

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 April 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***

Public

**Decision on Kilolo Request for Extension of Time for the Filing of the Closing
Submissions**

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*, having regard to Article 67(1)(b) of the Rome Statute ('Statute'), Rule 141 of the Rules of Procedure and Evidence ('Rules') and Regulations 23 *bis*(3) and 35 of the Regulations of the Court ('Regulations') issues the following 'Decision on Kilolo Request for Extension of Time for the Filing of the Closing Submissions'.

I. Procedural History and Submissions

1. On 9 December 2015, the Single Judge issued a decision on the further timetable of the conduct of the proceedings ('9 December 2015 Decision').¹ Therein, the Single Judge, *inter alia*, set the timeline for the filing of closing submissions, holding that the submissions have to be filed three weeks after the closure of the submission of the evidence ('Closing Submissions Deadline') and explaining that the Office of the Prosecutor ('Prosecution') and the defence teams must file their respective submissions at the same time.²
2. On 15 January 2016, the Single Judge rejected a request by the Prosecution to vary the order of closing submissions ('15 January 2016 Decision') highlighting that 'the purpose of a closing brief is not to respond to the other party's closing brief but to express their own position regarding the charges and the evidence'.³
3. On 22 March 2016, the defence for Mr Kilolo ('Kilolo Defence') filed a request for extension of time of the Closing Submissions Deadline and to amend the

¹ Further Directions on the Conduct of the Proceedings in 2016, ICC-01/05-01/13-1518.

² 9 December 2015 Decision, ICC-01/05-01/13-1518, paras 21-22.

³ Decision on Prosecution's Motion for Reconsideration on the Closing Submissions Directions, ICC-01/05-01/13-1552, para. 10.

order in which these submissions are to be filed ('Request').⁴ It requests an extension of four weeks and that the defence be allowed to file its submission after having received the final submissions of the Prosecution.⁵

4. On 23 March 2016, the defence for Mr Babala filed its response, joining the Request.⁶
5. On 29 March 2016, the Prosecution filed its response, opposing the Request with regard to the modification of the filing order and deferring to the Chamber's discretion regarding the extension of time.⁷
6. On 4 April 2016, the defence for Mr Arido filed its response, supporting the Request.⁸ On the same day, the defence for Mr Mangenda also provided its response, supporting the Request in respect of the modification of the filing order and not opposing it otherwise.⁹
7. The Kilolo Defence submits that an extension is warranted because of the limited time available to the defence. It argues that since December 2015 it has been occupied with preparations for the presentation of its evidence, including organisation of declarations under Rule 68(2)(b) of the Rules, as well as the preparation of the examination of the witnesses called by the other defence teams. Due to the ensuing work and the unexpected withdrawal of some

⁴ Demande d'extension du délai pour le dépôt des conclusions finales de la défense et modification de l'ordre du dépôt des conclusions finales des parties, ICC-01/05-01/13-1739-Conf, notified on 23 March 2016.

⁵ Request, ICC-01/05-01/13-1739-Conf, para. 5.

⁶ Observations de la Défense de M. Fidèle Babala Wandu à la « Demande d'extension du délai pour le dépôt des conclusions finales de la défense et modification de l'ordre de dépôt des conclusions » (ICC-01/05-01/13-1739-Conf), ICC-01/05-01/13-1744-Conf.

⁷ Prosecution's Response to the Kilolo Defence's « Demande d'extension du délai pour le dépôt des conclusions finales de la défense et modification de l'ordre du dépôt des conclusions finales des parties » - ICC-01/05-01/13-1739-Conf, ICC-01/05-01/13-1756-Conf.

⁸ Narcisse Arido's Response to 'Demande d'extension du délai pour le dépôt des conclusions finales de la défense et modification de l'ordre du dépôt des conclusions finales des parties' (ICC-01/05-01/13-1739-Conf), ICC-01/05-01/13-1761-Conf.

