

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 18 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 Babala Defence Request for Reconsideration of Closing Submission
Page Limit**

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

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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 Regulation 37 of the Regulations of the Court, issues the following 'Decision on Babala Defence Request for Reconsideration of Closing Submission Page Limit'.

1. On 9 December 2015, the Single Judge gave, *inter alia*, certain directions on closing submissions and statements. The Single Judge required that closing submissions in this case would be a maximum of 100 pages long.¹
2. On 15 January 2016, the Single Judge partially granted a request from the Office of the Prosecutor ('Prosecution') for additional pages. The Single Judge allowed the Prosecution to make a 150 page closing submission, permitting the extension on grounds that the Prosecution's submissions are intended to reflect the individual criminal responsibility of all five accused.² In response to an argument from the defence for Mr Babala ('Babala Defence') that the defence teams should get the same number of additional pages, the Single Judge indicated that he remained 'unconvinced, lacking any further substantiation, that this is necessary. It is also noted that the defence teams will each set out their final positions on the charges and evidence presented in relation to the accused concerned'.³
3. On 13 April 2016, the Babala Defence requested reconsideration of the 100 page limit in order to be given an extra 100 pages ('Request').⁴

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

² Decision on Prosecution's Motion for Reconsideration of the Closing Submissions Directions, ICC-01/05-01/13-1552.

³ ICC-01/05-01/13-1552, para. 9.

⁴ *Requête de la Défense de M. Fidèle Babala Wandu en reconsidération de la « Further Directions on the Conduct of the Proceedings in 2016 », aux fins d'obtenir une extension du nombre de pages de ses conclusions finales*, ICC-01/05-01/13-1801.

4. On 15 April 2016,⁵ the Prosecution opposed the Request.⁶
5. That same day, the defence for Mr Kilolo ('Kilolo Defence') joined the Request, submitting in the alternative that if the Request is not granted the defence teams should be given at least as many pages as the Prosecution for closing submissions.⁷
6. Recalling the applicable law on reconsidering decisions,⁸ the Single Judge considers that the Babala Defence fails to demonstrate a 'clear error of reasoning' or that reconsideration is necessary 'to prevent an injustice'.
7. The Babala Defence makes reference to needing additional pages in order to address '*du volume de documents déposés au dossier par les Parties, spécialement le Procureur, et surtout des non-dits, des allégations infondées et des insinuations*'.⁹ However, the Babala and Kilolo Defence both fail to substantiate why the ambit of issues to which they need to respond increased so dramatically since the decision of 15 January 2016. The Babala Defence does mention the number of items disclosed and submitted during the course of the defence case,¹⁰ but the original 100 page limit foresaw that new evidence would be addressed during the defence case. The Single Judge is not persuaded that the amount of evidence

⁵ The response deadline was shortened to this date. Email from Trial Chamber VII Communications to the parties, 13 April 2016 at 13:09.

⁶ Prosecution's Response to « *Requête de la Défense de M. Fidèle Babala Wandu en reconsidération de la 'Further Directions on the Conduct of the Proceedings in 2016', aux fins d'obtenir une extension du nombre de pages de ses conclusions finales* » (ICC-01/05-01/13-1801), ICC-01/05-01/13-1808.

⁷ Adjunction de la défense de monsieur Aimé Kilolo à la « *Requête de la Défense de M. Fidèle Babala Wandu en reconsidération de la « Further Directions on the Conduct of the Proceedings in 2016 », aux fins d'obtenir une extension du nombre de pages de ses conclusions finales* (ICC-01/05-01/13-1801), ICC-01/05-01/13-1809.

⁸ 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.

⁹ Request, ICC-01/05-01/13-1801, para. 7.

¹⁰ Request, ICC-01/05-01/13-1801, paras 20-25.

in the defence case warrants additional pages, particularly in view of the fact that nine witnesses out of the defence teams' original list of 21 did not testify.¹¹

8. The Single Judge also emphasises that certain Babala Defence arguments related to the prejudice caused by a 100 page limit are simply incorrect. The Babala Defence submits that its closing submissions are '*la seule et unique opportunité pour la Défense d'exposer de façon claire et exhaustive ses positions*', ignoring the fact that the Single Judge explicitly reminded the defence that its arguments throughout the trial are on record and that 'there is no need to recapitulate the argumentation advanced at trial' in closing submissions.¹² The Babala Defence makes specific reference to its need to make submissions on Article 25(3)(c) of the Statute,¹³ failing to mention it was already permitted to make submissions on this mode of liability which remain under consideration by the Chamber.¹⁴ The Babala Defence also omits the fact that it is entitled to make closing statements after all closing submissions are filed, affording a further opportunity to address the evidence and the arguments of the other parties.
9. Noting the discrete scope and purpose of closing submissions set out by the Single Judge previously,¹⁵ these arguments cannot justify additional pages. The Kilolo Defence's alternative request for a page limit equal to the Prosecution – which amounts to requesting a 50 page extension – is likewise rejected for lack of substantiation.

¹¹ See Annex of *Soumission conjointe des équipes de Défense de MM. Bemba, Kilolo, Mangenda, Babala et Arido relative à l'ordre de la Chambre* « Directions relating to certain defence witnesses and appearance order » (ICC-01/05-01/13-1578), 12 February 2016, ICC-01/05-01/13-1624. The Chamber had an approximate indication of how many defence witnesses would testify prior to the 100 page limit being set. See ICC-01/05-01/13-1518, para. 3 (footnote 5).

¹² ICC-01/05-01/13-1518, para. 21.

¹³ Request, ICC-01/05-01/13-1801, para. 19.

¹⁴ *Observations de la Défense de M. Fidèle Babala sur les éléments constitutifs de l'atteinte à l'administration de la justice prévue à l'article 70 ainsi que sur les modalités de responsabilité et leur applicabilité* (ICC-01/05-01/13-T-8-CONF- FRA), 1 June 2015, ICC-01/05-01/13-973.

¹⁵ ICC-01/05-01/13-1518, para. 21; ICC-01/05-01/13-1552, para. 10.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Babala and Kilolo Defence requests.

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


Judge Bertram Schmitt, Single Judge

Dated 18 April 2016

At The Hague, The Netherlands