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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, AIMÉ KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA
WANDU AND NARCISSE ARIDO***

Public Document

**Prosecution's application for leave to appeal the "Decision on Witness Preparation
and Familiarisation"**

Source: Office of the Prosecutor

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

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I. Introduction

1. In its “Decision on Witness Preparation and Familiarisation” (“Decision”),¹ Trial Chamber VII rejected the Prosecution’s proposed Witness Preparation Protocol, pursuant to which the Prosecution would meet with its witnesses on their arrival to The Hague to conduct witness preparation and familiarisation prior to their testifying in court (“Witness Preparation”).

2. While accepting that a decision whether to allow Witness Preparation fell within the Chamber’s discretion under article 64(2) of the Statute “[t]o adopt procedures to ensure that the trial is fair and expeditious,”² the Chamber concluded that “[i]n this case, it is unnecessary and inappropriate to authorise witness preparation as defined in the Kenya Protocols.”³

3. The Prosecutor seeks leave to appeal the Decision on the following issues:⁴

- (i) Whether the Trial Chamber erred in failing to provide a reasoned opinion (“First Issue”);
- (ii) Whether the Trial Chamber erred in balancing the potential risks of Witness Preparation *vis-à-vis* the parties’ right to prepare their cases and the substantial benefits of Witness Preparation to an expeditious and fair trial and the well-being of witnesses (“Second Issue”); and
- (iii) Whether the Trial Chamber erred by taking into account and/or giving weight to extraneous or irrelevant factors and/or by failing to take into account or accord proper weight to relevant factors (“Third Issue”).

4. The issues are appealable issues that arise from the Decision. In addition, they meet the criteria for leave to appeal under article 82(1)(d) of the Statute.

¹ ICC-01/05-01/13-1252, 15 September 2015.

² Decision, para. 20.

³ Decision, para. 21.

⁴ Collectively, the “Issues”.

II. Submissions

(a) *Relevant Context*

5. The Trial Chamber, like the Trial Chambers that have endorsed Witness Preparation in other cases, acknowledged that pursuant to articles 64(2) and (3)(a), Trial Chambers have discretion to adopt adequate procedures “to ensure that the trial is fair and expeditious,”⁵ and importantly, this includes procedures in relation to witnesses appearing before the Court.⁶

6. Indeed, apart from this Chamber,⁷ the emerging trend at the Court has endorsed the practice of Witness Preparation, by recognising both the parties’ right to prepare their cases, and secondly, that Witness Preparation is one of the instruments to promote fair, effective and expeditious trials.⁸ In the view of the *Ruto and Sang* decision, “[i]n order to elicit a focused and structured testimony and to ensure that all probative evidence is presented, it is [...] important that counsel, particularly counsel for the calling party, are well prepared and fully acquainted with each witness’s evidence. A pre-testimony meeting is a last opportunity for the calling party to determine the most effective way to question its witnesses and which topics will elicit the most relevant and probative evidence during in-court examination.”⁹ Indeed, a pre-testimony meeting with the witness enables the calling party to ascertain if there are any significantly changed circumstances which may

⁵ Decision, para. 20. The Prosecution submits that it is more accurate to also talk of a “duty” given the wording of article 64(2), which provides that “the Trial Chamber *shall* ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses” (italics added). Article 64(3)(a), also cited at paragraph 20 of the Decision, similarly employs “shall” in, *inter alia*, requiring Chambers to confer with the parties and to adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings.

⁶ Decision, para. 20.

⁷ Two other rather isolated cases are the Court’s first decision on the subject in the *Lubanga* case (ICC-01/04-01/06-1049) and the *Bemba* (Main) case (ICC-01/05-01/08-1016), which, by majority, rejected Witness Preparation.

⁸ See e.g., ICC-01/09-01/11-524 (*Ruto and Sang* case); ICC-01/04-02/06-652 (*Ntaganda* case); ICC-01/09-02/11-588 (*Kenyatta and Muthaura* case). In *Bemba* (“Main Case”), the Chamber, by majority rejected the practice, but Judge Ozaki dissented. ICC-01/05-01/08-1039, para. 10.

⁹ ICC-01/09-01/11-524, para. 34.

affect the witness's evidence in advance of their testimony. This may enable the calling party to make fundamental decisions, such as whether or not to call the witness.

