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

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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, AIMÉ KILOLO MUSAMBA, JEAN-JACQUES
MANGENDA KABONGO, FIDÈLE BABALA WANDU AND NARCISSE ARIDO*

Public

Defence Notice Concerning the Close of Evidence

Source: Counsel for Jean-Pierre Bemba Gombo

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

The Office of the Prosecutor

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Detention Section

Victims Participation and Reparations Section Other

1. The Defence for Mr. Jean-Pierre Bemba Gombo hereby files its notice concerning the close of evidence presented on behalf of Mr. Jean-Pierre Bemba Gombo in the Article 70 case.
2. This notice is subject to the following caveats:
 - a. The Prosecution's obligation to disclose materials under Article 67(2) and Rule 77 continues throughout the proceedings.¹ The close of evidence does not exempt the Prosecution from its ongoing duty to identify and disclose such materials;
 - b. The Trial Chamber alluded to the possibility that the Defence could submit additional observations based on documents received from the Dutch authorities.² The Trial Chamber also indicated separately that submissions and evidence concerning Article 69(7) challenges would be considered independently of its judgment.³ Since the Defence has yet to receive the materials, it is not in a position to assess whether further observations will be necessary. The Defence nonetheless submits that the formal close of evidence should not, in itself, preclude the Defence for Mr. Bemba from filing a future request to submit discrete observations and evidence, emanating from the Dutch authorities, which relate solely to the Article 69(7) challenge pending before the Trial Chamber.

¹ See ICC-01/05-01/08-3336, in which Trial Chamber III considered which disclosure orders might be necessary to ensure the Prosecution's compliance with Article 67(2) and Rule 77, almost two years after the close of evidence, and more than one year after the commencement of deliberations. See also Prosecutor v. Blaskic, Appeals Judgment, 29 July 2004, para. 267; Prosecutor v. Bizimungu et al, Decision on Defence Motions Alleging Violation of the Prosecutor's Disclosure Obligations Pursuant to Rule 68, 22 September 2008, para. 33.

² ICC-01/05-01/13-1768, para. 14.

³ ICC-01/05-01/13-1753, paras. 10 and 11.

- c. A discrete request from the Defence teams for Mr. Bemba and Mr. Mangenda to access a specific recording from the ICC detention unit is pending before the Trial Chamber. The primary purpose of this request is to inform internal Defence analysis and comparison of recordings collected by different authorities. Since the Defence has yet to receive the recording, it is not in a position to assess whether it would wish to rely on it as part of the evidential record. In order to preserve such an eventuality, the Defence nonetheless requests the authorisation of the Trial Chamber to vary the close of evidence in order to permit the Defence to file a future application as concerns this one, discrete item. If - after reviewing the item - the Defence were to apply to admit it, the request would not enlarge or vary the evidential scope of the proceedings since the content of this recording has already been put into evidence by the Prosecution. The Registry has also confirmed that the Prosecution was afforded the opportunity to access the detention unit version of the recording, but declined to do so.



Melinda Taylor
Counsel of Mr. Jean-Pierre Bemba

Dated this 21st day of April 2016

The Hague, The Netherlands