

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/05-01/13**

Date: **12 May 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 Requests to Present Unsworn 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

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 67(1)(h) of the Rome Statute ('Statute') and Regulation 24(5) of the Regulations of the Court, issues the following 'Decision on Requests to Present Unsworn Statements'.

1. On 29 April 2016, the Presiding Judge closed the evidence presentation in this case and announced that closing statements would commence on 31 May 2016.¹ Each defence team was allotted two hours to present their closing statements.
2. On 2 May 2016, the defence for Mr Babala ('Babala Defence') requested that Mr Babala be permitted to give an unsworn statement for one hour during the closing statements in this case ('Babala Defence Request').²
3. On 3 May 2016, the Office of the Prosecutor ('Prosecution'), responded to this request.³ The Prosecution did not oppose, subject to applying three conditions: (i) the statement must not unfairly expand the two hour allotment provided for defence closing statements; (ii) the unsworn statement 'should bear on matters relevant to the case' and (iii) should the unsworn statement refer to evidence and/or the merits of the case so as to justify a reply or the introduction of rebuttal evidence, the Prosecution may do so.⁴

¹ Decision Closing the Submission of Evidence and Further Directions, ICC-01/05-01/13-1859.

² Requête de la Défense de M. Fidèle Babala Wandu informant la Chambre du souhait de l'Accusé de vouloir faire une déclaration orale en application de l'article 67(1)(h) du Statut de Rome, ICC-01/05-01/13-1862.

³ Prosecution's Response to the « Requête de la Défense de M. Fidèle Babala Wandu informant la Chambre du souhait de l'Accusé de vouloir faire une déclaration orale en application de l'article 67(1)(h) du Statut de Rome », ICC-01/05-01/13-1862, ICC-01/05-01/13-1863.

⁴ ICC-01/05-01/13-1863, para. 2.

4. On 4 May 2016, the defence for Mr Kilolo also requested that Mr Kilolo give a one hour unsworn statement ('Kilolo Defence Request').⁵
5. On 6 May 2016,⁶ the Prosecution indicated that: (i) it relied fully on its response to the Babala Defence Request in relation to the Kilolo Defence request and (ii) that, if the two requests are granted, the accused should be 'informed of their right to remain silent and cautioned that their statements may be used against them, notwithstanding that their statements may not give rise to further questioning [...]'.⁷
6. That same day, the defence for Mr Arido⁸ indicated it did not oppose either request, and the defence for Mr Bemba took no position on them, subject to noting that the defence cannot cross-examine these statements and that any new information or elements should be considered in a manner consistent with Mr Bemba's rights.⁹
7. On 9 May 2016, the Babala Defence sought leave to reply to the Prosecution's response of 3 May 2016.¹⁰ The Single Judge considers that it does not require any further submissions in order to render its ruling - this request is rejected.
8. The Single Judge notes Article 67(1)(h) of the Statute, which gives the accused the right to make an unsworn statement in his or her defence. Unsworn

⁵ Requête de la Défense demandant au nom de monsieur Aimé Kilolo Musamba l'autorisation de faire une déclaration orale en vertu de l'article 67(1) (h) du Statut du Rome, ICC-01/05-01/13-1867.

⁶ The response deadline for both the Babala Defence Request and Kilolo Defence Request was shortened to this date. Emails from Trial Chamber VII Communications to the parties, 2 May 2016 at 14:44 and 6 May 2016 at 10:42.

⁷ Email from the Prosecution to the Chamber and parties, 6 May 2016 at 11:27.

⁸ Narcisse Arido's Response to the Babala and Kilolo Defence Requests to Make an Unsworn Statement Pursuant to Article 67(1)(h) (ICC-01/05-01/13-1862 and ICC-01/05-01/13-1867), ICC-01/05-01/13-1874 (also indicating that Mr Arido has yet to decide if he will make an unsworn statement).

⁹ Defence Consolidated Response to Requests ICC-01/05-01/13-1862 and ICC-01/05-01/13-1867, ICC-01/05-01/13-1876.

¹⁰ Requête de la Défense de M. Fidèle Babala Wandu sollicitant l'autorisation de répliquer à « *Prosecution's Response to the « Requête de la Défense de M. Fidèle Babala Wandu informant la Chambre du souhait de l'Accusé de vouloir faire une déclaration orale en application de l'article 67(1)(h) du Statut de Rome »*, ICC-01/05-01/13-1862» (ICC-01/05-01/13-1863-Conf), ICC-01/05-01/13-1881.

statements have been permitted during closing statements in previous trials at this Court.¹¹

9. As is their right, Mr Babala and Mr Kilolo may present unsworn statements as part of their closing statements. These statements must fall within the two hour allotment to present closing statements. To the extent that these statements can be considered in the judgment, the accused are reminded that such statements constitute a waiver of their Article 67(1)(g) right to not to be compelled to 'confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence'.
10. In response to the Prosecution's observations on the contents of unsworn statements and its ability to respond to them, the Single Judge emphasises that these statements are a right of the accused. The Single Judge will not circumscribe what Mr Babala or Mr Kilolo can say prior to them giving their unsworn statements. Noting the defence's right to present closing statements last¹² and that the evidence presentation in this case is closed, the Prosecution will also not be permitted to reply or present further evidence in response to unsworn statements.

¹¹ Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Transcript of Hearing, 23 May 2012, ICC-01/04-01/07-T-340-ENG, page 48 line 5 to page 61 line 1; Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Transcript of Hearing, 26 August 2011, ICC-01/04-01/06-T-357-ENG, page 48 line 16 to page 49 line 19. Mr Bemba was granted an opportunity to make an unsworn statement during the closing statements in *The Prosecutor v. Jean-Pierre Bemba Gombo*, but ultimately declined to do so. Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba*, Order on closing oral statements, 4 November 2014, ICC-01/05-01/08-3191, para. 5; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba*, Decision on unsworn statement by the accused pursuant to Article 67(1)(h) of the Rome Statute, 1 November 2013, ICC-01/05-01/08-2860.

¹² Rule 141(2) of the Rules of Procedure and Evidence.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Babala Defence request for leave to reply; and

GRANTS the Babala Defence Request and Kilolo Defence Request, in accordance with paragraph 9 above.

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



Judge Bertram Schmitt, Single Judge

Dated 12 May 2016

At The Hague, The Netherlands