7. Furthermore, allowing the calling party, in exercising its right to prepare for trial, to meet its witnesses to “re-engage with the facts underlying their testimony aids the process of human recollection, better enables witnesses to tell their stories accurately on the stand and can assist in ensuring that the testimony of a witness is structured.”¹⁰ As underscored by the *ad hoc* Tribunals, and noted by some Defence teams before this Court,¹¹ substantive witness preparation “is likely to enable accurate, orderly and efficient presentation of the evidence of a witness in the trial.”¹²

8. In this sense, Witness Preparation ensures the Prosecution's independence under article 42(1) in exercising its functions. As the Appeals Chamber noted in an interlocutory appeal in the *Lubanga* case, “it is the Prosecutor who, pursuant to article 54(1) of the Statute, is tasked with the investigation of crimes under the jurisdiction of the Court and who, pursuant to article 61(1) and (3) of the Statute, proffers charges against suspects.”¹³ The Decision significantly affects the Prosecution's right to present its case in the way it deems more efficient. The Appeals Chamber has also repeatedly affirmed that the Prosecutor has duties with respect to the objective of establishing the truth and the Chamber must ensure that the Prosecutor can effectively exercise her duties under the Statute.¹⁴

9. Furthermore, the recent trend at the Court accepts that Witness Preparation enhances the protection and well-being of witnesses, beyond that offered through the VWU-driven witness familiarisation procedure, and enables the Court to best discharge its article 68(1) duty to protect witnesses. Witness Preparation helps to

¹⁰ ICC-01/09-01/11-524, para. 32.

¹¹ ICC-01/09-01/11-524, para. 32, referring to ICC-01/09-01/11-452, para. 21.

¹² *Prosecutor v. Limaj*, IT-03-66-T, Decision on Defence Motion on Prosecution Practice on “Proofing” Witnesses, 10 December 2004, page 2.

¹³ ICC-01/04-01/06-2205 OA15 OA16, para. 94.

¹⁴ ICC-01/04-02/12-271-Corr A, paras. 255-257; ICC-02/11-01/15-208 OA6, para.87.

reduce a witness's "[s]tress and anxiety about testifying. Conversely, limiting pre-testimony contact between counsel and witnesses to the ten-minute 'courtesy meeting' provided for in the Familiarisation Protocol does not best serve the Chamber's Article 68(1) duty to take appropriate measures to protect the well-being and dignity of witnesses."¹⁵

10. As underscored by the judges in the *Ruto and Sang* case, this is because "[i]n most of the cases before this Court, witnesses' concerns extend beyond the individual protective measures accorded to them or the logistics of trial proceedings such as the layout of the courtroom and the role of the parties and participants. Their concerns may also result from anxiety about giving evidence in what may feel like a foreign and even hostile environment, a lack of confidence in their ability to communicate and articulate their experiences and/or apprehension over the unfamiliar experience of being challenged during cross-examination."¹⁶

11. Moreover, a VWU-driven familiarisation process, while important, falls short of addressing case-specific concerns that witnesses may have prior to their testifying in court.¹⁷ Such concerns can only be addressed by the calling party during Witness Preparation. In conclusion, "enabling interaction with counsel on the substantive aspects of their evidence may help to increase witnesses' confidence and may reduce their reluctance to reveal sensitive information on the stand. The role of the VWU, while of vital importance to the work of the Court, is not a substitute for the relationship between questioning counsel and the witness in this respect."¹⁸

12. Notwithstanding the recent consistent Court practice recognising the extensive benefits of Witness Preparation, and this Trial Chamber's own acknowledgment in this case that Witness Preparation falls within the Trial Chamber's discretion¹⁹ under

¹⁵ ICC-01/09-01/11-524, para. 37.

¹⁶ ICC-01/09-01/11-524, para. 37.

¹⁷ ICC-01/09-01/11-524, para. 37.

¹⁸ ICC-01/09-01/11-524, para. 37.

