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No.: ICC-01/05-01/13
Date: 20 March 2015

TRIAL CHAMBER VII

Before: Judge Judge Olga Herrera Carbuccia
Judge Chile Eboe-Osuji
Judge Bertram Schmitt

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

Registry submission to the Chamber regarding trial preparation

Source: Registrar

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Legal Representatives of the Victims

Legal Representatives of the Applicants

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court (the "Court");

NOTING the “*Order seeking submissions in advance of first status conference*” (the ‘Order’) issued by the Chamber on 23 February 2015;¹

NOTING articles 43(6) and 68(1) and (4) of the Rome Statute, rules 16 to 19 of the Rules of Procedure and Evidence, regulation 24*bis* of the Regulations of the Court and regulations 79 to 96 of the Regulations of the Registry.

NOTING rules 13 (1), 15 (1), 74, 84 and 137 (1) of the Rules of Procedure and Evidence (“RPE”) and regulations 24*bis* and 26 of the Regulations of the Court (“RoC”) and regulations 10, 80 and 96 of the Regulations of the Registry;

CONSIDERING that in the Order, the Chamber requests submissions from the parties on potential agenda items;

CONSIDERING that in conformity with regulation 24*bis* of the Regulations of the Court, the Registry files the present submissions with the sole purpose of assisting the Chamber on matters related to the fulfilment of its mandate that the Chamber may wish to consider in preparation of the trial;

RESPECTFULLY SUBMITS observations on trial related matters as follows:

¹ ICC-01/05-01/13-824.

On victims and witnesses related protocols

1. The Registry respectfully takes this opportunity to inform the Chamber that prior to any witness giving testimony, the Victims and Witnesses Unit (the “VWU” or the “Unit”) is generally required to carry out a witness familiarisation procedure. The Unit recommends the adoption of a Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial (the “Familiarisation Protocol”). The Familiarisation Protocol aims at outlining the procedures that serve the best interests of witnesses and provide for sustainable working solutions for all entities involved. The Protocol covers issues pertinent to the familiarisation process and takes into account the practices and experiences concerning witnesses appearing before the Court. It covers issues relating to, *inter alia*, preparation of the witnesses in the field, arrangements for witnesses falling under the scope of rule 74 of the RPE, special measures for vulnerable witnesses and courtroom familiarisation.

2. Subject to the approach of the Chamber in the present case, the Unit informs the Chamber of the Familiarisation Protocol which was filed in the Bemba case² and the Amended Familiarisation Protocol which was filed in both Kenya cases³. Both Protocols reflect the relevant jurisprudence of the Court. The amended version which was adopted in both Kenya cases takes into consideration the fact that a Witness Preparation Protocol was adopted. The disposition relating to the provision and reading of the statement are not included anymore in the amended Familiarisation Protocol as the process is not conducted by the VWU but by the parties themselves. The VWU would however like to draw the Chamber’s attention on the latest amendments made by the VWU to the amended Familiarisation Protocol in the version filed in the

² ICC-01/05-01/08-1081-Anx.

³ ICC-01/09-01/11-704-Anx and ICC-01/09-02/11-727-Anx.

case of *The Prosecutor v. Laurent Gbagbo*⁴. Should the Chamber authorize the preparation of witnesses by the calling party, the VWU would recommend the adoption of this latest version of the Familiarisation Protocol.

3. The Registry also informs the Chamber that in accordance with rule 88 of the RPE, the Unit upon a request from the Chamber will provide its assessment on the need for special measures to be implemented for the benefit of potentially vulnerable witnesses. In this regard, the VWU refers to the “Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses” (the Vulnerability Protocol”) which was filed in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*⁵, in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*⁶, in the case of *The Prosecutor v. Laurent Gbagbo*⁷, in the case of *The Prosecutor v. Charles Blé Goudé*⁸ and *The Prosecutor v. Bosco Ntaganda*⁹. In order to promote a uniform practice, the VWU would recommend adopting the same Vulnerability Protocol in the present case.
4. Furthermore, subject to the approach of the present Chamber and in the event the parties are to call dual status’ witnesses, the Unit informs the Chamber, in order to promote a uniformed practice, on the “Proposed mechanism for exchange of information on individuals enjoying dual status” (the “Proposed Mechanism”) introduced in the *The Prosecutor v. Lubanga* case. An updated version of the Proposed Mechanism was filed in the case of *The Prosecutor v. Bosco Ntaganda*¹⁰ following consultations between the Unit and the parties and participants in that case.

