

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/13
Date: 24 February 2016

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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO

**Public Document
with
Public Annex A**

**Prosecution's Response to the Materials the Defence Intends to Use During
their Opening Statements**

Source: The Office of the Prosecutor

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

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1. The Office of the Prosecutor (“Prosecution”) does not object to the materials identified by the Kilolo,¹ Babala,² and Arido³ Defences for use during the course of their respective opening statements. However, as appears from these materials, there may be some lack of clarity as to the proper scope of opening statements, which is quite distinct from that of closing statements. Specifically, the scope of opening statements is limited to the summarisation of, or commentary on, the evidence that the given Party intends to adduce during its case-in-chief and what it will prove. It is not evidence in itself, nor is it for the purpose of argument.⁴

2. Further, the Prosecution requests that to the extent the Defence intend to use documents disclosed by the Prosecution, that the Defence respect the assigned confidentiality designation.

3. Finally, should the Accused intend to make an oral unsworn statement, pursuant to article 67(1)(h) of the Rome Statute, the Prosecution requests timely notice thereof, and that the Trial Chamber VII establish reasonable and clear parameters in terms of time and content, in accordance with the Court’s

¹ ICC-01/05-01/13-1643-Conf-AnxA.

² ICC-01/05-01/13-1639-AnxA-Corr.

³ ICC-01/05-01/13-1644-Conf-AnxA.

⁴ See e.g. ICC-01/04-01/06-1346, para. 1 (the purpose of opening statements is so that the Parties can “explain their respective cases”); *Prosecutor v. Kunarac et al.*, Decision on Prosecution’s Motion for Exclusion of Evidence and Limitation of Testimony, Case Nos. IT-96-23 & 23/1, 3 July 2000, para. 10 (“the Trial Chamber does emphasise that there is no justification for the defence submission that the material in the opening statement cannot be limited. The opening statements which the parties are permitted by Rule 94 to make are intended only to assist the Trial Chamber in understanding the evidence *which is to be placed before it*”) (emphasis added); *Prosecutor v. Sesay et al.*, Prosecution Opening Statement, Case No. SCSL-04-15-T, 5 July 2005, p. 6, lns. 32-34, p. 8, lns. 21-22 (an opening statement “is not evidence, it is merely a statement of expectations” and “a mere declaration of intentions”); *Prosecutor v. Sesay et al.*, Status Conference, Case No. SCSL-04-15-T, 2 May 2007, p. 31, lns. 2-4 (an opening statement “isn’t the final argument” but “what [the Defence] intend to lead as evidence”); *Prosecutor v. Norman et al.*, Status Conference, Case No. SCSL-04-14-T, 19 January 2006, pp. 24, lns. 17-21, 24-25, pp. 28-29, lns. 26-6 (stating that “a party may make an opening statement confined to the evidence he intends to present in support of his case”, that “opening statements is not the arguments at the end of the trial, as such”, and “[t]o argue about the validity and trustworthiness or otherwise of a witness for the Prosecution is not part of what is normally contained in an opening statement, as such. It is to be confined to the evidence you intend to lead.”); ADC-ICTY, *Manual on International Criminal Defence: ADC-ICTY Developed Practices*, 2011, para. 42 (noting that “[t]he primary purpose of the Defence opening statement [...] is to provide an overview of the Defence evidence: the witnesses *who will be* called and the nature of the information *they are expected to present*.” Also noting that opening statements are “not meant to be argumentative”) (emphasis added).

jurisprudence.⁵ If the Accused intend to use documents for their unsworn statements, those documents should be identified in advance.



Fatou Bensouda, Prosecutor

Dated this 24th day of February 2016
At The Hague, The Netherlands

⁵ See ICC-02/11-01/15-205, para. 25 (“Shall either accused decide to exercise this right, the respective Defence team shall file a notice with the Chamber, prior to the start of its presentation of evidence, if any. Thereafter, the Chamber will rule on the appropriate moment and modalities for the accused to exercise this right.”); ICC-01/05-01/08-1023, para. 21 (“He may make an unsworn statement at his convenience but shall nonetheless inform the Trial Chamber in order that it may decide on the appropriate moment and modalities for so doing.”); ICC-01/04-02/06-619, para. 19 (“Should the accused decide to exercise his right under Article 67(l)(h) of the Statute to make an unsworn oral or written statement, the Defence shall file a notice prior to the start of the Defence’s case, if applicable, so as to allow the Chamber to rule on the appropriate moment and modalities.”); ICC-01/04-01/07-1665, para. 12 (“Whenever an accused wishes to make an unsworn statement, he or she shall inform the Chamber, which will decide on the appropriate moment and modalities for making the statement.”).