

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

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TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

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

**Prosecution Request for Leave to Reply to ICC-01/05-01/13-1028,
ICC-01/05-01/13-1037 and ICC-01/05-01/13-1041**

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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I. Introduction

1. Pursuant to regulation 24(5) of the Regulations of the Court (“RoC”), the Office of the Prosecutor (“Prosecution”) requests Trial Chamber VII (“Chamber”)’s leave to reply to the Bemba,¹ Arido,² and Babala³ Defences’ responses (collectively, “Responses”) to the Prosecution’s Request to Designate a Person Authorised to Witness a Declaration under rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”).⁴

2. A limited consolidated reply addressing the procedural arguments raised in the Responses will clarify the salient issues before the Chamber concerning the application of rule 68 of the Rules. Further, as a matter of first impression before the Court, explication of the manner in which nearly identical procedural provisions have been applied at the *ad hoc* Tribunals, may assist the Chamber in the proper determination of the issues.

II. Submissions

3. The Prosecution seeks to reply regarding the following issues:

- a) Whether, absent the Chamber’s direction, an accompanying declaration required for the *admissibility* of prior written evidence under rule 68 falls within the scope of pre-trial disclosure, given (i) the express condition that such declaration “be made reasonably close in time to when the prior recorded testimony is being *submitted*”⁵ into evidence,⁶ since the latter need not take place pre-trial; and (ii) that the declaration is non-evidential, and a mere

¹ ICC-01/05-01/13-1037.

² ICC-01/05-01/13-1028.

³ ICC-01/05-01/13-1041.

⁴ ICC-01/05-01/13-1011.

⁵ See rule 68(2)(b)(ii) of the Rules (emphasis added).

⁶ See generally, rule 68(1) and (2) of the Rules (referring to the Chamber “allow[ing] the introduction” of the prior evidence); see also rule 68(2)(b)(ii) of the Rules (noting that such evidence “may only be introduced” if accompanied by a declaration).

ministerial predicate for the statement's admissibility, not unlike the affirmation required under article 69(1) of the Rome Statute ("Statute") and rule 66(1) of the Rules.

- b) Whether generally applying amended rule 68 — a rule of evidence — can be considered retroactive where it does not affect any vested right predating the rule's amendment—that is, evidence previously admitted or excluded from the proceedings; and
- c) Whether, more specifically, admitting prior statements which only came into existence in this case after the amendment of rule 68 constitutes a retroactive application of the rule; and if so, whether their admission is "detriment[al]" to the Defence,⁷ given that former rule 68 did not vest procedural rights regarding the admission of non-existent or non-tendered statements.

III. Relief Requested

4. For the foregoing reasons, the Prosecution requests the Chamber to grant it leave to reply to the Responses, pursuant to regulation 24(5) of the RoC.



Fatou Bensouda, Prosecutor

Dated this 2nd Day of July 2015
At The Hague, The Netherlands

⁷ See article 51(4) of the Statute.