¹⁹ As argued above, it is more accurate to talk of a "duty" given the wording of article 64(2) and (3)(a) of the Statute.

article 64(2) of the Statute “[t]o adopt procedures to ensure that the trial is fair and expeditious,”²⁰ including in relation to witnesses appearing before the Court, the Trial Chamber denied Witness Preparation. The Chamber took the view that “[i]n this case, it is unnecessary and inappropriate to authorise witness preparation as defined in the Kenya Protocols.”²¹

13. As argued in relation to the First Issue, the Chamber failed to provide a reasoned opinion in support of its conclusion above. It also erred in the exercise of its discretion – an error that underpins the Second and Third Issues.

14. This request for leave to appeal seeks to challenge the correctness of the Decision. This case concerns the prosecution of persons for alleged improper interference with witnesses in the *Bemba* Main Case—a case in which the Chamber (by majority) had disallowed Witness Preparation. Contrary to the Decision, there is nothing inherent in the article 70 case, whether arising from the nature of the charges or the nature of the Prosecution witnesses and the totality of the surrounding circumstances, that would justify the Trial Chamber to have rejected the by now widely accepted Court practice of Witness Preparation. The Decision reflects a wrong exercise of discretion, and does not justify a departure from the existing Court practice recognising the importance of Witness Preparation to promote a fair and expeditious trial and to protect the well-being of witnesses.

15. As concerns the specific nature of the charges in the case, the Decision does not explain why the mere fact that the charges are “fundamentally concerned with allegations of improper interference with defence witnesses and false testimony,”²² *ipso facto* should inhibit Witness Preparation. This process does not engage in “interference”, but rather is part of the calling party’s right to prepare for trial, allowing such a party the opportunity to re-engage with the witness on the underlying facts and streamline the presentation of the case. As argued above, as

²⁰ Decision, para. 20.

²¹ Decision, para. 21.

²² Decision, para. 23.

part of the calling party's right to prepare, Witness Preparation assists the party to meet with the witness and assess the best way to elicit a focused and structured testimony and to ensure that all probative evidence is presented. The pre-testimony meeting enables the calling party to meet the witness to prepare and get fully acquainted with each witness's evidence.²³ Again as argued earlier, a pre-testimony meeting with the witness enables the calling party to know if there are any significantly changed circumstances which may affect the witness's evidence. Based on such meeting, the calling party is enabled to make fundamental decisions, such as whether or not to call the witness.

16. Moreover, the witness interference charges in this case demand, rather than attenuate, the necessity of witness preparation. Witness interference, which normally engages either incentives or threats to witnesses, may specifically trigger what some ICC decisions correctly characterise as sensitive concerns that witnesses may not wish to reveal while on the stand, but may be willing to do so, not to the VWU, but to the calling party during Witness Preparation.²⁴

17. Concerning the nature of the witnesses and the surrounding circumstances as identified in the Decision, this request for leave to appeal raises as an appealable issue, the Decision's consideration that because the Prosecution interviewed the witnesses within the last three years or because they testified in the *Bemba* Main Case, Witness Preparation was unnecessary. The Decision does not elaborate why these factors do not permit, or render unnecessary, Witness Preparation, given its extensive benefits to a fair and expeditious trial and its enhancement of the well-being of witnesses, as discussed above. By considering those factors, the Chamber took account of and/or gave undue weight to irrelevant factors in the exercise of its discretion.

²³ ICC-01/09-01/11-524, para. 34.

²⁴ ICC-01/09-01/11-524, para. 37.

18. In fact, other additional factors exist in this case which justify, rather than inhibit, Witness Preparation – and the Chamber’s failure to consider and/or accord some of them sufficient weight, partly supports the third appealable Issue identified above.

19. Firstly, although the Prosecution filed its proposed Protocol on Witness Preparation almost six months ago, the Trial Chamber has denied the Prosecution’s re-engagement with the witnesses barely two weeks before the start of the trial.

20. Secondly, the Accused, charged with witness interference, were granted interim release without any conditions, and particularly without any restriction on their direct or indirect contact with the witnesses in this case until recently. Following the Appeals Chamber’s determination that their release was granted in error, the Accused remain on interim release, with such a restriction on contact only being recently imposed. Since their release in 2014, neither the Court nor the Prosecution is aware of the extent to which any of the Accused may have had contact with these witnesses. This is a legitimate issue, among others, for the Prosecution to explore with the witnesses prior to the commencement of trial.

