

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 23 March 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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

Public Document

**Prosecution's Response to Bemba's "Request for Leave to Reply to Prosecution's
Response to Bemba's 'Application for Admission of Prior Recorded Testimony of
D20-0002 Pursuant to Rule 68(2)(b) (ICC-01/05-01/13-1737-Conf)'"**

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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1. The Bemba Defence's request to reply to the Prosecution's response to its "Application for Admission of Prior Recorded Testimony of D20-0002 Pursuant to Rule 68(2)(b)" ("Request")¹ should be denied. The core of the Prosecution's Response² is that, given the nature of D20-0002's evidence, the Chamber should require his *viva voce* testimony, and that alternatively, the "prior testimony" proffered by the Defence must be considered in light of his 17 March 2016 statement to the Prosecution ("Witness Statement").³

2. The issues advanced by the Defence all deal with tangential matters concerning the Defence's conduct in this case, particularly as it relates to the Contact Protocol, with the sole exception being its first point:⁴ that the Defence supports the Prosecution's alternative remedy⁵ to the extent the Chamber grants the Defence's underlying motion. That concession is clearly expressed and requires no further submissions.

3. That none of the remaining tangential issues require a reply is clear. *First*, as it relates to the Prosecution's interpretation of documents and *inter-party* communications,⁶ the documents and records at issue are attached to the relevant filings and they speak for themselves. They do not require further interpretation by the Bemba Defence. This is particularly true given that in its Motion⁷ the Bemba Defence has already provided its interpretation on two of the issues it now seeks to address;⁸ which is why the Prosecution responded to them.⁹

¹ ICC-01/05-01/13-1741-Conf.

² ICC-01/05-01/13-1737-Conf ("Response").

³ ICC-01/05-01/13-1737-Conf, paras. 5-11, 13-15.

⁴ Request, para. 2(i), fn. 2 ("The Defence fully supports the admission of this transcript and related recording, although it disputes the inflection that the Prosecution has placed on its contents.").

⁵ ICC-01/05-01/13-1737-Conf, paras. 13-15.

⁶ *Contra* Request, para. 2(ii)(a), (b) and (d).

⁷ ICC-01/05-01/13-1721-Conf, para. 25.

⁸ Request, paras. 2(ii)(b), (d).

⁹ ICC-01/05-01/13-1737-Conf, para. 12.

4. *Second*, to the extent the Bemba Defence now concedes that it did not provide the documents identified in its letter to the Witness, as it appears they do,¹⁰ that issue can be explored with the Witness during his *viva voce* examination and is already reflected in the Witness Statement. It warrants no reply.

5. *Third*, whether it was STIC or the Bemba Defence responsible for erroneously translating the Witness' letter¹¹ is entirely irrelevant. The key point is that the letters were mistranslated on salient issues which the Witness corrected during his interview with the Prosecution. The Witness' corrections ought to be reflected in the record of the case either through his *viva voce* examination or the admission of the Witness Statement.

6. For the foregoing reasons, the Chamber should dismiss the Request.



Fatou Bensouda, Prosecutor

Dated this 23rd Day of March, 2016
At The Hague, The Netherlands

¹⁰ Request, para. 2(ii)(a).

¹¹ Request, para. 2(ii)(c).