

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/05-01/13**  
Date: **10 September 2015**

**TRIAL CHAMBER VII**

**Before: Judge Bertram Schmitt, Single 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**

**Decision on Requests Related to Timing of Defence Opening Statements**

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**

**Others**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Judge Bertram Schmitt**, acting as Single Judge on behalf of Trial Chamber VII ('Single Judge' and 'Chamber', respectively) 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* ('Bemba et al. case'), having regard to Rules 136(2) and 140 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on Requests Related to Timing of Defence Opening Statements'.

1. On 2 September 2015, the Presiding Judge issued directions on the conduct of the proceedings. As regards opening statements of the five defence teams, the direction given was that '[t]he 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'.<sup>1</sup>
2. On 7 September 2015, the defence team for Mr Babala ('Babala Defence') requested reconsideration of this direction ('Babala Defence Request').<sup>2</sup> Noting that the defence teams could not reach a common position, the Babala Defence requests that it present its opening statement after the Office of the Prosecutor's ('Prosecution') opening statement, regardless of the wishes of the other defence teams.<sup>3</sup>
3. The same day, the other four defence teams filed a submission ('Four Defence Teams Request') requesting that: (i) each defence team be permitted to make a 15-20 minutes statement after the Prosecution's opening statement; and (ii) that any such statement be without prejudice to make an opening statement prior to the

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<sup>1</sup> Directions on the conduct of the proceedings, ICC-01/05-01/13-1209, para. 5.

<sup>2</sup> Demande en reconsidération de la disposition concernant les déclarations liminaires de «Directions on the conduct of the proceedings» (ICC-01/05-01/13-1209) fondée sur pied de la règle 136(2) RPP, ICC-01/05-01/13-1218.

<sup>3</sup> Babala Defence Request, ICC-01/05-01/13-1218, pages 7-8.

defence case presentation.<sup>4</sup> These teams clarify that, if these requests are rejected, they elect to present opening statements at the beginning of the defence cases.<sup>5</sup>

4. The direction regarding defence opening statements aims at organising the trial efficiently by receiving the opening statements of the five defence teams in a consolidated manner. Neither of these requests presents any argument justifying reconsideration of this direction, and the Single Judge in particular fails to see how Rule 136(2) of the Rules<sup>6</sup> is infringed by giving all the defence teams an opportunity to provide opening statements at the same moment during trial. Also, reasons of equal treatment of all parties do not militate in favour of allowing the defence to make a statement at the beginning of the trial *and* an opening statement at a later stage of the proceedings.
5. As a collective position could not be reached, the defence opening statements will be heard, as submitted in the Four Defence Teams Request, at the time the majority of the defence teams prefer.

**FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY**

**REJECTS** the relief sought in the Babala Defence Request and the primary relief sought in the Four Defence Teams Request; and

**ORDERS** the five teams to give any opening statements prior to the presentation of evidence by the defence, rather than prior to the presentation of evidence by the Prosecution.

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<sup>4</sup> Bemba, Mangenda, Kilolo and Arido Defences' Request to be Permitted to Make Short Statements after the Prosecution's Opening Statement, and to Reserve Position on Making Opening Statements before the Presentation of Defence Evidence, if Any, ICC-01/05-01/13-1220, para. 6.

<sup>5</sup> Four Defence Teams Request, ICC-01/05-01/13-1220, para. 7.

<sup>6</sup> Rule 136(2) provides that '[i]n joint trials, each accused shall be accorded the same rights as if such accused were being tried separately'. See Babala Defence Request, ICC-01/05-01/13-1218, para. 2.

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



**Judge Bertram Schmitt, Single Judge**

Dated 10 September 2015

At The Hague, The Netherlands