

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 May 2015

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding
Judge Olga Herrera Carbuccion
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

With one Public Annex

**Registry's Observations Pursuant to Rule 24*bis* of the Regulations of the Court
Concerning Protocol Matters**

Source: The Registry

Document 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 Michael Gosnell

Counsel for Fidèle Babala Wandu

Ms 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

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section

Other

The Registrar of the International Criminal Court (the “Court”);

NOTING the “Registry submission to the Chamber regarding trial preparation”, submitted on 20 March 2015;¹

NOTING the “Prosecution Submissions on a Proposed Protocol on Handling of Confidential Information and Contacts with Witnesses”, submitted on 20 March 2015;²

NOTING the “Joint Defence Submissions on Witness Contact and Familiarisation”, submitted on 13 April 2015;³

NOTING the “Prosecution’s submission on proposed redactions protocol”, submitted on 25 February 2015;⁴

NOTING the “Joint Defence Observations on the Redactions Regime for Trial Pursuant to the Trial Chamber’s Order Seeking Submission in Advance of First Status Conference (ICC-01/05-01/13-824)”, submitted on 13 April 2015;⁵

NOTING the “Public Redacted version of “Prosecution’s Observations on the Agenda of the First Status Conference”, 20 March 2015, ICC-01/05-01/13-859-Conf’”, submitted on 24 March 2015;⁶

NOTING the Status Conference held on 24 April 2015;

¹ ICC-01/05-01/13-860

² ICC-01/05-01/13-858

³ ICC-01/05-01/13-898

⁴ ICC-01/05-01/13-825

⁵ ICC-01/05-01/13-902

⁶ ICC-01/05-01/13-859

NOTING articles 43(6), 64 and 68(1) and (4) and 93(10) of the Rome Statute, rules 16 to 19 of the Rules of Procedure and Evidence, regulation 23*bis* (2), 24*bis* of the Regulations of the Court and regulation 79 of the Regulations of the Registry;

CONSIDERING that the Prosecution submitted its observations and proposed protocols to be adopted in the present case, including the protocol on handling of confidential information and contacts with witnesses (the “Witness Contact Protocol”), protocol on the practices to be used to familiarise witnesses for giving testimony at trial (the “Familiarisation Protocol”), and proposed redactions protocol and that the Defence teams submitted their joint and respective observations;

CONSIDERING that the submissions of the parties refers to the function of the Registry, particularly that of the Victims and Witnesses Unit (the “VWU” or the “Unit”);

CONSIDERING that matters pertaining to protocols were not discussed at the Status Conference of 24 April 2015;

RESPECTFULLY SUBMITS the “Registry’s Observations Pursuant to Rule 24*bis* of the Regulations of the Court Concerning Protocol Matters”:

1. The Registry recalls to have proposed the adoption of the following instruments: the protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses (the Vulnerability Protocol”), the proposed mechanism for exchange of information on individuals enjoying dual status (the “Proposed Mechanism”), and the protocol on the practices to be used to familiarise witnesses for giving

testimony at trial (the “Familiarisation Protocol”).⁷ The following observations are submitted to properly address the submissions and proposals made by the parties and to provide the Registry’s views of the filed submissions.

A. Vulnerability Protocol

2. The Registry notes that at this juncture, there has been no indication of vulnerable witnesses to be called. However, the Registry believes that the adoption of the Vulnerability Protocol would be beneficial in the event of any unforeseen intervention needed. The Registry therefore maintains its proposal to adopt the Vulnerability Protocol as adopted in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, and *The Prosecutor v. Bosco Ntaganda*.⁸

B. Witness Contact Protocol

Involvement of the VWU in inter partes matters

3. The VWU takes notes of the proposed Witness Contact Protocol submitted by the Prosecution and the joint submissions of the Defence thereof.
4. The VWU has no observations on the proposals made by the Prosecution, however is of the view that the Defence submissions raise new substantial and significant issues in relation to the role of the VWU in performing its mandate which need to be addressed pertaining to the specificity of the services provided by the Unit.
5. The VWU wishes to reiterate its neutrality as a core principle in the exercise of its mandate, placing the VWU as a neutral entity to provide its equal services to the parties and participants in accordance with the statutory provisions of the Court. In this respect, the Unit is of the view that amendments proposed by the

⁷ ICC-01/05-01/13-860

⁸ ICC-01/05-01/08-974-Anx2, ICC-01/09-01/11-303-Conf-Exp-Anx, ICC-002/11-02/11-110-Anx1, ICC-01/04-02/06-445-Anx1.