21. To conclude, while it may not necessarily be a cause of the recurrent situation at the Court of alleged interference by many defendants with the administration of justice, an absence of Witness Preparation may inhibit, rather than promote, the efforts to deal with the vice. It is submitted that the consistent Court’s practice of Witness Preparation is a critical instrument for dealing with such interference, besides promoting the other benefits discussed above.

(b) Submissions on appealability of the Decision

22. The above Issues are appealable within the meaning of article 82(1)(d) of the Statute. Firstly, they are not mere disagreements with the Decision, but are essential for the determination of the Decision’s correctness, and they arise from the Decision.

23. Secondly, the Issues meet the criteria for leave to appeal in article 82(1)(d). By denying the Prosecution access to the witnesses, barely two weeks before the commencement of the trial, the Decision prejudices the Prosecution's right to prepare and present its case, by re-engaging with its witnesses and the facts underlying their testimony. It also prejudices the benefits of Witness Preparation, which although not discussed by this Decision, have been elaborated by decisions of other ICC Chambers.²⁵ These include the facilitation of a fair, effective and expeditious trial, by ensuring a more accurate, complete, orderly and efficient presentation of the evidence of the witnesses and the protection of the well-being of the witnesses. The above Issues thus significantly affect the fair and expeditious conduct of the proceedings, and the outcome of the trial. Finally, the Appeals Chamber's immediate resolution of the issues would materially advance the proceedings.

24. A request for leave to appeal (and responses thereto) must focus on whether the requirements of article 82(1)(d) are met, and must not engage on the merits or correctness of a Decision.²⁶ In the following submissions, the Prosecution refers to the merits of the Issues only to the extent necessary to demonstrate that they are appealable issues, and not mere disagreements with the Decision, which arise from the Decision and which meet the criteria for leave to appeal.

A. The Issues are appealable issues that arise from the Decision

(a) The First Issue arises from the Decision

25. The Decision offers no reasoned opinion in concluding that "[i]n this case, it is unnecessary and inappropriate to authorise witness preparation as defined in the Kenya Protocols." While the First Issue is based on the "absence" of an item in the Decision (*i.e.* a reasoned opinion), because every Chamber is duty-bound to provide

²⁵ See e.g., ICC-01/09-01/11-524, paras. 31-37; ICC-01/04-02/06-652, paras. 17-18.

²⁶ ICC-01/09-01/11-817, para. 12.

a reasoned opinion, a Chamber's failure to do is sufficient to constitute an appealable issue. Therefore, a decision's failure to provide a reasoned opinion, as in this case, "arises" from the Decision, and is not a mere disagreement with the Decision, but an appealable issue.

26. In meeting its duty to provide a reasoned opinion, a Chamber need not recite every factor it has considered. However a Chamber is under a duty to provide a clear basis for its conclusions.²⁷

27. Although the Decision generally invokes the claimed "risks" of Witness Preparation elucidated in *Lubanga*—the first ICC case on Witness Preparation and which has since been rejected by other ICC Chambers²⁸—it offers no reasoned opinion why in the particular circumstances of this case, it was "unnecessary" and "inappropriate" to authorise Witness Preparation. The Decision does not go beyond its reference to the generalised "risks" associated with Witness Preparation as explained in *Lubanga*, to explain with any sufficient detail why such risks, assuming they exist, equally apply to the particular facts of this case, or which particular circumstances in this case render Witness Preparation "unnecessary" and "inappropriate".

28. The Decision's general reference to the fact that "the instant case is fundamentally concerned with allegations of improper interference with defence witnesses and false testimony"²⁹ does not provide a reasoned decision. The Chamber fails to explain why the mere fact that the charges are based on witness interference—as opposed to any other crime or offence—renders Witness Preparation "unnecessary" and "inappropriate."

29. Likewise, the Decision's assertion that "spontaneity of the witness testimony is of particular importance in these circumstances" is conclusory. No explanation is

²⁷ ICC-01/04-02/12-271, paras. 182, 226; ICC-01/04-01/06-773 OA5, para. 20; ICC-01/04-01/06-774 OA5, para. 30.

²⁸ Decision, para. 21.

²⁹ Decision, para. 23.

provided as to why or even how Witness Preparation—particularly, as proposed—could affect the “spontaneity” of witness testimony.