⁴ ICC-01/04-02/06-451-Anx1

⁵ ICC-01/05-01/08-974-Anx 2.

⁶ ICC-01/09-01/11-303- Conf-Exp-Anx.

⁷ ICC-02/11-01/11-93-Anx 2.

⁸ ICC-02/11-02/11-110-Anx 1.

⁹ ICC-01/04-02/06-445-Anx 1.

¹⁰ ICC-01/04-02/06-430-Anx1.

5. The VWU would like to inform the Chamber that the Unit stands ready to coordinate any necessary consultation with the parties, upon request from the Chamber, in order to submit for the Chamber's consideration the above mentioned documents for their adoption.

On protection referrals

6. The Victims and Witnesses Unit (the "VWU" or "Unit") encourages the parties to follow the procedure established in regulations 80(1) and 96(2) of the Regulations of the Registry for any issues concerning the protection of witnesses and referrals to the Court's witness protection program. The Unit remains available to assist the parties and to provide them with a protection referral form to facilitate any request.
7. Upon receipt of a referral for protection, the Unit will perform a threat and risk assessment of the security situation of the individual for whom protection measures are requested. For the purpose of assessment and recommendation of the appropriate protective measures it is essential that the parties provide the VWU with specific information on the nature of the threat or risk the individual could be exposed to, and on any general risk assessment already conducted.

On the eCourt protocol

8. The currently registered eCourt protocol is the generic protocol which has been registered through submission ICC-01/05-01/13-35-Anx. The Registry has no observations in relation to the content of the protocol.

On the disclosure regime

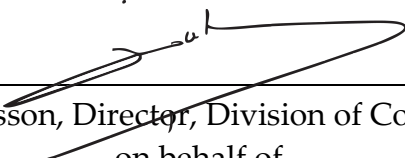
9. The current disclosure regime established during the status conference of 4 December 2013 requires that the disclosure between the parties be channelled through the Registry (namely the Court Management Section). If the Chamber confirms that disclosure is to remain strictly *inter partes*, the Registry proposes that this takes place without its involvement. In this way only evidence to be presented during the hearings should be uploaded into eCourt by the Registry and released by the submitting party.

On language of testimony

10. For the purposes of trial proceedings in the present case, the Registry is able to provide interpretation in French and English. If and when witnesses testify in other languages, the Registry will be able to provide interpretation services given that sufficient notice is provided in order to allow the recruitment of interpreters if required. For logistical reasons of travel and visa arrangements, the period of notice should not be less than four weeks in advance of the testimony.
11. In order to ensure the effective management of resources and without prejudice to prosecutorial and defence strategies, it would be desirable if witnesses speaking the same language (other than English or French) could be grouped in such a way that they testify one after another. Furthermore, in order to avoid any disruptions or delays in the proceedings, the calling party should verify the language requirements of each witness well ahead of testimony. This is particularly important with respect to witnesses who wish to testify in a language different than their mother tongue because should the witness change his or her mind at the last minute and decide to testify in a different language, the Registry would not be able to guarantee that the judicial calendar would not be disrupted as a consequence.

On the potential use of video link

12. The Registry recalls that in case ICC-01/05-01/08 many witnesses testified through video link. Without prejudice to any determination the Chamber will make in relation to witness appearance, the Registry draws the Chamber's attention to the high possibility that if the same or some of the same witnesses who testified in case ICC-01/05-01/08 through video link are called, it is expected, due to the nature of their status, that video link testimony may again be necessary.



Marc Dubuisson, Director, Division of Court Services
on behalf of
Herman von Hebel, Registrar

Dated this 20 March 2015

At The Hague, The Netherlands