

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 13 April 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***

Confidential Document

**Prosecution's Consolidated Response to "Narcisse Arido's Request to Amend the
Defence List of Evidence" (ICC-01/05-01/13-1778) and the Bemba Defence's
"Request to add items on the list of Evidence" (ICC-01/05-01/13-1792-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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Detention Section

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I. Submission

1. The Office of the Prosecutor ("Prosecution") defers to Trial Chamber VII's ("Chamber") discretion regarding the disposition of "Narcisse Arido's Request to Amend the Defence List of Evidence"¹ and the Bemba Defence's "Request to add items on the list of Evidence"² (together, "Requests").

2. As in previous responses to similar Defence requests,³ the Prosecution incorporates by reference its submissions regarding the application of regulation 35(2) of the Regulations of the Court at paragraph one of its response to the «*Requête de l'équipe de Défense de M. Babala aux fins d'ajouter deux documents à sa liste d'éléments de preuves*».⁴ In several instances, the Requests advance no plausible justification for the failure to identify, obtain, or timely seek the addition of the proposed documents to the respective defence exhibit lists.⁵ In this respect, the Prosecution considers that the Requests do not meet the threshold criteria for the Court's exercise of discretion under regulation 35(2).

¹ ICC-01/05-01/13-1778 ("Arido Request").

² ICC-01/05-01/13-1792-Conf ("Bemba Request").

³ See ICC-01/05-01/13-1760-Conf and ICC-01/05-01/13-1777-Conf.

⁴ ICC-01/05-01/13-1760-Conf.

⁵ See Arido Request, paras. 10, 12 and 13; CAR-D24-0004-0314 and CAR-D24-0004-0317 (comprising 16 January 2016 email and blank consent forms, respectively); CAR-D24-0004-0279 (a copy of a webpage listing for Arido's assigned counsel concerning his 23 November 2013 statement to the French authorities); and CAR-D24-0004-0280 and CAR-D24-0004-0282 (public sourced documents, referenced to by Arido's Counsel during opening statements). No explanation is provided as to why the Arido Defence failed to include these materials in its exhibit list or otherwise failed to request their timely addition thereto. Similarly, the Bemba Defence provides no justifications for its clear failure to include the following materials in its exhibit list or otherwise timely request their addition thereto. See Bemba Request, paras. 4, 7-8, and 19; CAR-D20-0006-2000; CAR-D20-0006-2004; CAR-D20-0006-2015 (comprising correspondence and a related document – with the Bemba Defence initiating the correspondence on 29 March 2016 regarding a 2014 document readily available on the Court's website); CAR-D20-0006-2009; CAR-D20-0006-2010; CAR-D20-0006-202[sic], should be 2012; CAR-D20-0006-2013 (comprising Bemba's lists of privileged telephone numbers for 2009 and 2012 of which he would have been fully apprised); CAR-D20-0006-2030 (parts of the 11 September 2012 testimony of a linguistic expert in the Main Case – of which Bemba was fully aware); CAR-D20-0006-2025 and CAR-D20-0006-2063 (an online translator result and open source dictionary definitions of the word 'ba', disclosed in April 2016); and CAR-D20-0006-2028 (an 8 April 2016 email from the Registry to the Bemba Defence, providing an ad hoc translation of a phrase which was requested on the same day, despite the Defence having raised the issue for the first time in December 2015).

3. The Prosecution has not addressed the prospective admissibility of the proposed documents, as the Requests are limited only to their addition to the respective exhibit lists.⁶ However, the Prosecution reserves the right to challenge the proposed documents' "formal submission" and/or admissibility in its response to the Arido and Bemba bar table motions through which they have been tendered.

II. Confidentiality

4. This filing is classified as "*Confidential*" as it responds to a filing of the same designation. The Prosecution does not object to its reclassification as "*Public*."



Fatou Bensouda, Prosecutor

Dated this 13th Day of April 2016
At The Hague, The Netherlands

⁶ Arido Request, paras. 1, 15; Bemba Request, paras. 1, 28.