

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/05-01/13**
Date: **25 November 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 Prosecution's Request to Hear P-256's Testimony via Video-Link

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

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

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 ('Court'), issues the following 'Prosecution's Request to Hear Witness P-256's Testimony via Video-Link', 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 69(2) of the Rome Statute and Rule 67 of the Rules of Procedure and Evidence.

1. On 19 October 2016, the Chamber convicted Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido of offences against the administration of justice ('Judgment').¹
2. On 11 November 2016, following an indication that the Office of the Prosecutor ('Prosecution') sought to submit P-256's written statement for purposes of sentencing, the Chamber indicated that 'procedural fairness demands that [P-256] also appear to be examined by the other parties' ('Sentencing Witnesses Decision').²
3. On 22 November 2016, the Prosecution requested that the Chamber hear P-256's testimony via video-link ('Request').³
4. On 24 November 2016, the defence for Mr Arido ('Arido Defence') opposed the Request ('Response').⁴
5. The Single Judge recalls his previous determinations that: (i) video-link and in-person testimony are not meaningfully different and (ii) the parties are permitted a

¹ Judgment pursuant to Article 74 of the Statute, ICC-01/05-01/13-1989-Red (confidential version registered on the same day).

² Decision on Sentencing Witnesses and Setting an Article 76(2) Hearing, ICC-01/05-01/13-2025, para. 16.

³ Prosecution's Request to Hear Witness P-0256's Testimony via Video-Link, ICC-01/05-01/13-2044. This request was necessary because the Prosecution had been previously directed in this case to file requests for witnesses to be heard via video-link. Directions on the conduct of the proceedings, 2 September 2016, ICC-01/05-01/13-1209, para. 17.

⁴ Narcisse Arido's Response to "Prosecution's Request to Hear Witness P-0256's Testimony via Video-Link" (ICC-01/05-01/13-2044), ICC-01/05-01/13-2059.

degree of deference in whether they wish for witnesses to appear in-court or via video-link, subject to countervailing considerations.⁵

6. The Arido Defence fails to provide any persuasive countervailing considerations which convince the Single Judge to interfere with the Prosecution's wish to have P-256 appear via video-link. The Arido Defence argues that the Sentencing Witnesses Decision required P-256 to appear 'at the seat of the court',⁶ which is a clear misrepresentation of this decision. These words are simply not in the decision - the Chamber only required P-256 to 'appear' and 'to be examined by the other parties'.⁷ The Chamber never prohibited P-256's appearance via video-link, and the Arido Defence cannot reasonably read any 'implicit missing phrase'⁸ into the Sentencing Witnesses Decision to create such a prohibition. The Arido Defence also argues that video-link 'can be potentially more costly than simply bringing a witness to The Hague'.⁹ Though this certainly can be true, there is no information suggesting that a video-link for P-256 is significantly more expensive or burdensome for the Registry.¹⁰
7. The Single Judge sees no prejudice to any defence teams by hearing P-256 via video-link, nor does the Arido Defence assert that it would suffer any. Consistent with the deference given to the parties as to how they wish for their witnesses to appear, the Single Judge grants the relief sought.

⁵ Decision on Video-Link Testimony for Defence Witnesses, 4 March 2016, ICC-01/05-01/13-1697, paras 9-16.

⁶ Response, ICC-01/05-01/13-2059, paras 2-3.

⁷ See paragraph 2 above.

⁸ Response, ICC-01/05-01/13-2059, para. 2.

⁹ Response, ICC-01/05-01/13-2059, para. 3.

¹⁰ In this regard, see Request, ICC-01/05-01/13-2044, para. 4 footnote 3 ('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').

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request.

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



Judge Bertram Schmitt, Presiding Judge

Dated 25 November 2016

At The Hague, The Netherlands