

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 3 November 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

Directions on Defence Presentation of Evidence

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

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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*, having regard to Articles 31, 66 and 67(1)(e) and (g) of the Rome Statute ('Statute'); Rules 78-80 of the Rules of Procedure and Evidence and Regulation 54 of the Regulations of the Court ('Regulations'), issues the following 'Directions on Defence Presentation of Evidence'.

1. At this point in the trial, the Office of the Prosecutor ('Prosecution') has mostly completed its presentation of evidence and, barring exceptional circumstances, should complete its presentation of evidence by the last hearing in the case this year, on Friday 20 November 2015. The Single Judge therefore considers it appropriate to give certain directions as regards the presentation of evidence by the five defence teams ('Defence').
2. Before setting out these directions, the Single Judge recalls the following:
 - i. The onus is on the Prosecution to prove the guilt of the accused, pursuant to Article 66(2) of the Statute. Conversely, the accused have the right to remain silent and need not present any evidence, as foreseen in Article 67(1)(g) of the Statute.¹ If the Defence does elect to present evidence, the Chamber may set deadlines and request information on their presentation, including: (a) a summary of the evidence the accused intend to rely on; (b) the estimated length of the questioning of witnesses and discussion of

¹ Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Second Decision on disclosure by the defence, 19 November 2009, ICC-01/04-01/06-2192-Red, paras 54-55 (redacted version notified 20 January 2010); Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on disclosure by the defence, 20 March 2008, ICC-01/04-01/06-1235-Corr-Anx1, para. 27 (corrigendum notified 11 June 2008).

other evidence; (c) the number and identity (including any pseudonyms) of the witnesses to be called and (d) the disclosure of evidence.²

- ii. The disclosure obligations of the Defence and Prosecution differ significantly, because of the particular role the two parties have at trial.³ This said, the Defence must permit the Prosecution to inspect any books, documents, photographs and other tangible objects in their possession or control, which are intended for use by the Defence as evidence for purposes at trial.⁴ In this regard, the Single Judge has taken note of the Defence disclosure already effectuated up until now.
- iii. At this point, and as set out in the 'Directions on the conduct of the proceedings' ('Rule 140 Decision'), the Defence should have already notified the Prosecution of any intent to raise an alibi or grounds for excluding criminal responsibility.⁵
- iv. The Defence may present an opening statement at the beginning of the Defence presentation of evidence, if the accused so wish.⁶
- v. The defence teams are to decide the order for Defence presentation of evidence amongst themselves.⁷
- vi. The timelines and procedures as set out in paragraphs 20-28 of the Rule 140 Decision, and any variations thereto,⁸ apply to all parties when presenting

² Regulation 54(b)-(e) and (l) of the Regulations. *See also* Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on defence disclosure and related issues, 24 February 2012, ICC-01/05-01/08-2141, page 18; Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the "Prosecution's Application Concerning Disclosure by the Defence Pursuant to Rules 78 and 79(4)", 14 September 2010, ICC-01/04-01/07-2388, page 23.

³ ICC-01/04-01/07-2388, para. 36.

⁴ Rule 78 of the Rules.

⁵ Directions on the conduct of the proceedings, 2 September 2015, ICC-01/05-01/13-1209, para. 8. *See also* Rule 79 of the Rules.

⁶ Decision on Requests Related to Timing of Defence Opening Statements, 10 September 2015, ICC-01/05-01/13-1231; Rule 140 Decision, ICC-01/05-01/13-1209, paras 5-7.

⁷ Rule 140 Decision, ICC-01/05-01/13-1209, para. 10.

their evidence. In particular, any requests for protective measures must be made as soon as possible.⁹

A. Opening statements

3. The length of time each defence team gets for its opening statements has already been decided in the Rule 140 Decision.¹⁰
4. The defence teams are directed to notify any material they intend to use in the course of their opening statements to the Chamber and other parties eight days prior to commencing the Defence opening statements. All such material must be capable of being understood in both working languages of the Court. Any objections to the use of such material shall be filed five days prior to the commencement of the Defence opening statements.

B. Defence disclosure deadlines

5. By 3 December 2015, the Defence must disclose all material in its possession which falls under its disclosure obligations.
6. By 7 January 2016, the Defence must disclose all outstanding materials it intends to use during its evidence presentation.
7. Any redactions to disclosable materials are to be applied in accordance with the Chamber's redaction protocol.¹¹

⁸ Email from a Legal Officer of the Chamber to the parties, 28 October 2015 at 09:40 (variance granted to file lesser redacted versions of transcripts two weeks from notification); Email from a Legal Officer of the Chamber to the parties, 12 October 2015 at 09:08 (variance granted to submit transcript corrections within ten working days from notification).

⁹ Rule 140 Decision, ICC-01/05-01/13-1209, para. 24.

¹⁰ Rule 140 Decision, ICC-01/05-01/13-1209, para. 5.

¹¹ Annex to the Decision on Modalities of Disclosure, 22 May 2015, ICC-01/05-01/13-959-Anx.

C. Length and timing of Defence presentation of evidence

8. By 3 December 2015, the defence teams must provide estimates on the number of witnesses they intend to call and the number of hours they intend to examine each of their witnesses. The Chamber will then give a final determination of the number of hours the defence teams will have to make their presentation of evidence. In this context, the Single Judge refers the defence teams to the possibility of consulting each other with a view to mounting a common defence, or presenting common witnesses, to the extent possible.

D. Lists of witnesses and evidence

9. By 3 December 2015, each defence team must provide a provisional list of witnesses. By this same date, each defence team is also requested to inform the Chamber (i) whether it anticipates any of the witnesses testifying via video-link; (ii) whether issues of self-incrimination may arise in relation to any of the witnesses and (iii) in which language the witnesses are expected to testify.
10. By 7 January 2016, each defence team must provide its final list of witnesses - in the order they will be called to appear - and lists of evidence. Each defence team shall also inform the Chamber of any intention to raise an alibi or grounds for excluding criminal responsibility.

E. Summaries of anticipated testimony of witnesses

11. The Prosecution provided summaries of the anticipated testimony of its witnesses.¹² Though these summaries were not ordered by the Presiding Judge, they have proven to be of assistance and the Defence is directed to prepare and submit comparable summaries for the witnesses it intends to call.

¹² Notification of Witness Summaries, 17 September 2015, ICC-01/05-01/13-1263-Conf (with annex).

12. By 7 January 2016, the Defence is to file these summaries. Noting in particular the fact that prior statements may not be available, the Defence is requested to prepare these summaries in a sufficiently detailed and comprehensive fashion to enable the parties and the Chamber to prepare meaningfully.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

ADOPTS the aforementioned directions concerning the Defence presentation of evidence.

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



Judge Bertram Schmitt, Single Judge

Dated 3 November 2015

At The Hague, The Netherlands