30. Finally, the Chamber does not elaborate on why the mere fact that the Prosecution interviewed the witnesses in the last three years or their having testified in the *Bemba* Main Case,³⁰ renders Witness Preparation “unnecessary” and “inappropriate.”

(b) The Second Issue arises from the Decision

31. The Second Issue, namely whether the Trial Chamber erred in balancing the potential risks of Witness Preparation *vis-à-vis* the parties’ right to prepare their cases and the substantial benefits of Witness Preparation to an expeditious and fair trial and the well-being of witnesses, arises from the Decision. This is because, in finding that the practice of Witness Preparation fell within the Trial Chamber’s discretion under article 64(2) and (3)(a) of the Statute, but that it was “unnecessary” and “inappropriate” in this case, the Chamber found that the potential “risks are not outweighed by the benefits of the witness preparation.”³¹ For the latter (*i.e.* for the “benefits”) the Decision cites the *Ruto and Sang* Decision,³² but does not discuss those “benefits”.

32. The Decision thus acknowledges that the existence of both potential “risks” and “benefits” associated with witness preparation were key to its exercise of discretion. In this regard, the Chamber’s failure to properly balance these factors arises from the Decision.

33. If leave to appeal is granted in respect of this Issue, the Prosecution will argue, *inter alia*, that by concluding that the “risks” associated with Witness Preparation were not outweighed by the “benefits” of Witness Preparation, the Chamber erred in

³⁰ Decision, para. 24.

³¹ Decision, para. 22.

³² Decision, footnote 34.

its balancing exercise. In a nutshell, the Prosecution will argue that the Chamber erred by ignoring the fundamental right of a calling party to prepare the best way to elicit all the probative evidence from the witness in a complete and focused manner in advance of the in-court testimony. A Chamber can only limit such right in exceptional circumstances where there is a concrete risk to the administration of justice, and it must employ the least intrusive means. The Decision does not substantiate that such circumstances exist in this case to justify its use of the most intrusive remedy – namely, the denial of Witness Preparation. Finally, if leave is granted, the Prosecution will argue that the Decision ignored the substantial benefits of Witness Preparation, and weighed alleged risks attached to such preparation that simply find no support in the Court’s accumulated practical experience on the matter.

34. As argued above, recent consistent practices of the Court recognise the substantial benefits of Witness Preparation, which outweigh any potential risks. These include, in summary, the facilitation of a fair, effective and expeditious trial, by ensuring a more accurate, complete, orderly and efficient presentation of the evidence of the witnesses and the protection of the well-being of the witnesses.

35. If the Prosecution’s request to appeal is granted, the Prosecution will argue that this case will benefit from Witness Preparation. It is a complex case, involving not only multiple charges, but extensive factual allegations and exhibits to which the witnesses will testify. The Prosecution has not interviewed the witnesses recently. Although some of the witnesses testified in the *Bemba* Main Case, the charges and issues in that case materially differ from those in this case. In a nutshell, the totality of the facts of this case requires the Prosecution, in exercising its right to prepare its case, to be able to re-engage with the witnesses and the facts underlying their testimony.

(c) *The Third Issue arises from the Decision*

36. The Third Issue, whether the Trial Chamber erred by taking into account and/or giving weight to extraneous or irrelevant factors, and/or by failing to take into account or accord proper weight to relevant factors, arises from the Decision.

37. This is because, while the Decision does not provide a reasoned opinion (as argued in relation to the First Issue), it mentions some factors it considered in precluding Witness Preparation which were irrelevant and/or were accorded undue weight. These include: the fact that the charges are for witness interference under article 70; that the Prosecution had interviewed the witnesses during the last three years; that the witnesses had testified in the *Bemba* Main Case; and the importance of spontaneity in the witnesses' testimony.³³

38. Secondly, the Decision also alludes to other (unelaborated) factors which, as will be argued in the appeal if leave were to be granted, the Chamber failed to take account of and/or accord proper weight, although very relevant. Moreover, there are other factors that the Decision does not allude to, but were specifically placed before the Chamber. In both instances, the Chamber's failure to consider and/or give proper weight to such factors arises from the Decision.

