



Original: English

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

Date: 29 July 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**

**Decision on the Prosecution's Request to Designate a Person Authorised to Witness  
a Declaration Under Rule 68(2)(b) of the Rules of Procedure and Evidence**

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**

Mr 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**

**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 Rule 68(2)(b) of the Rules of Procedure and Evidence (the ‘Rules’), issues the following ‘Decision on the Prosecution’s Request to Designate a Person Authorised to Witness a Declaration Under Rule 68(2)(b) of the Rules of Procedure and Evidence’.

1. On 16 June 2015, the Office of the Prosecutor (the ‘Prosecution’) requested the Chamber to designate a person authorised to witness declarations made under Rule 68(2)(b) of the Rules. The Prosecution submits that it envisages introducing in its case the prior recorded testimony of five witnesses, in whole or in part, under this provision (the ‘Request’).<sup>1</sup>
2. On 24 June 2015, the defence for Mr Arido (the ‘Arido Defence’) responded to the Request, indicating that it does not oppose the relief sought, although it seeks that the Chamber orders the Prosecution to: (i) disclose any material it intends to submit under Rule 68 of the Rules by 30 June 2015; and (ii) approach the defence teams (collectively, the ‘Defence’) and provide them with the identity (or pseudonym where delayed disclosure was requested) of the five witnesses for which the Prosecution will submit applications under Rule 68 of the Rules.<sup>2</sup>
3. On 25 June 2015, in its observations, the Registry stated that ‘in the event the Chamber would deem it appropriate to designate a representative of the

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<sup>1</sup> Prosecution’s Request to Designate a Person Authorised to Witness a Declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence, ICC-01/05-01/13-1011 (with annex).

<sup>2</sup> Narcisse Arido’s Response to Prosecution’s Request to Designate a Person Authorised to Witness a Declaration under Rule 68 (2) (b) of the Rules of Procedure and Evidence (ICC-01/05-01/13-1011), ICC-01/05-01/13-1028.

Registry [...] the Registry Legal Counsel, or anyone delegated by him, would be best placed.<sup>3</sup>

4. On 26 June 2015, the defence for Mr Bemba (the 'Bemba Defence'),<sup>4</sup> the defence for Mr Kilolo (the 'Kilolo Defence')<sup>5</sup> and the defence for Mr Babala (the 'Babala Defence')<sup>6</sup> responded to the Prosecution's request. The Bemba Defence and the Kilolo Defence advance positions similar to the Arido Defence, while the Babala Defence advances a general challenge to applying the amended Rule 68 of the Rules in this case.
5. Rule 68(2) of the Rules governs the introduction of previously recorded testimony for witnesses not present before the Trial Chamber. Rule 68(2)(b) of the Rules allows for such introduction if several requirements are met, including a requirement that the prior recorded testimony must be 'accompanied by a declaration by the testifying person that the contents of the prior recorded testimony are true and correct to the best of that person's knowledge and belief'. Rule 68(2)(b)(iii) of the Rules requires an authorised person to witness this declaration, and states that this authorisation may be given by 'the relevant Chamber or in accordance with the law and procedure of a State'.
6. The Chamber deems it appropriate to designate the Registry Legal Counsel, or anyone delegated by him, as the person authorised to witness declarations made pursuant to Rule 68(2)(b) of the Rules. Noting the arguments of the Babala

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<sup>3</sup> Registry's Submission on the "Prosecution's Request to Designate a Person Authorised to Witness a Declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence", 25 June 2015, ICC-01/05-01/13-1036 (notified 26 June 2015).

<sup>4</sup> Defence Response to Prosecution's Request to Designate a Person Authorised to Witness a Declaration under Rule 68 (2) (b) of the Rules of Procedure and Evidence (ICC-01/05-01/13-1011), ICC-01/05-01/13-1037.

<sup>5</sup> Réponse de la défense de Monsieur Aimé Kilolo à la «Prosecution's Request to Designate a Person Authorised to Witness a Declaration under Rule 68 (2) (b) of the Rules of Procedure and Evidence (ICC-01/05-01/13-1011).», ICC-01/05-01/13-1040.

<sup>6</sup> Observations de la Défense de M. Fidèle Babala à «Prosecution's Request to Designate a Person Authorised to Witness a Declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence » (ICC-01/05-01/13-1011), ICC-01/05-01/13-1041.

Defence, this authorisation is without prejudice to the Chamber's legal interpretation of Rule 68 of the Rules and its applicability in the present case.<sup>7</sup>

7. As to part (i) of the relief sought by the Arido Defence, the Chamber considers that the disclosure deadline of 30 June 2015 already extended to prior recorded testimony and that no further order is required in this respect. As specifically regards declarations made under Rule 68(2)(b)(ii) of the Rules, their disclosure after the 30 June deadline will not cause any prejudice to the accused, so long as the Defence has an adequate opportunity to review them prior to introducing the prior recorded testimony at issue. Considering that Rule 68(2)(b)(ii) of the Rules specifies the declaration requirements and specifically stipulates that declarations 'may not contain any new information', the Defence already knows what their general contents will be.
8. As to part (ii) of the relief sought by the Arido Defence, this request is moot in view of the Prosecution providing the requested information in its list of witnesses.<sup>8</sup>

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**AUTHORISES** the Registry Legal Counsel, or anyone delegated by him, to be the person authorised to witness declarations made pursuant to Rule 68(2)(b) of the Rules; and

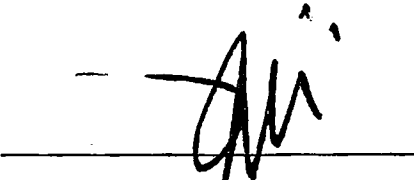
**REJECTS** all other requests.

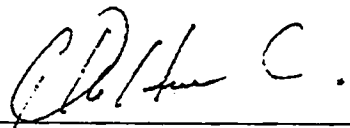
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<sup>7</sup> Judge Eboe-Osuji raises his concerns in this regard. In his view, declarations as to truth of contents of statements should not be made retroactively in any circumstance in which the witnesses may be prosecuted later for having made false statements. It is a matter of critical importance that people are told ahead of time – before they start making statements - that the statements they make may expose them to criminal sanctions on account of false testimony. Judge Eboe-Osuji would therefore have serious difficulty with any idea of taking statements from people and then weeks or months later precisely the same statements are taken to the witnesses for purposes of appending declarations as to the truth of their contents. Rule 68 need not compel the introduction of such a practice nor of its regularisation.

<sup>8</sup> Confidential redacted version of Annex A: Prosecution's List of Witnesses and Evidence, 30 June 2015, ICC-01/05-01/13-1048-Conf-AnxA-Red.

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

  
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Judge Chile Eboe Osuji, Presiding

  
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Judge Olga Herrera Carbuca

  
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Judge Bertram Schmitt

Dated 29 July 2015

At The Hague, The Netherlands