

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 29 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 Response to "Arido's Request for Leave to Reply to 'Prosecution's
Response to Arido's Request for the Admission of Evidence from the Bar Table
Motion,'" (ICC-01/05-01/13-1851-Conf)**

Source: The Office of the Prosecutor

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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1. Trial Chamber VII ("Chamber") should dismiss Arido's "Request for Leave to Reply to 'Prosecution's Response to Arido's Request for the Admission of Evidence from the Bar Table Motion (ICC-01/05-01/13-1789)'" ("Request").¹ The Request advances the arguments for which Arido seeks leave to make and which, in any event, are unsubstantiated.

2. Regulation 24(5) of the Regulations of the Court provides that a Party "may *only* reply to a response with the leave of the Chamber".² Although Arido cites this provision,³ the Request – not unlike those of other Defence teams⁴ – advances his substantive reply.⁵ The Office of the Prosecutor ("Prosecution") has repeatedly noted⁶ the Appeals Chamber's guidance repudiating this practice.⁷ On this basis alone, the Chamber should deny the Request.

3. Alternatively, the Request fails on its merits. The first issue⁸ concerns the manner in which the Chamber should make admissibility determinations, which cannot reasonably justify a reply, particularly considering that the Chamber has already addressed the matter.⁹

4. The second issue¹⁰ argues for the third time¹¹ the inadmissibility of Arido's statements to the French authorities under article 69(7) of the Rome Statute. However, the Chamber has already determined that the contested statements were

¹ ICC-01/05-01/13-1851-Conf.

² Emphasis added.

³ Request, para. 3.

⁴ See e.g. ICC-01/05-01/13-1844-Conf; ICC-01/05-01/13-1730-Conf.

⁵ Request, paras. 6-11.

⁶ See e.g. ICC-01/05-01/13-1750; ICC-01/05-01/13-1743-Red; ICC-01/05-01/13-1215-Conf.

⁷ ICC-01/04-01/06-824 OA7, para. 68 ("[t]he Appeals Chamber disapproves of a practice of the filing of a substantive reply prior to leave being granted by the Appeals Chamber, which in and of itself may also give rise to the rejection of an application for leave."). See also ICC-01/05-01/08-602 OA2, para. 9 (in the context of rule 103 of the Rules of Procedure and Evidence, "[t]he submissions of substantive observations is only permissible after a Chamber has decided to invite or grant leave to do so.").

⁸ Request, paras. 4(a), 6-7.

⁹ See ICC-01/05-01/13-1285, para. 10 ("[t]he relevance of a particular piece of evidence may not be possible to determine without consideration of other items of evidence, or even the totality of the evidence.").

¹⁰ Request, paras. 4(b), 8-9.

¹¹ See ICC-01/05-01/13-1795-Conf, paras. 10-23; ICC-01/05-01/13-1241-Conf, paras. 33-56.

not obtained in violation of the Statute or any international human right.¹² Thus, no reply on this issue is either necessary or appropriate.

5. The third issue¹³ could have been anticipated. Arido's assertion that the Chamber "has taken a liberal interpretation of the understanding of what constitutes a statement during the present trial",¹⁴ reflects an awareness that this might extend to the investigative reports for which he seeks admission. Further, the Working Group on Lessons Learnt emphasised that rule 68 applies to any "written statements taken by the parties or (intern)ational authorities", without circumscribing *when* the statements are taken.¹⁵ Both of these circumstances belie Arido's suggestion that he could not have anticipated the issue because the Prosecution's interpretation of the rule "go[es] way beyond the Trial Chamber's approach".¹⁶

Confidentiality

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



Fatou Bensouda, Prosecutor

Dated this 29th Day of April 2016
At The Hague, The Netherlands

¹² ICC-01/05-01/13-1432, para. 4. *See also* ICC-01/05-01/13-1833-Conf, paras. 46-52.

¹³ Request, paras. 4(c), 10-11.

¹⁴ Request, para. 10.

¹⁵ Study Group on Governance: Working Group on Lessons Learnt: Second report of the Court to the Assembly of States Parties, 31 October 2013, ICC-ASP/12/37/Add.I, p. 22, para. 13.

¹⁶ Request, para. 10.