⁹ Defence Response to "Demande d'extension du délai pour le dépôt des conclusions finales de la défense et modification de l'ordre du dépôt des conclusions finales des parties" (ICC-01/05-01/13-1739-Conf), ICC-01/05-01/13-1764-Conf.

defence witnesses, which led to a shortening of the time that was otherwise anticipated to be available to prepare its closing submissions, the Kilolo Defence avers that it is not possible to meet the Closing Submissions Deadline.¹⁰ Further, the Kilolo Defence submits that the novelty and complexity of the issues as well as the specific facts of the charges justify an extension of time.¹¹

8. In respect of the order in which the closing submissions have to be filed, the Kilolo Defence argues that Article 66(2) of the Statute puts the onus of proof on the Prosecution. Therefore, according to the Kilolo Defence, it should have the right to first receive the closing submissions of the Prosecution and only then file its own. Further, it submits that this has been the practice in other trials before this Court.¹²

II. Analysis

9. As a preliminary matter, the Single Judge notes that the submissions and responses of the parties have been filed confidentially. There is no apparent reason for this classification and, accordingly, the Single Judge orders the Registry to re-classify them as public.
10. In respect of the first prong of the Request, the extension to file closing submissions, the Single Judge notes that the testimony of the last witness was completed on 22 March 2016.¹³ This means the defence had several weeks available to prepare their closing submissions without the additional duty of having to prepare for hearings. Further, the Single Judge reminds the parties that the deadline only commences ‘three weeks after the submission of evidence closes’,¹⁴ which – in accordance with Rule 141(1) of the Rules – has yet to be

¹⁰ Request, ICC-01/05-01/13-1739-Conf, paras 12-17.

¹¹ Request, ICC-01/05-1/13-1739-Conf, paras 18-23.

¹² Request, ICC-01/05-1/13-1739-Conf, paras 24-28.

¹³ Transcript of Hearing, 22 March 2016, ICC-01/05-01/13-T-47-CONF-ENG.

¹⁴ 15 January 2016 Decision ICC-01/05-01/13-1552, para. 10.

declared by the Presiding Judge. For these reasons, the Single Judge is of the view that there is ample time to prepare the closing submissions and, accordingly, finds that no 'good cause' is shown within the meaning of Regulation 35(2) of the Regulations to extend the Closing Submissions Deadline.

11. With regard to the second prong of the Request, to change the order for the filing of the closing submissions, the Single Judge recalls, that this issue has been the subject of two previous decisions.¹⁵ Therefore, it is a request for reconsideration. Recalling the applicable law on reconsidering decisions,¹⁶ no new arguments are presented by any of the defence teams which either show that there is a 'clear error of reasoning' or that reconsideration is necessary 'to prevent an injustice'. Contrary to the assertion of the Kilolo Defence, the fact that the burden of proof lies with the Prosecution, in accordance with Article 66(2) of the Statute, has no implication on the sequence of filings by the parties. Further, the Single Judge emphasises once more that, in accordance with Rule 141(2) of the Rules, the 'Defence has the right to present closing statements last, and may orally respond to the Prosecution's arguments then.'¹⁷ Finally, reference is made to the purpose of closing submissions, as set out in the 15 January 2016 Decision.
12. Considering the above, the Single Judge rejects the Request.

¹⁵ 9 December 2015 Decision, ICC-01/05-01/13-1518, para. 5.

¹⁶ Decision on Defence Request for Reconsideration of or Leave to Appeal 'Decision on "Defence Request for Disclosure and Judicial Assistance"', 24 September 2015, ICC-01/05-01/13-1282, para. 8; Decision on Kilolo Defence Request for Reconsideration, 15 July 2015, ICC-01/05-01/13-1085-Conf, para. 4; 15 January 2016 Decision ICC-01/05-01/13-1552, para. 6.

¹⁷ 9 December 2015 Decision, ICC-01/05-01/13-1518, para. 22.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request; and

DIRECTS the Registry to reclassify ICC-01/05-01/13-1739-Conf, ICC-01/05-01/13-1744-Conf, ICC-01/05-01/13-1756-Conf, ICC-01/05-01/13-1761-Conf and ICC-01/05-01/13-1764-Conf as 'public'.

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

A handwritten signature in black ink, appearing to read 'Bertram Schmitt', is written over a horizontal line.

Judge Bertram Schmitt, Single Judge

Dated 13 April 2016

At The Hague, The Netherlands