacted version was filed on that same date, ICC-01/05-01/13-896-Red); Observations of the Mangenda Defence in advance of the first Status Conference, ICC-01/05-01/13-900; Arido Defence’s Submissions in Advance of First Status Conference Pursuant to Trial Chamber’s Order of 1 April 2015 (ICC-01/05-01/13-824), ICC-01/05-01/13-901+ AnxA; Observations de la Défense de monsieur Aimé Kilolo en vue de la première conférence de mise en état, ICC-01/05-01/13-904-Conf (a public redacted version was filed on 14 April 2015, ICC-01/05-01/13-904-Red).

<sup>4</sup> Transcript of hearing on 24 April 2015, ICC-01/05-01/13-T-8-CONF-ENG, page 70, line 1 et seq. The Chamber notes the confidential nature of the transcript and the information contained therein. For reasons of rendering decisions respecting the principle of publicity, the Chamber considers that references to this transcript are necessary and also required by the principle of judicial reasoning. The references have been kept to a minimum and do not, in the view of the Chamber, disclose any sensitive information.

date in this case.<sup>5</sup> It also noted the Prosecution's submissions that there is some outstanding information which the Prosecution is expecting to review and which may 'lead to further prosecutorial action bearing on the case'.<sup>6</sup> The Chamber emphasised that the trial in this case needs to begin and to proceed expeditiously and forewarned the parties that, if needed, it would impose a deadline within which the Prosecution must collect and analyse any further evidentiary material.<sup>7</sup>

6. In its oral submissions, the Prosecution reiterated its inability to provide the Chamber with any meaningful potential date for trial, particularly because of the potentially privileged material that still needs to be vetted for transmission to the Prosecution.<sup>8</sup> Defence counsel for Mr Bemba, Mr Kilolo, Mr Mangenda, Mr Babala and Mr Arido (together, the 'Defence') submitted that a disclosure deadline should be imposed on the Prosecution so the Defence may have adequate time to prepare for trial. The Defence did not suggest, however, a date for the commencement of trial.<sup>9</sup> More specifically, the defence for Mr Arido estimated it would need at least four months after the Prosecution has completed its disclosure, to prepare for trial.<sup>10</sup> The defence for Mr Kilolo (the 'Kilolo Defence') submitted it would need four to six months after disclosure to prepare for trial.<sup>11</sup> The defence for Mr Bemba and the defence for Mr Mangenda stressed the accused's right to be tried without undue delay,<sup>12</sup> while defence for Mr Babala submitted that all materials of the Prosecution should have been made available in order to facilitate an effective defence.<sup>13</sup>

<sup>5</sup> ICC-01/05-01/13-T-8-CONF-ENG, page 70, lines 3-4.

<sup>6</sup> ICC-01/05-01/13-T-8-CONF-ENG, page 70, lines 5-8.

<sup>7</sup> ICC-01/05-01/13-T-8-CONF-ENG, page 70, lines 9-13.

<sup>8</sup> ICC-01/05-01/13-T-8-CONF-ENG, page 70, line 23 to page 71, line 13.

<sup>9</sup> ICC-01/05-01/13-T-8-CONF-ENG, page 71, line 17 to page 72, line 20; page 73, lines 23-25; page 74, lines 22-23; page 75, lines 6-8.

<sup>10</sup> ICC-01/05-01/13-T-8-CONF-ENG, page 74, line 10.

<sup>11</sup> ICC-01/05-01/13-T-8-CONF-ENG, page 75, lines 1-4.

<sup>12</sup> ICC-01/05-01/13-T-8-CONF-ENG, page 71, line 17 to page 72, line 11; page 75, lines 6-14.

<sup>13</sup> ICC-01/05-01/13-T-8-CONF-ENG, page 72, page 72, lines 16-19.

7. On 8 May 2015, as instructed during the status conference,<sup>14</sup> the Kilolo Defence filed further written submissions, in relation to their request for the temporary suspension of trial proceedings until the conclusion of the case of *The Prosecutor v. Mr Jean-Pierre Bemba Gombo* (the 'Main Case'). The reasons in support of this request were to guarantee the fair trial rights of Mr Kilolo, and in the alternative, in the interests of the good administration of justice (the 'Kilolo Defence Request').<sup>15</sup> The Kilolo Defence submits that, as Lead Counsel to Mr Bemba in the Main Case, Mr Kilolo has knowledge of information directly linked to the defence of Mr Bemba that is essential for his own defence in the present case.<sup>16</sup> At the same time, it submits that Mr Kilolo's right to communicate such privileged information in the present case in order to contest the charges brought against him could affect the right of Mr Bemba to a fair trial in the Main Case.<sup>17</sup>

## II. Analysis

8. Pursuant to Article 64(2) and (3) of the Statute, the Chamber has the obligation to ensure the fairness and expeditiousness of the trial. In particular, under Article 64(3) of the Statute, the Chamber shall '[c]onfer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of proceedings'.
9. Before setting a date for the commencement of trial, the Chamber must address the Kilolo Defence Request as it has a bearing on deciding on the commencement of trial. Bearing in mind the above provisions, the Chamber dismisses the Kilolo Defence Request based on the following considerations. Despite the fact the Chamber directed the Kilolo Defence to give concrete

<sup>14</sup> ICC-01/05-01/13-T-8-CONF-ENG, page 78, lines 9-17.

