

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/05-01/13
Date: **15 January 2016**

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 Prosecution's Motion for Reconsideration of the Closing Submissions
Directions**

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, 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 141 of the Rules of Procedure and Evidence ('Rules') and Regulations 35 and 37 of the Regulations of the Court, issues the following 'Decision on Prosecution's Motion for Reconsideration of the Closing Submissions Directions'.

1. On 9 December 2015, the Single Judge gave, *inter alia*, certain directions on closing submissions and statements. The Single Judge required that closing submissions in this case would be: (i) 100 pages long; (ii) filed on the same day by all parties and, for the Office of the Prosecutor ('Prosecution'), in both English and French simultaneously and (iii) filed three weeks after the submission of the evidence closes, with closing statements following the week afterwards.¹
2. On 21 December 2015, the Prosecution requested reconsideration of these directions ('Request').² As to the number of pages in the closing submission, the Prosecution submits that 100 pages is insufficient and that it will require up to 200 pages. As to the time limits, and with particular reference to possible delays in receiving translations and edited transcripts, the Prosecution anticipates requiring a 'modest extension of time, if that, once the full scope of the Defence case is reasonably discernible'.³

¹ Further Directions on the Conduct of the Proceedings in 2016, ICC-01/05-01/13-1518, paras 20-23.

² Prosecution's Motion for Reconsideration of the Further Directions on the Conduct of the Proceedings in 2016 (ICC-01/05-01/13-1518), ICC-01/05-01/13-1531 (with annex).

³ Request, ICC-01/15-01/13-1531, para. 15.

3. On 4 January 2016 the defence team for Mr Babala ('Babala Defence') responded to the Request, submitting that it should be granted with the caveat that the same time and page limits should apply to all parties.⁴
4. On 12 January 2016, the defence team for Mr Bemba ('Bemba Defence') responded to the Request.⁵ The Bemba Defence takes no position on the Prosecution's page limit request. The Bemba Defence supports a variation of the time limit by arguing that the closing submissions be staggered so that the defence teams can respond to the Prosecution's filing.
5. No further responses by other defence teams were received.
6. Recalling the applicable law on reconsidering decisions,⁶ the Single Judge considers that the Prosecution fails to demonstrate a 'clear error of reasoning' or that reconsideration is necessary 'to prevent an injustice'. However, in view of the parties' understandable interest in ensuring that the Chamber is fully informed of their positions and the fact that certain aspects of the Request are unopposed, the Single Judge is willing to be flexible with his prior directions.
7. The Single Judge notes that the defence teams do not, in principle, oppose giving the Prosecution additional pages. The only contested point is that, in an argument challenged by the Babala Defence, the Prosecution argues that it is entitled to more pages than any one defence team because it has to demonstrate individual criminal responsibility for all five accused at once.⁷

⁴ Réponse de la Défense de M. Fidèle Babala Wandu à « Prosecution's Motion for Reconsideration of the Further Directions on the Conduct of the Proceedings in 2016 » (ICC-01/05-01/13-1518) » (ICC-01/05-01/13-1531), 30 December 2015, ICC-01/05-01/13-1534.

⁵ Defence Response to 'Prosecution's Motion for Reconsideration of the Further Directions on the Conduct of the Proceedings in 2016 (ICC-01/05-01/13-1518)', 12 January 2016, ICC-01/05-01/13-1541.

⁶ Decision on Defence Request for Reconsideration of or Leave to Appeal 'Decision on "Defence Request for Disclosure and Judicial Assistance"', 24 September 2015, ICC-01/05-01/13-1282, para. 8; Decision on Kilolo Defence Request for Reconsideration, 15 July 2015, ICC-01/05-01/13- 1085-Conf, para. 4.

⁷ Request, ICC-01/05-01/13-1531, para. 5(v).

8. If the Prosecution wishes to expand its closing submissions to reflect the individual criminal responsibility of all five accused, the Single Judge is willing to grant the Prosecution a further extension of pages for this reason. However, this does not necessarily mean that 200 pages are warranted. The Prosecution was able to set out its core arguments and evidence against all five accused in a pre-trial brief of 126 pages, plus annexes,⁸ and has already filed 11 pages of legal submissions before the Chamber.⁹ The Single Judge fails to see why the Prosecution requires 200 pages to make a closing submission that is expected to 'crystallise [its] final position[] on the charges and evidence presented in a succinct manner' without needing to 'recapitulate the argumentation advanced in trial'.¹⁰ The Single Judge considers 150 pages to be more than sufficient for the Prosecution's closing submission, and will extend the page limit only to this extent.
9. As regards the separate request of the Babala Defence to augment the page limit for the closing submissions of the defence teams, the Single Judge remains unconvinced, lacking any further substantiation, that this is necessary. It is also noted that the defence teams will each set out their final positions on the charges and evidence presented in relation to the accused concerned.
10. As to the Bemba Defence's argument for staggering the closing submissions, the Single Judge is not persuaded that concerns of fairness justify delaying the proceedings so that the defence can respond to the Prosecution in writing before responding orally in their closing statements. The defence must be given the opportunity to speak last in oral closing statements,¹¹ but there is no such requirement for written closing submissions. The ICTY and ICTR generally

⁸ Prosecution Pre-Trial Brief, 31 July 2015, ICC-01/05-01/13-1110-Conf (with two annexes).

⁹ Consolidated Prosecution Response to the Defence Submissions on the Legal Elements of the Charged Offences and Modes of Liability, 22 June 2015, ICC-01/05-01/13-1024 (with annex).

¹⁰ Further Directions on the Conduct of the Proceedings in 2016, ICC-01/05-01/13-1518, para. 21.

¹¹ Rule 141(2) of the Rules.

require both parties to file closing briefs at the same time – this is because the purpose of a closing brief is not to respond to the other party’s closing brief but to express their own position regarding the charges and the evidence.¹² The Single Judge considers closing submissions before this Court to serve the same purpose, and will not stagger the receipt of the closing submissions.

11. The Single Judge also notes that the Prosecution’s request for an extension of time is both undefined and conditional: a ‘modest extension of time, if that’ is all that is requested. The Single Judge considers it premature to consider the Prosecution’s arguments on these points until they can clearly articulate if and why an extension of time as needed.¹³ The Single Judge will therefore not vary the closing submissions timeline, without prejudice to a substantiated request being raised at a later time.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

PARTIALLY GRANTS the Request, extending the page limit for the Prosecution’s closing submission to 150 pages;

REJECTS the remainder of the Request; and

REJECTS the Babala Defence request to grant an extension of page limit to the defence teams.

¹² ICTR, Appeals Chamber, *Laurent Semanza v. The Prosecutor*, Judgement, 20 May 2005, ICTR-97-20-A, para. 36.

¹³ At least as regards the Prosecution’s argument that extra time is needed because of delayed receipt of English transcripts, this delay was caused due to resource constraints at the end of 2015. Transcript of Hearing, ICC-01/05-01/13-T-19-Red-ENG, page 62 line 13 to page 63 line 6, *referenced in* Request, ICC-01/05-01/13-1531, para. 14. The Chamber has not received any indication that delayed receipt of English transcripts will continue during the 2016 hearings, but will inform the parties accordingly should this be the case.

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

A handwritten signature in black ink, consisting of a stylized 'B' followed by a horizontal line and a small flourish.

Judge Bertram Schmitt, Single Judge

Dated 15 January 2016

At The Hague, The Netherlands