

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 10 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, AIMÉ KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA
WANDU and NARCISSE ARIDO***

Public

Decision on Requests Related to Timing of Defence Opening Statements

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 Gosnell

Counsel for Fidèle Babala Wandu

Mr 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

Others

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber VII ('Single Judge' and 'Chamber', respectively) of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido* ('Bemba et al. case'), having regard to Rules 136(2) and 140 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on Requests Related to Timing of Defence Opening Statements'.

1. On 2 September 2015, the Presiding Judge issued directions on the conduct of the proceedings. As regards opening statements of the five defence teams, the direction given was that '[t]he defence teams may make their opening statements prior to the presentation of evidence, if any, by the Defence. However, this decision must be made collectively - the Chamber does not wish to hear openings from the defence teams at multiple points during the trial'.¹
2. On 7 September 2015, the defence team for Mr Babala ('Babala Defence') requested reconsideration of this direction ('Babala Defence Request').² Noting that the defence teams could not reach a common position, the Babala Defence requests that it present its opening statement after the Office of the Prosecutor's ('Prosecution') opening statement, regardless of the wishes of the other defence teams.³
3. The same day, the other four defence teams filed a submission ('Four Defence Teams Request') requesting that: (i) each defence team be permitted to make a 15-20 minutes statement after the Prosecution's opening statement; and (ii) that any such statement be without prejudice to make an opening statement prior to the

¹ Directions on the conduct of the proceedings, ICC-01/05-01/13-1209, para. 5.

² Demande en reconsidération de la disposition concernant les déclarations liminaires de «Directions on the conduct of the proceedings» (ICC-01/05-01/13-1209) fondée sur pied de la règle 136(2) RPP, ICC-01/05-01/13-1218.

³ Babala Defence Request, ICC-01/05-01/13-1218, pages 7-8.

defence case presentation.⁴ These teams clarify that, if these requests are rejected, they elect to present opening statements at the beginning of the defence cases.⁵

4. The direction regarding defence opening statements aims at organising the trial efficiently by receiving the opening statements of the five defence teams in a consolidated manner. Neither of these requests presents any argument justifying reconsideration of this direction, and the Single Judge in particular fails to see how Rule 136(2) of the Rules⁶ is infringed by giving all the defence teams an opportunity to provide opening statements at the same moment during trial. Also, reasons of equal treatment of all parties do not militate in favour of allowing the defence to make a statement at the beginning of the trial *and* an opening statement at a later stage of the proceedings.
5. As a collective position could not be reached, the defence opening statements will be heard, as submitted in the Four Defence Teams Request, at the time the majority of the defence teams prefer.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the relief sought in the Babala Defence Request and the primary relief sought in the Four Defence Teams Request; and

ORDERS the five teams to give any opening statements prior to the presentation of evidence by the defence, rather than prior to the presentation of evidence by the Prosecution.

⁴ 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, ICC-01/05-01/13-1220, para. 6.

⁵ Four Defence Teams Request, ICC-01/05-01/13-1220, para. 7.

⁶ Rule 136(2) provides that '[i]n joint trials, each accused shall be accorded the same rights as if such accused were being tried separately'. See Babala Defence Request, ICC-01/05-01/13-1218, para. 2.

Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt, Single Judge

Dated 10 September 2015

At The Hague, The Netherlands