

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/13
Date: **2 September 2015**

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge

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

Directions on the conduct of the proceedings

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

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section

Others

Judge Bertram Schmitt, Presiding Judge of Trial Chamber VII ('Chamber') of the International Criminal Court ('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* ('Bemba et al. case'), having regard to Articles 64 and 67-69 of the Rome Statute ('Statute'), Rules 68, 87-88, 134 and 140 of the Rules of Procedure and Evidence ('Rules'), and Regulation 43 of the Regulations of the Court ('Regulations'), issues the following 'Directions on the conduct of the proceedings'.

I. Background

1. On 24 February 2015, the Chamber, *inter alia*, ordered the parties to file written submissions on the conduct of the proceedings in the *Bemba et al.* case.¹
2. On 20 March 2015, the Prosecution filed its submissions, which took the form of a proposed protocol on the conduct of the proceedings.²
3. On 13 April 2015, the five defence teams ('Defence') filed joint observations in response to the Chamber's order.³

II. Directions

4. The following constitutes the Presiding Judge's directions on the conduct of proceedings pursuant to Article 64(8)(b) of the Statute and Rule 140 of the Rules. Topics addressed in the parties' submissions, but left unaddressed in the present decision, will either be the subject of separate written decisions or oral determinations by the Presiding Judge in the course of the trial.

¹ Order seeking submissions in advance of first status conference, 24 February 2015, ICC-01/05-01/13-824, para. 2(f).

² Annex D of the Prosecution's Observations on the Agenda of the First Status Conference, ICC-01/05-01/13-859-AnxD.

³ Observations conjointes des équipes de défense concernant la conduite de la procédure, 13 April 2015, ICC-01/05-01/13-899.

A. Opening Statements

5. The Chamber will hear the Prosecution's opening statement first, followed by opening statements from the Defence in an order for the defence teams to decide amongst themselves. The parties which have provided time estimates will be allowed to present their statements within the allotted time;⁴ those which did not give an estimate may have 1.5 hours to present their statements.⁵ The parties need not use all of their allotted time. The defence teams may make their opening statements prior to the presentation of evidence, if any, by the Defence. However, this decision must be made collectively – the Chamber does not wish to hear openings from the defence teams at multiple points during the trial. The Defence is to inform the Chamber as to when it intends to present these statements within five days of notification of the present decision.

6. As for reading the charges to the accused at the commencement of trial,⁶ section (a) of the confirmation decision's operative part is to be read for this purpose.⁷

7. The parties are directed to notify any material they intend to use in the course of their opening statements to the Chamber and other parties eight days prior to the commencement of trial. All such material must be capable of being understood in both working languages of the Court. Any objections to the use of such material shall be filed five days prior to the commencement of trial.

⁴ These estimates were sought by way of an email to the parties. Email from a Legal Officer of the Chamber to the parties, 25 August 2015 at 17:04. Estimates were given by: the Prosecution (two hours), the Kilolo Defence (one hour); the Mangenda Defence (one and a half hours) and the Babala Defence (one and a half hours).

⁵ Estimates were not given by the Bemba Defence and the Arido Defence.

⁶ Article 64(8)(a) of the Statute.

⁷ Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute, 11 November 2014, ICC-01/05-01/13-749, pages 47-54.

The parties will be permitted to use audio/visual material during opening statements.

B. Notification by the Defence of grounds for excluding criminal responsibility and disclosure by the Defence

8. Rule 79 of the Rules requires the Defence to notify the Prosecution of its intent to raise the existence of an alibi or grounds for excluding criminal responsibility sufficiently in advance to enable the Prosecution to adequately prepare and respond. In this sense, the Defence is to provide this notification, if any, prior to the start of trial.
9. At a later stage, the Chamber will provide timelines for Defence disclosure and order further information on any presentation of evidence by the Defence.

C. Phases of the trial relating to the presentation of evidence

10. Subject to Articles 64(6)(b) and 69(3) of the Statute, the trial will be organised into: (i) presentation of evidence by the Prosecution and (ii) presentation of evidence by the Defence, in an order for the defence teams to decide amongst themselves.
11. As to the order of questioning for Prosecution witnesses, and subject to Rule 140(2)(c) of the Rules, the Prosecution will question the witness first, followed by the Defence, in an order for the defence teams to decide amongst themselves.

D. Length and timing of the presentation of evidence by the Prosecution

12. The Prosecution has indicated its intention to rely on 15 witnesses at trial (though it may seek the admission of prior recorded testimony for some of them in lieu of *viva voce* testimony) and, after being permitted to add certain

items, 2,288 items of evidence. The Prosecution has indicated that it requires one to two days to examine each of its witnesses.⁸ The Defence submits that each defence team should be given the same amount of time as the Prosecution for questioning witnesses.⁹

13. The Presiding Judge considers that giving the Defence teams five times the amount of time to examine witnesses as the Prosecution to be disproportionate. This calculation suggests that each defence team would ask an equal number of unique questions to each witness. Mindful of Rule 136(2) of the Rules, the Presiding Judge considers that, in practice, defence team questioning in this case may overlap considerably (thus reducing questions from other teams which have already been asked). Some witnesses may also not testify against all of the accused, thus further reducing the time required for questioning.
14. Assuming that the Prosecution takes one day of examination per witness, the Presiding Judge considers that an average estimate of two days of Defence examination per witness is reasonable.
15. Given a standard hearing day of 4.5 hours, the Prosecution is therefore expected to finish its case in approximately 200 hours. This estimate is an average maximum calculation across the entire Prosecution case and will be enforced subject to the overall course of the proceedings. No party will be entitled to conduct an inefficient examination of a witness, even if such an examination would fall within the average estimated times per witness indicated above. Further, the parties must always be prepared to continue with the case, even if less time than estimated is required for a particular witness.

