

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: ICC-01/05-01/13
Date: **25 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 Victim and Witnesses Unit Request to modify the witness
familiarisation process**

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

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 ('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(2) of the Rome Statute ('Statute'), issues the following 'Decision on Victims and Witnesses Unit Request to modify the witness familiarisation procedure'.

1. On 15 September 2015, the Chamber issued its decision on witness familiarisation,¹ adopting a protocol on practices used to prepare and familiarise witnesses for giving testimony before the Court ('Protocol').²
2. On 24 September 2015, the Victims and Witnesses Unit ('VWU') filed a request that it be allowed to conduct part of the familiarisation of witnesses that is prescribed in the Protocol prior to their arrival at the place of testimony ('Request').³ In particular, the VWU requests that it be allowed to commence its in-court protection assessment before a witness travels to the location of testimony and to provide him or her with his or her previous statement(s) and/or transcript(s).⁴
3. The Chamber notes that the parties did not provide their responses to the Request. However, with a view to ensuring the timely appearance of witnesses, the Chamber considers it, exceptionally, appropriate and beneficial to render its decision without having received any responses. However, this is without any prejudice to the parties' right to seize the Chamber with a motivated request at a

¹ Decision on Witness Preparation and Familiarisation, ICC-01/05-01/13-1252.

² Annex to the Decision on Witness Preparation and Familiarisation, 15 September 2015, ICC-01/05-01/13-1252-Anx ('Protocol').

³ Victims and Witnesses Unit's Submissions in relation to the implementation of The Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony before the Court (ICC-01/05-01/13-1252-Anx), ICC-01/05-01/13-1297, notified on 25 September 2015.

⁴ Request, ICC-01/05-01/13-1297, paras 3-4.

later point in time should they require a derogation from the terms of the Protocol (as modified).⁵

4. While paragraphs 26 of the Protocol stipulates that the process of witness familiarisation starts only once the witness has arrived at the location of testimony, the Chamber considers it beneficial, in these particular instances, to allow the VWU to start the process earlier in order to assure the smooth preparation of the witnesses' testimonies and the expeditiousness of the trial. Accordingly, it authorises the VWU to start part of the familiarisation protocol before the witness has arrived at the location of testimony.
5. However, the Chamber notes that the start of the familiarisation procedure also serves as the cut-off date for the calling party to contact the witness.⁶ In order to avoid any potential breaches of the Protocol, the VWU is to communicate clearly to the parties when the familiarisation procedure starts with as much advance notice as is possible.
6. With regard to the reading of prior statements and/or transcripts by the witness as part of the familiarisation, the Chamber notes that the non-calling party has the right to be informed of the material in order to resolve any potential dispute.⁷ The Chamber has specified that the non-calling party has at least three days to make those objections before the material is transmitted to the witness.⁸ Should the VWU decide to provide to the witness any prior statement or transcript before his or her arrival at the location, it is to liaise with the calling party in order to ensure that the non-calling parties have at least three days to submit objections, in accordance with the Chamber's guidelines.

⁵ See Protocol, ICC-01/05-01/13-1252-Anx, para. 3.

⁶ Protocol, ICC-01/05-01/13-1252-Anx, para. 25.

⁷ Protocol, ICC-01/05-01/13-1252-Anx, para. 74.

⁸ Email from Trial Chamber VII communications on 22 September 2015, at 9:33.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request in accordance with the guidelines provided in paragraphs 5 and 6.

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



Judge Bertram Schmitt, Single Judge

Dated 25 September 2015

At The Hague, The Netherlands