

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 20 July 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***

Public Redacted Document

with

Confidential Annex A and Corrected version of Confidential Annex B

**Public redacted version of "Corrected version of "Prosecution's Submission on its
Second Proposal of Agreed Facts", 10 July 2015, ICC-01/05-01/13-1072-Conf-Corr**

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

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

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Mr Philippe Larochelle

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

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section Others

I. Introduction

1. The Office of the Prosecutor (“Prosecution”) submits its observations on its Second Proposal of Agreed Facts provided to the Defence, pursuant to Trial Chamber VII (“Chamber”)’s 24 April 2015 order.¹

2. Although the Prosecution and various Defence teams agree on a total of 17 disparate facts, the Parties have not been able to reach a common agreement regarding any of the 380 proposed stipulations, under rule 69 of the Rules of Procedure and Evidence (“Rules”).

3. The few facts on which the various Defence teams agree² mostly concern biographical information, such as the Accused’s dates of birth and nationalities. The Prosecution does not object to the Chamber considering these as proved.³ In addition, the Prosecution is exploring other avenues to move this case forward, and intends to submit a request for judicial notice of appropriate facts under article 69(6) of the Rome Statute shortly.

II. Confidentiality

4. This filing is classified as “Confidential”, as it refers to filings and information of the same designation. The Prosecution will file a public redacted version.

¹ ICC-01/05-01/13-T-8-Red-ENG, p.6, lns.7-9.

² These vary in number from one to ten.

³ Rule 69 of the Rules.

III. Procedural Background

5. On 20 February 2015, to advance the proceedings and to reduce the scope of the contested issues in the case, the Prosecution provided the Defence with its First Proposal of Agreed Facts containing 64 basic factual stipulations (“First Proposal”).⁴ All of the Defence teams rejected the First Proposal for various reasons.⁵

6. On 24 April 2015, the Chamber encouraged the Parties to “seriously explore” the possibility of agreeing on the issues that are not contested.⁶ The Chamber further directed the Prosecution to again submit proposed agreed facts to the Defence by 30 April, and the Defence to respond by 30 June.⁷

7. On 30 April 2015, the Prosecution communicated to the Defence its Second Proposal of Agreed Facts (“Second Proposal”). The Second Proposal contains 380 factual stipulations, including the 64 stipulations from the First Proposal provided in February. It is attached at Annex A to this filing.

8. On 2 June 2015, the Babala Defence responded to the Second Proposal. The Bemba, Mangenda and Kilolo Defences responded on 30 June 2015. The Arido Defence responded on 2 July. All responses received are attached at Annex B.

IV. Submissions

9. The 380 stipulations comprising the Second Proposal concern the Accused’s personal and professional background; their role in the Main Case; contact details such as, email addresses and telephone numbers; the whereabouts of the Accused

⁴ See ICC-01/05-01/13-859-Conf-AnxC.

⁵ See ICC-01/05-01/13-859-Conf, para.21.

⁶ ICC-01/05-01/13-T-8-Red-ENG, p.5, ln.24 – p.6, ln.6.

⁷ ICC-01/05-01/13-T-8-Red-ENG, p.6, lns.7-9.

and financial transactions which occurred during the charged period; basic information relating to the testimony of Defence witnesses in the Main Case; as well as the meaning of certain coded expressions used by the Accused.⁸

10. Babala does not agree that the proposed stipulations are not contested.

11. Bemba agrees that three stipulations are not contested:

- i. Accused Jean-Pierre BEMBA GOMBO is a DRC national, born on 4 October 1962 (proposed stipulation 1);
- ii. BEMBA was the Accused in the Main Case and detained at the ICC Detention Centre, including during the period from the end of 2011 through November 2013 (proposed stipulation 3);
- iii. BEMBA has been a Senator of the DRC since 19 January 2007, including during the period from the end of 2011 through November 2013 (proposed stipulation 4).⁹

12. Mangenda agrees that three stipulations are not contested:

- i. Accused Jean-Jacques KABONGO MANGENDA is a DRC national, born on 1 October 1979 (proposed stipulation 17, modified);
- ii. MANGENDA has been a member of the Kinshasa/Matete bar since December 2004 (proposed stipulation 18);
- iii. MANGENDA was case manager for the BEMBA Defence in the Main Case from 3 October 2008 until his arrest on 23 November 2013 (proposed stipulation 19, qualified).¹⁰

⁸ See Annex A.