<sup>15</sup> Requête de la Défense de M. Aimé Kilolo Musamba demandant à la Chambre de première instance de suspendre temporairement la procédure, ICC-01/05-01/13-939.

<sup>16</sup> ICC-01/05-01/13-939, para. 12.

<sup>17</sup> ICC-01/05-01/13-939, paras 15-16.

examples in an *ex parte* filing to the Chamber,<sup>18</sup> the Kilolo Defence failed to demonstrate - both in its oral and written submissions - concrete difficulties it would face in light of privileged information the accused may have access to, if the trial were to start before the conclusion of the Main Case. The Kilolo Defence also did not explain how the commencement of trial proceedings in this case would affect Mr Kilolo's right to an adequate defence in this case. The Chamber deems these arguments speculative and without merit.

10. Further, the Chamber notes the clarification of the Kilolo Defence to seek a delay of the present proceedings until any final (appeals) judgment is rendered in the Main Case.<sup>19</sup> The Chamber considers that it would be wholly inconsistent with its obligation to ensure an expeditious trial to condition commencing trial on the conclusion of both the trial and potential appeal phases of the Main Case. In the interests of justice, and particularly in light of the right of all the other accused persons in this case to be tried without undue delay, a trial date must be set independent of any developments in the Main Case. As a result, the Chamber rejects the Kilolo Defence Request.

11. In setting the date for trial, the Chamber notes that the charges have been confirmed with decision dated 11 November 2014, almost seven months ago, and that preparations for trial have been ongoing ever since. Moreover, the Chamber pays heed to the Defence's submissions that all incriminating material must be disclosed by the Prosecution on an on-going basis, and at the latest four months prior to the start of the trial.<sup>20</sup> Nonetheless, the Chamber also notes that, according to the Prosecution, it had already by 24 April 2015 disclosed to the Defence the majority of the material in its possession.<sup>21</sup> That said, the Chamber considers that the limited amount of further disclosure means that it is sufficient

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<sup>18</sup> ICC-01/05-01/13-T-8-CONF-ENG, page 77, lines 18-21.

<sup>19</sup> ICC-01/05-01/13-T-8-CONF-ENG, page 77, line 24 to page 78 line 6.

<sup>20</sup> ICC-01/05-01/13-894, paras 32-34, 37(l).

<sup>21</sup> ICC-01/05-01/13-T-8-CONF-ENG, page 9, lines 8-11.

to only have a three-month deadline between the disclosure deadline of 30 June 2015 and the trial commencement.<sup>22</sup>

12. In light of the above, the Chamber sets the trial commencement date for Tuesday, 29 September 2015.

13. The Chamber further directs the Prosecution to file a list of evidence to be relied on at trial, as well as a list of witnesses no later than 30 June 2015.

14. In order to ensure a fair and expeditious trial and enable issues to be addressed in a timely and efficient manner, the Chamber considers it appropriate to set a deadline for the filing of all motions that, in the view of the parties, require resolution prior to the commencement of trial and which are not already before the Chamber. Any such motion should be filed by 31 July 2015.

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<sup>22</sup> Decision on Modalities of Disclosure, 22 May 2015, ICC-01/05-01/13- 959 + Anx.

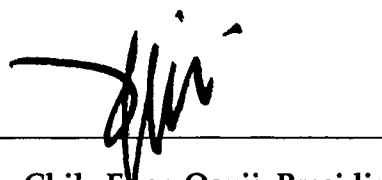
**FOR THE FOREGOING REASONS THE CHAMBER HEREBY**

**REJECTS** the Kilolo Defence Request; and

**SETS** the commencement date for trial on Tuesday, 29 September 2015.

**ADOPTS** the schedule leading up to trial as set out in paragraphs 12 to 14 above.

Done in both English and French, the English version being authoritative.



**Judge Chile Eboe-Osuji, Presiding**



**Judge Olga Herrera Carbuccion**



**Judge Bertram Schmitt**

Dated 22 May 2015

At The Hague, The Netherlands