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**International
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Court**

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

Date: **15 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***

Public Document

**Prosecution's Response to «*Requête de la Défense de M. Fidèle Babala Wandu en
reconsidération de la 'Further Directions on the Conduct of the Proceedings in
2016', aux fins d'obtenir une extension du nombre de pages de ses conclusions
finales*» (ICC-01/05-01/13-1801)**

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. The Office of the Prosecutor (“Prosecution”) opposes the «*Requête de la Défense de M. Fidèle Babala Wandu en reconsidération de la ‘Further Directions on the Conduct of the Proceedings in 2016’, aux fins d’obtenir une extension du nombre de pages de ses conclusions finales*» (“Request”).¹ First, the Trial Chamber VII (“Chamber”) has already reconsidered its Directions on the Conduct of Proceedings in 2016 (“Directions”).² Second, the Request does not otherwise establish the requisite legal basis for reconsideration. The Request should be dismissed.

2. Alternatively, should the Chamber construe the Request as filed under regulation 35(2) of the Regulations of the Court, the Prosecution would defer to the Chamber’s discretion.

II. Submissions

A. Reconsideration is neither required nor justified in the circumstances

3. The Request fails to meet the threshold criteria for reconsideration. First, the Chamber has already reconsidered the Directions and modified them.³ Thus in effect, the Request seeks reconsideration of the Directions *de novo*. The Single Judge’s observation that the Babala Defence’s previous request to augment the page limit for closing submissions⁴ was “unconvinc[ing], lacking further substantiation”⁵ cannot reasonably be construed as inviting the Request. Second, given the Babala Defence’s active participation in the litigation resulting in the Chamber’s modification of the Directions, the Request does not explain the Babala Defence’s failure to raise the

¹ ICC-01/05-01/13-1801 (“Request”).

² See, ICC-01/05-01/13-1518 (“Directions”); ICC-01/05-01/13-1552 (“Reconsideration Decision”).

³ Reconsideration Decision, p. 6.

⁴ ICC-01/05-01/13-1534 (“Reconsideration Request”).

⁵ Reconsideration Decision, para. 9. See Request, para. 16.

contentions it now advances, which were foreseeable and could have been included in its 30 December 2015 Reconsideration Request.⁶

4. *Third*, whether taken together or separately, the contentions advanced in the Request fail to show that the Chamber's reconsideration of the Directions is necessary (1) as the result of a clear error of reasoning; (2) to prevent an injustice; or (3) as it results in manifestly unsound consequences.⁷

5. Although the Request alleges several reasons why an extension of the 100 page limit applicable to the Defence's final written submissions may be advantageous to Babala, none merits reconsideration. The Defence's submissions regarding "*l'équité du procès*"⁸ do not demonstrate any matter warranting reconsideration. Nor do the arguments advanced concerning "*l'évolution de la procédure*",⁹ which rely on circumstances arising after the issuance of the Directions that are clearly not their result, or rise to the level of a "manifestly unsound consequence" or "an injustice".

6. The attenuated relationship between the alleged circumstances and the Directions is fatal to the Request. For example, the Request contends that the number of documents tendered from the bar table since the December 2015 issuance of the Directions "*justifient la possibilité pour la Défense de se voir augmenter le nombre de pages pour ses conclusions finales.*"¹⁰ However, the mere tendering of documents does not, *a fortiori*, require that each be dealt with in the Defence's final written submissions. The Defence's similar contentions regarding the Parties' disclosures and the respective Defence teams' lists of evidence fail for similar reasons.¹¹

⁶ See Request, paras. 12-19, 22-24, 26-27.

⁷ See ICC-01/04-02/06-519, para. 12. See particularly, ICC-01/0401/06-2705, para. 18.

⁸ Request, p. 5.

⁹ Request, p. 7.

¹⁰ Request, para. 25.

¹¹ See Request, paras. 21, 22.

B. The Prosecution defers to the Chamber should it construe the Request under regulation 35(2)

7. The Request plainly does not meet the legal test for reconsideration. However, should the Chamber construe the Request as having been brought pursuant to regulation 35(2), the Prosecution would defer to the Chamber's discretion in determining whether the Request demonstrates "good cause"¹² and the propriety of the relief sought.

III. Requested Relief

8. For the foregoing reasons, the Request should be dismissed. In the alternative, should the Chamber construe the Request pursuant to regulation 35(2), the Prosecution would defer to the Chamber's discretion.



Fatou Bensouda, Prosecutor

Dated this 15th Day of April 2016
At The Hague, The Netherlands

¹² Regulation 35(2).