

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 16 June 2015

TRIAL CHAMBER VII

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

***THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

**Confidential, *EX PARTE*, only available to the Prosecution and Victims and
Witnesses Unit**

**Prosecution's Notification pursuant to Rule 74 of the Rules of Procedure and
Evidence**

Source: The Office of the Prosecutor

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

Counsel for Aimé Kilolo Musamba

**Counsel for Jean-Jacques Mangenda
Kabongo**

Counsel for Fidèle Babala Wandu

Counsel for Narcisse Arido

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

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations Others
Section**

I. Introduction

1. The Office of the Prosecutor ("Prosecution") notifies Trial Chamber VII ("Chamber") and the Victims and Witnesses Unit ("VWU") that issues of self-incrimination may arise in respect of witnesses the Prosecution may call at trial. In such circumstances, rule 74 of the Rules of Procedure and Evidence ("Rules") will apply.

2. In the absence of a protocol on the conduct of trial proceedings, the procedure followed in other cases regarding the potential self-incrimination of witnesses should be applied.

II. Confidentiality

3. This filing is classified as Confidential, *Ex Parte*, only available to the Prosecution and the VWU, as it refers to a witness in respect of whom the Prosecution made an application for delayed disclosure.¹ Though the Defence of the Accused Jean-Pierre Bemba Gombo has become aware of the witness's identity through a limited and inadvertent disclosure of data in E-Court,² this classification is retained out of an abundance of caution. There is nothing to indicate that the other Accused know of the witness's identity.³ Nonetheless, the Prosecution is reviewing the continued viability of delayed identity disclosure and will resolve the matter shortly.

¹ ICC-01/05-01/13-985-Conf-Exp.

² Upon becoming aware of the issue, the Prosecution immediately sought to rectify the matter through an update of the data on E-Court.

³ See, e.g., ICC-01/05-01/13-1007-Conf; ICC-01/05-01/13-1006-Conf; ICC-01/05-01/13-999-Conf; ICC-01/05-01/13-998-Conf.

III. Submissions

4. The Prosecution expects that the testimony of 10 potential witnesses may raise issues of self-incrimination.⁴ These are witnesses D-2, D-3, D-13, D-15, D-23, D-26, D-54, D-55, D-57, and D-64. Each witness is the subject of confirmed charges, having allegedly testified falsely in the Main Case.⁵ Their testimony in this case therefore raises possible issues of self-incrimination covered by rule 74 of the Rules.

5. In line with the Court's practice, it is incumbent on the Registry to make the necessary arrangements to appoint a qualified lawyer to provide independent legal advice to the witnesses, as they may incriminate themselves during their testimony.⁶

6. The Prosecution will provide the rule 74 counsel with the transcripts of the witnesses Main Case testimony and any prior statements, interviews or other relevant material for the witnesses, upon notice of his appointment by the Registry and with the Chamber's leave.

7. The appointed rule 74 counsel should be directed to inform the witnesses of the offence defined in article 70(1)(a) of the Rome Statute, in accordance with rule 66(3) of the Rules.⁷

⁴ See, e.g., ICC-01/09-01/11-847-Corr, para.29; ICC-01/04-02/06-619, para.45.

⁵ ICC-01/05-01/13-749.

⁶ ICC-01/09-01/11-847-Corr, para.29; ICC-01/04-02/06-619, para.44.

⁷ ICC-01/04-02/06-619, para.46.

IV. Conclusion

8. Based on the foregoing, the Prosecution requests that the Chamber direct the Registry to identify and appoint, as necessary, qualified counsel to advise the witnesses on self-incrimination pursuant to rule 74 of the Rules, and to follow the procedure outlined above in the absence of a protocol on the conduct of trial proceedings.



Fatou Bensouda, Prosecutor

Dated this 16th Day of June 2015
At The Hague, The Netherlands