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

Date: 7 September 2015

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

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

**Bemba, Mangenda, Kilolo and Arido Defences' Request to be Permitted to Make
Short Statements after the Prosecution's Opening Statement, and to Reserve Position
on Making Opening Statements before the Presentation of Defence Evidence, if Any.**

Source: Defence for Jean-Pierre Bemba Gombo
Defence for Aimé Kilolo Musamba
Defence for Jean-Jacques Kabongo Mangenda
Defence for Narcisse Arido

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

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I. INTRODUCTION

1. The “Directions on the conduct of the proceedings”¹ require the Defence teams to choose between making an opening statement immediately after the Prosecution’s Opening, or prior to the presentation of evidence, if any, by the Defence. The Directions indicate that the decision must be made ‘collectively’² and that, in the absence of any estimate to the contrary, such statements shall not exceed 1.5 hours.³

2. The Defence teams have consulted amongst themselves and have discovered that, despite their best efforts, no consensus can be reached in respect of the two options presented by the Trial Chamber.

3. The Defence for Mr. Bemba, Mr. Kilolo, Mr. Mangenda and Mr. Arido hereby request the opportunity, in accordance with the consistent practice of previous ICC cases,⁴ to present if they wish a short statement immediately following the Prosecution’s opening statement, without prejudice to the opportunity of giving an opening statement before the presentation of their evidence.

II. SUBMISSIONS

4. The rationale for this request, aside from its consistency with previous practice, is as follows:

- (i) Since the confirmation of charges proceedings took place in writing, no defendant has, as yet, made a public statement on his response to the charges. A short

¹ ICC-01/05-01/13-1209, 2 September 2015, (“Directions”).

² ICC-01/05-01/13-1209, para.5.

³ *Ibid.*

⁴ See e.g. *Gbagbo & Blé Goudé* case: “The Defence teams may reserve all or part of their time to make their opening statements after the close of Prosecution’s presentation of evidence and prior to the presentation of evidence, if any, by the Defence”, ICC-02/11-01/15-205, para. 10; see also the *Lubanga* case, where the Lubanga Defence made a statement at both the start of the Prosecution’s case (ICC-01/04-01/06-T-109-ENG, p. 3, l. 20 and f.) and at the beginning of the Defence case (ICC-01/04-01/06-T-236-Red2, p. 20, l.15 and f.); *Ngudjolo & Katanga* case, where the Ngudjolo Defence made its opening statement at the start of the Prosecution’s case (ICC-01/04-01/07-T-80-ENG, p. 55, l. 11 and f.) and also made a short statement after the Katanga Defence’s case and at the beginning of the presentation of evidence for Ngudjolo (ICC-01/04-01/07-T-291-Red2-ENG, p. 5, l. 25 and f.). The Defence also believes that the same approach has been adopted in the *Ntaganda* case.

Opening Statement will give each Defence team an opportunity to publicly state their response to the Prosecution's allegations;

- (ii) In the event that a Defence team is to present evidence, it will be appropriate to make an Opening Statement outlining the evidence that will be called. At the present stage, Defence's investigations are on-going. Further, it is by no means certain that any Defence, as the Presiding Judge rightly acknowledges,⁵ will present any evidence. Having to elect between an Opening Statement at this stage or later is therefore premature.
- (iii) If the Defence are unable to reach a collective position, at least one Defence team – the Babala Defence - will be unable to make an Opening Statement at the stage in the proceedings that it would most prefer.

5. This request is therefore respectfully made by four of the five Defence teams as a possible compromise to facilitate expeditious proceedings without prejudicing the rights of the accused pursuant to Rule 136(1) of the Rules of Procedure and Evidence. The four applications wish to underscore, for the avoidance of doubt, that they do not oppose Mr. Babala's request in respect of the present matter.⁶

III. RELIEF SOUGHT

6. The following relief is respectfully requested:

- (i) That each Defence team be permitted to make a 15-20 minutes statement after the Prosecution's Opening Statement; and,
- (ii) That any such statement will be without prejudice to make an opening statement prior to the presentation of the Defence case.

⁵ ICC-01/05-01/13-1209, para.5.

⁶ ICC-01/05-01/13-1218, 7 September 2015.

7. In the event that this Request is rejected, for the avoidance of doubt, the four Defence teams submitting this Request elect to present their Opening Statements at the beginning of the Defence cases rather than prior to the Prosecution's presentation of evidence.

Respectfully submitted,



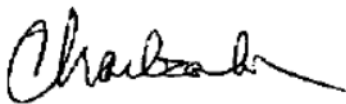
Melinda Taylor, Counsel for Jean-Pierre Bemba Gombo



Paul Djunga Mudimbi, Counsel for Aimé Kilolo Musamba



Christopher Gosnell, Counsel for Jean-Jacques Kabongo Mangenda



Chief Charles Achaleke Taku, Counsel for Narcisse Arido

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