

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: **English**

No.: **ICC-01/05-01/13**  
Date: **22 November 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, AIMÉ KILOLO***  
***MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA***  
***WANDU AND NARCISSE ARIDO***

**Public Document**

**Prosecution's Request to Hear Witness P-0256's Testimony *via* Video-Link**

**Source:** 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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**Victims Participation and Reparations Section**

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## I. Introduction

1. The Office of the Prosecutor (“Prosecution”) requests that Witness P-0256’s testimony be heard *via* video-link to secure his appearance on 12 and, possibly, 13 December 2016, pursuant to article 69(2) of the Rome Statute (“Statute”) and rule 67 of the Rules of Procedure and Evidence (“Rules”). Proceeding in this way is not prejudicial to or inconsistent with the Convicted Persons’ rights, nor does it detrimentally affect the fairness of the sentencing proceedings.

## II. Submissions

2. Trial Chamber VII (“Chamber”) should permit P-0256’s testimony *via* video-link. The Witness’s video-link testimony is justified and appropriate in the circumstances, particularly given his current location, and the nature of his involvement in the events comprising the charges in this case. Permitting P-0256’s video-link testimony will ensure the efficient presentation of evidence and is consistent with the Chamber’s prior practice.

3. Article 69(2) grants the Chamber broad discretion to permit the presentation of evidence by means other than in-court personal testimony as long as this does not violate the Statute and accords with the Rules.<sup>1</sup> As a corollary, this Chamber has also recognised that Parties may be accorded a certain degree of deference regarding the modality of their witnesses’ appearance (in-court or *via* video-link), subject to countervailing considerations, including the logistical burden on the Registry and the Chamber’s overarching obligation to ensure a fair and expeditious trial.<sup>2</sup>

4. P-0256’s video-link testimony gives rise to no significant countervailing considerations, nor in any way interferes with the Chamber’s statutory obligations. To the contrary, as noted, the Witness’s location and the circumstances of his involvement in this case, make proceeding *via* video-link more conducive to the

<sup>1</sup> ICC-01/05-01/13-1697, para.14 (*referring to* ICC-01/05-01/08-1386, OA5 OA6, para. 77) (“Decision”).

<sup>2</sup> ICC-01/05-01/13-1697, para.16.

efficient administration of justice than securing his in-court testimony. It would not only guarantee his appearance on the scheduled dates,<sup>3</sup> but also reduce any barriers or risks that his travel to The Hague may entail.

5. The use of video-link testimony would not be prejudicial to or inconsistent with the rights of the Convicted Persons. In these particular circumstances, there is no meaningful difference between receiving the testimony of P-0256 *via* video-link and in-person.<sup>4</sup> The Convicted Persons, particularly Arido, will have the opportunity to observe and cross-examine the witness in the same manner they would have if he appeared physically in the courtroom.<sup>5</sup> Importantly, the Chamber's opportunity to observe the Witness's demeanour, potentially informing its determination of his credibility, will not be impaired. Further, the proposed video-link would not detrimentally affect the fairness of the sentencing procedure, given that the Chamber already confirmed that it does not evaluate video-link witnesses any differently than in-court witnesses.<sup>6</sup>

### III. Conclusion

6. In light of the above, the Prosecution requests that the Chamber authorise the testimony of Witness P-0256 to be heard *via* video-link on 12 December 2016 and any subsequent date that the Chamber may consider appropriate.



**Fatou Bensouda, Prosecutor**

Dated 22<sup>nd</sup> Day of November 2016  
At The Hague, The Netherlands

<sup>3</sup> The Registry has confirmed to the Prosecution that a video-link appearance can, in principle, be arranged for the sentencing hearing on 12 and 13 December 2016.

<sup>4</sup> See ICC-01/05-01/13-1697, para. 9.

<sup>5</sup> ICC-01/05-01/13-1697, paras. 12, 20.

<sup>6</sup> ICC-01/05-01/13-1697, para. 15.