

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 7 September 2015

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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

Public Document

**Prosecution Urgent Motion for Clarification of Paragraph 23 of the “Directions on
the conduct of the proceedings”**

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

Mr Steven Sacha Powles

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Michael Gosnell

Mr Arthur Vercken De Vreuschmen

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Mr Azama Shalie Rodoma

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. Submissions

1. The Office of the Prosecutor (“Prosecution”) requests the Trial Chamber VII (“Chamber”)’s clarification or guidance in respect of paragraph 23 of its 2 September 2015 “Directions on the conduct of the proceedings” (“Directions”) concerning the application of rule 68(3) of the Rules of Procedure and Evidence.¹ It is necessary and appropriate in the circumstances of this case.

2. Specifically, the Prosecution understands that paragraph 23 of the Directions does not apply to the allegedly false testimony of the former Main Case defence witnesses called to testify in this case. This understanding is based on the rule 68(3)’s conditioning of the admissibility of the previously recorded testimony on the consent of the witness concerned. A witness complicit in a crime involving the giving of false testimony cannot reasonably have the power to veto the proof of such crime.

3. Further, and importantly, for these crimes the prior testimony constitutes the *corpus delicti*, i.e. the substantial and fundamental fact necessary to establish their commission. It thus falls outside the ambit of rule 68(3).

4. Accordingly, the admission of the prior allegedly false testimony of former Main Case defence witnesses is governed by article 69(3) of the Rome Statute.

¹ ICC-01/05-01/13-1209.

II. Relief Requested

5. The Prosecution requests the Chamber to clarify the application of paragraph 23 of the Directions to the allegedly false testimony of the former Main Case defence witnesses testifying in this case, or to provide its guidance. Given the established schedule, the Prosecution seeks this clarification on an urgent basis.



Fatou Bensouda, Prosecutor

Dated this 7th Day of September 2015
At The Hague, The Netherlands