39. These include firstly, the benefits of Witness Preparation, which the Chamber failed to consider and/or to have accorded proper weight.³⁴ Secondly, was the Chamber's failure to consider, or to have given limited weight to the fact that any potential risk could be mitigated by the Protocol, and other safeguards, such cross-examination and the fact that all counsel are bound by codes of conduct.

40. Thirdly the Chamber erred by failing to consider and/or giving insufficient weight to the complexity of the case; the large number of exhibits in the case; the

³³ Decision, para. 23

³⁴ Decision, para. 22.

time that has lapsed since the Prosecution interviewed the witnesses; and the fact that some witnesses have not testified in *Bemba* Main Case, and thus preparation is needed to assist the recollection of their memory.³⁵

41. Finally, because the Chamber is not aware of the nature and scope of the inconsistent and/or additional evidence that may be generated by Witness Preparation, it erred by considering and/or giving undue weight to the fact that such evidence may be best tested in the courtroom.³⁶

B. The Issues meet the criteria for leave to appeal

42. All Issues individually meet the criteria for leave to appeal in article 82(1)(d).

43. At the heart of each of the Issues is the denial to the Prosecution of the opportunity to undertake Witness Preparation. By denying the Prosecution access to its witnesses, barely two weeks before the commencement of the trial, all three Issues prejudice the Prosecution's right to effectively prepare its case, through re-engaging with its witnesses and the facts underlying their testimony. As argued above, the Prosecution enjoys independence in preparing and presenting its case, and the Chamber has a duty to facilitate this process. The Chamber may limit such independence only in exceptional circumstances where there is a concrete risk to the administration of justice. Witness Preparation presents no such risk, but advances substantial benefits for the conduct of the trial, and for the well-being of witnesses. In any case, any potential risks are mitigated by the safeguards embedded in Witness Preparation Protocols.

44. It follows therefore, that the Issues fundamentally prejudice both the Prosecution's right to prepare, and the benefits of witness preparation, which although not discussed by this Decision, are, as shown above, elaborated by

³⁵ Decision, para. 25.

³⁶ Decision, para. 25.

decisions of other ICC Chambers.³⁷ As noted above, such benefits include, in summary, the facilitation of a fair, effective and expeditious trial, by ensuring a more accurate, complete, orderly and efficient presentation of the evidence of the witnesses and the protection of the well-being of the witnesses. Without Witness Preparation, there is a danger either that the witnesses may fail in their recollection of events due to the passage of time, or will take longer in their recollection of the events. Furthermore, Witness Preparation assists the parties to ensure that the witnesses' testimony in court focuses on relevant matters in the trial.

45. Witness Preparation also assists the parties to prepare focused examination of the witnesses, thereby promoting the fair and expeditiousness conduct of the proceedings. Indeed, because it enables the calling party to know if the witness's testimony has fundamentally changed, such party can then take fundamental decisions, such as whether or not to call the witness – thereby avoiding needless wastage of Court's time and resources. The above Issues, by prejudicing all these benefits thus significantly affect the fair and expeditious conduct of the proceedings, and the outcome of the trial.

46. Another important benefit of Witness Preparation is that the calling party may identify and disclose to the other parties any inconsistent and/or additional evidence that may be generated from the exercise. Such early disclosure may assist a timely investigation in preparation for cross-examination and will thus promote a fair and expeditious conduct of the proceedings.

³⁷ See e.g., ICC-01/09-01/11-524, paras. 31-37; ICC-01/04-02/06-652, paras. 17-18.

C. The Appeals Chamber's immediate resolution of the Issues would materially advance the proceedings

47. Finally, the Appeals Chamber's immediate resolution of the issues would materially advance the proceedings.

48. This is because the Appeals Chamber's intervention, among others, will enable, not only the Prosecution, but also the Defence, if it so wishes in respect of its witnesses, to conduct Witness Preparation with all its attendant benefits. These benefits, as shown above, include the facilitation of an expeditious trial, by ensuring a more accurate, complete, orderly and efficient presentation of the evidence of the witnesses. An immediate resolution of the Issues will thus materially advance the proceedings.

III. Relief Requested

49. For the reasons above, the Chamber should grant the Prosecution's request for leave to appeal.



Fatou Bensouda, Prosecutor

Dated this 21st September 2015
At The Hague, The Netherlands.