

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **22 January 2016**

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***

Confidential

Decision Regarding Defence Evidence

Decision 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

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

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Others

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 Article 67(1) of the Rome Statute ('Statute') and Regulation 23 *bis*, 29 and 35 of the Regulations of the Court ('Regulations'), issues the following 'Decision Regarding Defence Evidence'.

I. Procedural History

1. On 3 November 2015, the Single Judge set certain deadlines on the presentation of evidence by the five defence teams, including the provision of a final list of witnesses (in the order they will be called), together with the summaries of anticipated testimony by 7 January 2016.¹ That deadline was subsequently postponed to 21 January 2016.²
2. On 21 January 2016, the five defence teams submitted the information, as ordered.³ However, the defence of Narcisse Arido ('Arido Defence') did not comply with the order to provide summaries of anticipated testimonies of the witnesses it intends to call, without any further explanation. Further, the defence of Aimé Kilolo Musamba ('Kilolo Defence') indicated the intention to add possibly two more witnesses in the event that those persons are authorised

¹ Directions on Defence Presentation of Evidence, ICC-01/05-01/13-1450.

² Further Directions on the Conduct of the Proceedings in 2016, 9 December 2015, ICC-01/05-01/13-1518.

³ Narcisse Arido's List of Witnesses and Evidence, ICC-01/05-01/13-1557 (with two annexes); Notification de l'équipe de Défense de M. Fidèle BABALA WANDU du dépôt de sa liste de témoins, des éléments de preuve et de la divulgation des éléments par l'équipe Babala en application de la « Decision on Defence Presentation of Evidence » (ICC-01/05-01/13-1450) et de la « Further Directions on the Conduct of the Proceedings in 2016 » (ICC-01/05-01/13-1518), ICC-01/05-01/13-1558 (with three annexes); Jean-Jacques Mangenda's Lists of Evidence and Witnesses, ICC-01/05-01/13-1559 (with two annexes); Defence notification of the list of witnesses and list of evidence and request for variation of the deadline, ICC-01/05-01/13-1560-Conf (with seven annexes) Soumissions de la défense de monsieur Aimé Kilolo concernant sa liste de témoins et la liste de preuves, ICC-01/05-01/13-1562 (with four annexes).

to testify in this case.⁴ No names or summaries of anticipated testimony were provided in respect of those persons.

3. On 22 January 2016, the Chamber was notified of the 'Defence request to be authorised not to identify two potential witnesses' ('Kilolo Request') in which the Kilolo Defence provides some additional background information as to the identity of the two potential witnesses and the general subject-matter of their anticipated testimony.⁵ It informs the Chamber that it is in the process of trying to expedite receipt of the necessary consent so that it might identify these two witnesses to the Chamber and the parties.⁶ The Kilolo Defence, therefore, requests that it 'not be required to identify these two witnesses pending [its] attempts to resolve these sensitive issues'.⁷
4. On the same day, the Chamber was notified of the 'Defence Request to File a Revised, Corrected List of Evidence' ('Bemba Request') submitted by the defence of Jean-Pierre Bemba Gombo ('Bemba Defence').⁸

II. Kilolo Request and Bemba Request

5. As a preliminary matter, the Single Judge notes that the Kilolo Request was filed confidential *ex parte*. Considering the necessity to notify the other parties of the nature of the Kilolo Request, the Single Judge orders the Kilolo Defence to submit a redacted confidential version of its filing by Monday, 25 January 2016, at 16h00. Moreover, the Single Judge has sufficient information before him to decide upon the Kilolo Request and Bemba Request and is of the view that no further responses by the parties were necessary.

⁴ Kilolo Request, ICC-01/05-01/13-1562, para. 10; see also confidential Annex A.

⁵ Defence request to be authorised not to identify two potential witnesses, ICC-01/05-01/13-1563-Conf-Exp.

⁶ Kilolo Request, ICC-01/05-01/13-1562, para. 5.

⁷ Kilolo Request, ICC-01/05-01/13-1562, para. 8.

⁸ Defence Request to File a Revised, Corrected List of Evidence, ICC-01/05-01/13-1565-Conf (with one annex).

6. The Single Judge understands the Kilolo Request to mean that the Kilolo Defence actually seeks an extension of time, after the lapse of the 21 January 2016 deadline, in order to complete its final list of witnesses. According to Regulation 35(2) of the Regulations, such extension may only be granted if the Kilolo Defence can demonstrate that it was "unable to file the application within the time limit for reasons outside [its] control". Even though the Single Judge has not been provided with sufficient justification why the application of an extension of time could not be submitted, or the consultation process involving the two witnesses could not be concluded prior to the 21 January 2016 deadline, he nevertheless, in light of Article 67(1) of the Statute agrees, on an exceptional basis, that the names of the two potential witnesses be added at a later point to the final list of witnesses, if necessary. However, with a view to minimising any potentially negative impact on the further course of proceedings and the rights of the other parties in this case, the Kilolo Defence shall provide the names of the two witnesses, together with the summary of their anticipated testimonies, by Monday, 1 February 2016, at 16h00 at the latest. The Single Judge stresses that granting the Request at this point in time is without prejudice to any subsequent decision to hear the witnesses concerned.
7. The Bemba Defence requests that it be authorised to correct its list of evidence with the addition of ten items of evidence which were inadvertently left off the list, and to revise its list of evidence with the addition of four pieces of evidence.⁹ The Single Judge does not find any prejudice in the addition of the ten evidentiary items in question, noting that they have already been disclosed to the parties.¹⁰ As regards the four pieces of evidence to be added, the Single Judge accepts that the Bemba Defence could not have included them in the list

⁹ Bemba Request, ICC-01/05-01/13-1565-Conf, para. 4.

¹⁰ Bemba Request, ICC-01/05-01/13-1565-Conf, para. 3.

of evidence prior to the 21 January 2016 deadline. As such, the Bemba Request is granted.

III. Order to the Arido Defence

8. The Single Judge notes that no summaries of anticipated testimonies of the witnesses, indicated in the list of witnesses, have been provided by the Arido Defence. The Single Judge recalls Regulation 29 of the Regulations and orders the Arido Defence to provide this information, as previously ordered, by no later than Tuesday, 26 January 2016, at 16h00.

FOR THE FOREGOING REASONS THE SINGLE JUDGE HEREBY

ORDERS the Kilolo Defence to file a confidential redacted version of filing ICC-01/05-01/13-1563-Conf-Exp by **Monday, 25 January 2016, at 16h00;**

GRANTS the Kilolo Request extending the deadline to notify the names of two additional witnesses and related summaries of their anticipated testimonies by **Monday, 1 February 2016, at 16h00;**

GRANTS the Bemba Request to submit a revised and corrected list of evidence;

ORDERS the Arido Defence to file the summaries of the anticipated testimonies of the witnesses it intends to call by **Tuesday, 26 January 2016, at 16h00.**

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

A handwritten signature in black ink, consisting of stylized, cursive letters, positioned above a horizontal line.

Judge Bertram Schmitt
Single Judge

Dated 22 January 2016

At The Hague, The Netherlands