⁹ See Annex B.

¹⁰ *Ibid.*

13. Kilolo agrees that one stipulation is not contested:

- i. Accused Aimé KILOLO MUSAMBA LUBEMBA is a Belgian national, born 1 January 1972 (proposed stipulation 14).¹¹

14. Arido agrees that 10 stipulations are not contested:

- i. Accused Narcisse ARIDO is a CAR national, born on 15 May 1978 (proposed stipulation 29);
- ii. ARIDO holds a DEA in *Droit Privé, option Droit du transport aérien* (proposed stipulation 30, modified);
- iii. ARIDO was a member of the CAR military until at least 2001 (proposed stipulation 32);
- iv. ARIDO owns or owned a business in Cameroon called *Arc-en-Ciel Multiservices* (proposed stipulation 33);
- v. [REDACTED] is ARIDO's wife (proposed stipulation 34);
- vi. ARIDO was scheduled to testify as Bemba Defence witness in the Main Case as D-11 on 27 September 2012. ARIDO produced an expert report in the Main Case (proposed stipulation 35, modified);
- vii. ARIDO never presented himself to testify in the Main Case (proposed stipulation 36);
- viii. ARIDO travelled to France from Cameroon on 26 September 2012 using the visa delivered to him by the Court for the purposes of testifying (proposed stipulation 37);
- ix. Email address *aridonarcisse@yahoo.fr* was used by ARIDO including during the period from the end of 2011 through November 2013 or a part thereof (proposed stipulation 60, qualified);
- x. On 19 January 2012, ARIDO transferred 18 000 CFA to [REDACTED] (proposed stipulation 320, modified).¹²

¹¹ *Ibid.*

¹² *Ibid.*

15. These agreed facts are indicated at Annex A among the proposed stipulations provided to the Defence. Annex B contains the Defences' respective responses reflecting their positions and proposed modifications to the language of certain agreed stipulations, to which the Prosecution accedes.

16. As noted, the Mangenda and Arido Defences qualify their stances on several proposed stipulations. For example, while Mangenda does not contest his former position as the Bemba Defence's "case manager", [REDACTED].¹³

17. The respective Defences further do not concede a number of facts which they affirmatively advanced before Pre-Trial Chamber II and which underlie factual findings in the Decision on the Confirmation of Charges.¹⁴ For example, Pre-Trial Chamber II found that the Bemba Defence "explicitly acknowledged" that the coded expressions "*le collègue d'en haut*", "*collègue*", and "*enfant à ses côtés*" identify Kilolo and Mangenda, respectively.¹⁵ These are found in stipulations 349 and 350 of the Second Proposal, which further cite the Bemba Defence confirmation submission as their source.

18. Overall, at least 85 proposed stipulations reference the Defences' pre-trial submissions among their sources. At least 94 proposed stipulations reference facts arising from the Defences' pre-trial disclosure. In addition, at least 45 proposed stipulations arise from the Main Case's record that is public or otherwise available to the Defence, and concern, for example, the dates of the witnesses' testimony. None of the Defence teams have agreed that such matters are not contested—although the Arido Defence has indicated that [REDACTED].¹⁶

¹³ See Annex B.

¹⁴ ICC-01/05-01/13-749.

¹⁵ *Ibid.*, para.80.

¹⁶ See Annex B.

19. As noted, there is no common agreement between the Prosecution and *all* the Accused regarding any given fact. Although the 17 facts agreed on with separate Defences do not substantially streamline or advance the proceedings, the Prosecution does not object to them being considered as proved, pursuant to rule 69 of the Rules, in the form proposed by the respective Defences.¹⁷



Fatou Bensouda, Prosecutor

Dated this 20th Day of July 2015
At The Hague, The Netherlands

¹⁷ See Annex B.