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No: ICC-01/05-01/13

Date: 6 May 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, AIMÉ KILOLO MUSAMBA,
JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA WANDU AND
NARCISSE ARIDO**

Public

Response to Prosecution's Request for Variation of Time for Closing Statements

Source: Defence for Jean-Jacques Kabongo Mangenda

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

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
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Detention Section

**Victims Participation and Reparations
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Other

1. Jean-Jacques Mangenda defers to the Trial Chamber's wisdom as to whether the Prosecution's request¹ to depart from the established schedule for hearings is supported by "good cause" and is "appropriate" as required pursuant to Regulation 35(2) of the Regulations of the Court. However, the Defence disagrees with the Prosecution's argument that a factor in favour of doing so is the "burden of establishing the Accused's guilt beyond reasonable doubt".
2. The Prosecution has already had ample opportunity to discharge its burden of proof through its 313 pages of substantive submissions in the DCC,² the Pre-Trial Brief,³ and the Opening Statement;⁴ its presentation of evidence during trial; and its liberal opportunity to introduce evidence that it wished during and even at the close of the Defence case.
3. The function and scope of the Prosecution's oral submissions by way of reply should be viewed in this context. In fact, the accused's right enshrined in Article 67(1)(a) to be informed promptly of the nature and cause of the charges requires the Prosecution:

to present, during the pre-trial phase, all of the facts and circumstances relating to his case. To hold otherwise would be to call into question the very purpose of a pre-trial phase, at the close of which the charges are fixed and settled. Such a solution would, moreover, render useless the months of work devoted by the Pre-Trial Chamber to preparing the case for trial and, to a large extent, would make it pointless even to hold a confirmation hearing where evidence is presented, and at the close of which the trial is supposed to commence. As the *ad hoc* international criminal tribunals have stressed, the Prosecutor "is expected to know [his] case before it goes to trial. It is not acceptable for the Prosecut[or] to omit the material aspects of its main allegations in the indictment with the aim of moulding the case against the accused in the course of the trial depending on how the evidence unfolds."⁵

4. The Prosecution has already had ample opportunity to discharge its burden of proof, and is required to present its evidence and theory of the case well in advance of closing arguments. This does not mean that the Prosecution should not have a

¹ *Bemba et al.*, Prosecution's Request for Variation of Time for Closing Statements, ICC-01/05-01/13-1864, 3 May 2016 ("Request").

² *Bemba et al.*, Document Containing the Charges, ICC-01/05-01/13-526-Conf-AnxB1, 30 June 2014. The Prosecution's Notification of Filing of the Document Containing the Charges and List of Evidence (ICC-01/05-01/13-526) was accompanied by five confidential substantive annexes.

³ *Bemba et al.*, Prosecution Pre-Trial Brief, ICC-01/05-01/13-1110-Conf, 31 July 2015.

⁴ *Bemba et al.*, ICC-01/05-01/13-T-10-CONF-ENG, 24:11-73:18.

⁵ *Katanga & Ngudjolo*, Decision on the Filing of Summary of the Charges by the Prosecutor, ICC-01/04-01/07-1547-tENG, 21 October 2009, para.23.

reasonable opportunity to reply to the Defence's final briefs, but discharging its burden of proof is not a justification for the Prosecution's requested extension of time.

5. The Prosecution notably did not support the successive filing of final briefs, which would have permitted all parties to "better formulate cogent, limited and focused responses on important issues."⁶ If the Prosecution was so concerned about this issue, then it would have supported the Defence's request, rather than putting forward a measure that only benefits the Prosecution in that regard.⁷



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Counsel for Mr. Jean-Jacques Kabongo Mangenda

Respectfully submitted this 6 May 2016,
 At The Hague, The Netherlands

⁶ Request, para.4.

⁷ *Bemba et al.*, Prosecution's Response to the Kilolo Defence's «Demande d'extension du délai pour le dépôt des conclusions finales de la défense et modification de l'ordre du dépôt des conclusions finales des parties» - ICC-01/05-01/13-1739-Conf, ICC-01/05-01/13-1756, 29 March 2016, paras.1,7.