⁸ Transcript of hearing, 24 April 2015, ICC-01/05-01/13-T-8-Red-Eng, page 35 line 10 to page 36 line 25.

⁹ ICC-01/05/01/13-899, para 59.

E. Scheduling of Prosecution witnesses

16. Within five days of notification of the present decision, the Prosecution shall provide the anticipated order in which it intends to call its witnesses to the Defence and the Chamber. Should the order of witnesses change, the Prosecution is to promptly inform the Defence and Chamber of such changes.
17. Within five days of notification of the present decision, the Prosecution should also file any applications under Rule 67 of the Rules for all witnesses it currently seeks to have testify by video-link. The Prosecution is to liaise with the Registry and indicate in any such motion how much time the Registry estimates would be needed to make the necessary arrangements if the relief sought was granted.

F. Self-incrimination of witnesses

18. The Registry shall make all necessary arrangements to provide independent legal advice to witnesses who may be at risk of incriminating themselves during their testimony. The Prosecution has already given some indication which of its witnesses might have self-incrimination issues.¹⁰
19. The advising lawyer shall then seize the Chamber of any application for assurances under Rule 74(3)(c) of the Rules, if required. The parties shall be notified of such an application. The advising lawyer shall also be responsible for informing the witness of the offence defined in Article 70(1)(a) of the Statute, in accordance with Rule 66(3) of the Rules.

¹⁰ *In this regard, see Confidential redacted version of "Prosecution's Notification pursuant to Rule 74 of the Rules of Procedure and Evidence", 16 June 2015, ICC-01/05-01/13-1010-Conf-Exp, 18 June 2015, ICC-01/05-01/13-1010-Conf-Red (ex parte version notified 16 June 2015).*

G. Use of Materials During the Examination of a Witness

20. At least five days before a witness commences testifying, the calling party shall provide the Chamber and other parties with a list, *via* email, of any material(s) to be used during its examination of that witness. The calling party shall also indicate any passages intended to be used within these document(s) and whether the party intends to tender the document(s) as evidence.
21. At least one day before a witness commences testifying, the non-calling party shall provide a list of any documents it intends to use during its questioning, *via* email. The party intending to use the documents shall ensure that electronic copies of the documents have been uploaded into E-Court prior to their use during trial.

H. Evidence

i. Expert witnesses

22. Within ten days of notification of the present decision or no later than 30 days before the anticipated testimony of an expert witness (whichever comes last), any non-calling party may file a notice indicating whether it (i) challenges the qualifications of the witness as an expert, and/or (ii) challenges the relevance of all, or parts of the report written by the expert, if any.

ii. Prior recorded testimony under Rule 68(3)

23. If the witness who gave the prior recorded testimony is expected to testify before the Chamber, any Rule 68(3) application shall be filed within 21 days of the date the witness is scheduled to appear, with any objections thereto filed no later than 10 days after notification. Such application(s) shall be filed together with copies of the prior recorded testimony.

I. Protective measures

24. Any applications for in-court protective measures shall be made as soon as possible to allow the Chamber to receive submissions on the request and to allow the Victims and Witnesses Unit to fulfil its mandate.
25. Rule 87 applications shall be filed confidentially, but not *ex parte*. The information which the applying party seeks to withhold from the other party shall be provided in an *ex parte* annex to the application, which shall include the justification for its *ex parte* designation.

i. Private and closed session

26. Insofar as possible, witness testimony shall be given in public. Requests for private and/or closed sessions shall be made in a neutral and objective way, if possible, referring to the topics that will be covered. To the extent possible, the parties are directed to group identifying questions together to avoid unnecessary recourse to closed and/or private session.

ii. Transcripts

27. The Registry shall make public the redacted version of the transcripts within two days of the notification of the edited confidential version. Thereafter, the calling party shall review the transcript and propose a lesser redacted version within one week of notification by the Registry. Within three days of receiving the proposed lesser-redacted version, the other parties may raise any objections. Should no objections to the proposed lesser-redacted version be made, the Registry shall file it in the record of the case with the appropriate document number designation.

28. Requests for corrections to the transcript shall be submitted to the Registry within five working days from the notification of the edited version of the

transcript. The requests to the Registry shall refer to the edited version of the transcript and contain a table providing: (i) the full reference of the transcript, date and case name; (ii) the passage extracted from the edited version of the transcript containing the discrepancies to be reviewed; (iii) the pages and lines of the passage to be reviewed and (iv) the language originally used by the speaker. The Registry shall apply any corrections to the transcript in accordance with its normal methods.

FOR THE FOREGOING REASONS, THE PRESIDING JUDGE HEREBY

ADOPTS the aforementioned directions concerning the conduct of proceedings.

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

A handwritten signature in black ink, appearing to be 'BS', is written above a horizontal line.

Judge Bertram Schmitt, Presiding Judge

Dated 2 September 2015

At The Hague, The Netherlands