Defence in paragraphs 41 to 43⁹ are of *inter partes* nature and impact the basic principles observed by the Unit in the exercise of its mandate.

6. The VWU believes that the involvement of the Unit in contacting witnesses for the purpose of the parties' interviews should only be on exceptional situations, on a case by case basis, whereby the Unit would only act upon instruction and on behalf and of the Chamber. It is crucial that the appearance of neutrality of the Unit is maintained towards witnesses for the Unit's future interaction with them. As part of the Registry and not a party to the proceedings, the Unit should not appear as it is representing the parties.
7. This applies the same to the Defence proposal on post-testimony contacts in paragraph 56 to 63.¹⁰ The VWU remains available to provide its services and assists the Chamber for this matter if so required, however, other occasions should first be explored prior to resorting to this solution. The timeframe and occasion at which the VWU is expected to inquire the witnesses are not clearly indicated in the proposal of the Defence. The VWU believes that, should the Defence refers to the cooling down period as regulated in Familiarisation Protocol, this period should not be used for *inter partes* matter.
8. It is to be noted that the cooling down focuses mainly on the necessary psychological and security matters for the benefit of the witnesses. Inquiring whether the witnesses would be willing to be contacted by the non-calling party during this period may create a disruption of the role of the Unit in performing its tasks during post testimony and compromise the trust that has been built between the witnesses and the Unit as an impartial actor in the process. The Unit believes that it should not be involved in *inter partes* matters, however, if the Chamber considers necessary, it should only be done on exceptional basis.

⁹ ICC-01/05-01/13-898-AnxA

¹⁰ ICC-01/05-01/13-898-AnxA

Use of names and identifying information

9. The VWU proposes the adoption of section V on “Disclosure of the Identity of Witnesses of Other Parties in the Course of Investigations” as proposed by the Prosecution.¹¹ The additional paragraph 6¹² proposed by the Defence is not sufficient whereas the adoption of the section V as proposed by the Prosecution would ensure minimal possibility of inadvertent disclosure.
10. Specifically for paragraph 27, the Unit strongly does not recommend any disclosure of identity of protected witnesses prior to consultation with the Unit. The VWU is responsible for the safety and security of witnesses and no disclosure of protected witnesses identifying information should be done without prior consultation with the Unit. Therefore, paragraph 27 should not apply and be included in the Protocol.

Additional observations

11. In addition to the above, concerning amendments made by the Defence in paragraph 51, the Registry believes that the Court shall not bear any costs related to legal advice or assistance sought in relation with contacts with witnesses.

C. Familiarisation Protocol

12. The VWU notes that the Prosecution does not oppose the adoption of the recently adjusted proposed protocol submitted by the Unit in case of *The Prosecutor v. Bosco Ntaganda* and that the Defence have not raised any objection to the adoption of the said proposed Protocol.
13. In this respect, the VWU wishes to inform the Chamber that the proposed Familiarisation Protocol annexed by the Prosecution in its submission of the 24

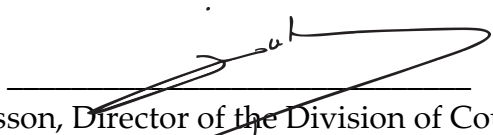
¹¹ *Ibid.*

¹² *Ibid.*

March 2015¹³ does not include the adjustments proposed by the Unit and in particular paragraphs pertaining to joint travel and accommodation and Witnesses falling under the scope of Rule 74 of the Rules of Procedure and Evidence. The VWU therefore annexes the complete proposed protocol as Annex A of the present filing for the attention of the Chamber.

D. Redaction Protocol

14. The VWU notes the Prosecution's proposed Redaction Protocol. The VWU also notes the Defence's submissions, that a case-by-case assessment of redaction requests, and not a protocol, is the method best suited to redactions in the present case. In the alternative, should the Chamber decide to adopt a protocol, the Defence provided its observations on the prosecution's proposed protocol.
15. The Unit does not have additional observations on the specifics of the parties' proposed Redaction Protocol. However, should the Chamber decide not to adopt the Protocol, the Unit believes that it is necessary to ensure that categories pertaining to ICCPP related information, normally regulated as category B.4, be clearly regulated through a different manner that the Chamber consider appropriate, in order to ensure the effective functioning of the ICCPP and the protection of witnesses.



 Marc Dubuisson, Director of the Division of Court Services
per delegation of
 Herman von Hebel, Registrar

Dated this 18 May 2015

At The Hague, The Netherlands

¹³ ICC-01/05-01/13-859-AnxA