

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 26 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

Directions Relating to Certain Defence Witnesses and Appearance Order

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

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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 Articles 64(2) and 67(1)(c) and (e) of the Rome Statute, Rule 67 of the Rules of Procedure and Evidence and Regulations 28 and 34 of the Regulations of the Court, issues the following 'Directions Relating to Certain Defence Witnesses and Appearance Order'.

1. On 21 January 2016, the defence teams for Mr Bemba,¹ Mr Kilolo ('Kilolo Defence'),² Mr Mangenda,³ Mr Babala⁴ and Mr Arido⁵ (collectively, 'Defence') filed their final lists of witnesses, evidence and anticipated testimony summaries.
2. After reviewing these filings, the Single Judge issues some further directions in relation to the Defence evidence proposed.

A. Relevance and propriety of certain Kilolo Defence witnesses

3. The Chamber has now received all expected witness identities and anticipated summaries, save for the situations where extensions of time were granted.⁶ The Single Judge recalls that, although he concluded that the time estimates provided by the defence teams were reasonable, this finding was 'without

¹ Defence notification of the list of witnesses and list of evidence and request for variation of the deadline, ICC-01/05-01/13-1560-Conf (with seven annexes; corrigendum of Annex A notified 22 January 2016).

² Soumissions de la défense de monsieur Aimé Kilolo concernant sa liste de témoins et sa liste de preuves, ICC-01/05-01/13-1562 (with four annexes).

³ Jean-Jacques Mangenda's Lists of Evidence and Witnesses, ICC-01/05-01/13-1559 (with two annexes).

⁴ Notification de l'équipe de Défense de M. Fidèle BABALA WANDU du dépôt de sa liste de témoins, des éléments de preuve et de la divulgation des éléments par l'équipe Babala en application de la « Decision on Defence Presentation of Evidence » (ICC-01/05-01/13-1450) et de la « Further Directions on the Conduct of the Proceedings in 2016 » (ICC-01/05-01/13-1518), ICC-01/05-01/13-1558 (with three annexes).

⁵ Narcisse Arido's List of Witnesses and Evidence, ICC-01/05-01/13-1557 (with two annexes); Narcisse Arido's Transmission of Witness Summaries, 25 January 2016, ICC-01/05-01/13-1573 (with two annexes).

⁶ Decision Regarding Defence Evidence, 22 January 2016, ICC-01/05-01/13-1566-Conf; Decision on Mangenda Request for Extension of Time to file an Expert Report, 20 January 2016, ICC-01/05-01/13-1555.

prejudice to the Chamber concluding at a later point that estimates for certain witnesses need to be revised. This could be the case if, for example, a witness's anticipated testimony is irrelevant or goes solely to factual and/or legal matters which usurp the functions of the Chamber.⁷

4. On the information already received, the Chamber wishes to receive further information on certain witnesses the Kilolo Defence intends to call. The Single Judge therefore directs the Kilolo Defence to file submissions justifying the relevance and propriety of calling: (i) a witness to testify as to '*certaines des défis et des réalités pratiques auxquelles un avocat de la défense peut être confronté lors de procédures pénales internationales*'⁸ and (ii) six witnesses to testify as to Mr Kilolo's character, professionalism and/or ethics.⁹ These submissions are to be filed by **16:00 on Friday, 29 January 2016**. Any responses to these submissions, if necessary, must be filed by **16:00 on Tuesday, 2 February 2016**.

B. Deadline to make essential arrangements for *viva voce* testimony

5. The Single Judge observes that many of the witnesses the Defence intend to call *viva voce* reside far away from the seat of the Court. The Single Judge re-emphasises that '[t]he Defence are required to make all necessary logistical arrangements with the Registry sufficiently in advance of calling any witnesses, particularly as regards interpretation (Court Interpretation and Translation Section), self-incrimination assurances (Counsel Support Section) and matters falling within the mandate of the Victims and Witnesses Unit' ('VWU').¹⁰ The

⁷ Further Directions on the Conduct of the Proceedings in 2016, 9 December 2015, ICC-01/05-01/13-1518, para. 15.

⁸ ICC-01/05-01/13-1562-Conf-AnxB, page 3 (D21-001).

⁹ D21-004, D21-005, D21-006, D21-007, D21-008 and the person referenced in Confidential Redacted version of the Defence request to be authorised not to identify two potential witnesses, 22 January 2016, ICC-01/05-01/13-1563-Conf-Red, para. 2 (confidential redacted version notified 25 January 2016).

¹⁰ ICC-01/05-01/13-1518, para. 18. *See also* Annex to the Decision on Witness Preparation and Familiarisation, 15 September 2015, ICC-01/05-01/13-1252-Anx, para. 13 ('In order to facilitate the logistical arrangements and to ensure the timely appearance of a witness, the [Witness Information Form] shall be submitted to the VWU not less than 35 days before the witness is scheduled to arrive at the location of testimony').

Defence must explore, together with the VWU, the various possibilities for witnesses to either testify at the seat of the Court or via video-link in another location. The Chamber expects that it will hear the witnesses called by the Defence consecutively, without significant gaps and further interruptions.

6. In the interest of ensuring that the trial proceeds expeditiously and without undue delay, the Single Judge sets a deadline of **26 February 2016** for all essential arrangements to be completed for the appearance of Defence witnesses before the Court. **On this date by 16:00**, the Registry must file a submission indicating if these arrangements have not been completed for any witnesses.
7. If such arrangements are not completed by this deadline for a particular witness, the Chamber may require the defence team concerned to call this witness by video-link in order to facilitate his/her appearance in a timely manner.

C. Overall witness order

8. The Single Judge recalls that the Defence have already been directed to set out its final witness lists in the order each defence team intends to call its witnesses.¹¹
9. The Single Judge now wishes to receive further information regarding the overall witness order across the five defence lists. The defence teams are directed to collaborate with each other and to provide a joint witness order by **16:00 on 12 February 2016**. Just as was the case with the Prosecution, should the order of witnesses change the Defence must promptly notify the Prosecution and Chamber of such changes.¹² The Single Judge understands that this may be the case, especially in light of the logistical arrangements by the Registry that

¹¹ Directions on Defence Presentation of Evidence, 3 November 2015, ICC-01/05-01/13-1450, para. 10; *deadline extended by* ICC-01/05-01/13-1518, page 10.

¹² See Directions on the conduct of the proceedings, 2 September 2015, ICC-01/05-01/13-1209, para. 16.

need to be made. Finally, the Single Judge recalls his earlier direction that the 'Defence are to endeavour to avoid gaps in the hearing whenever possible, up to and including having a defence team call its available witnesses during the presentation of evidence of another defence team'.¹³

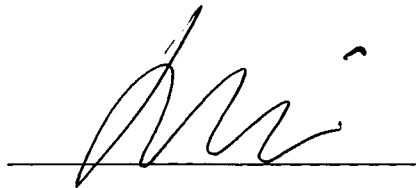
FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

ORDERS the Kilolo Defence to file submissions by 16:00 on Friday, 29 January 2016, and the other parties to file any responses by 16:00 on Tuesday, 2 February 2016, in accordance with paragraph 4 of the present decision;

ORDERS the Defence to make essential arrangements for *viva voce* testimony and for the Registry to file a report by 26 February 2016, in accordance with paragraph 6 of the present decision; and

ORDERS the Defence to jointly provide an overall witness order by 16:00 on 12 February 2016, in accordance with paragraph 9 of the present decision.

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



Judge Bertram Schmitt, Single Judge

Dated 26 January 2016

At The Hague, The Netherlands

¹³ ICC-01/05-01/13-1518, para. 17.