

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **2 July 2015**

TRIAL CHAMBER VII

**Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuca
Judge Bertram Schmitt**

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***

Confidential

**Request by the Defence for Mr Fidèle Babala to obtain an amended version of the
“Bar Table Motion” as submitted for admission in the “Prosecution’s First
Request for the Admission of Evidence from the Bar Table”
(ICC-01/05-01/13-1013-Conf)**

Source: Defence for Mr Fidèle Babala Wandu

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

Official Court Translation

1/7

2 July 2015

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

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Mr Herman von Hebel

Counsel Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations Section****Others**

I. INTRODUCTION

1. On 13 April 2015, with a view to the first status conference,¹ the Defence teams jointly submitted observations on the conduct of the proceedings as well as on their position on the admission of documentary evidence not introduced through a witness.²
2. On 16 June 2015, the Office of the Prosecutor (“the Prosecution”) filed a request to present 345 documents from the bar table (“the Prosecution’s Request”).³
3. On 26 June 2015, the Defence team for Narcisse Arido responded to the Prosecution’s Request, asking the Chamber:

to reject the Prosecution’s Request, without prejudice, and to order the Prosecution to re-file its first bar table request with an annex containing a table including, for each document (i) a short description of its content; (ii) an index of the most relevant portions of the document; (iii) an averment and explanation of its authenticity; (iv) an indication of the reason for not tendering the document through a witness; and (v) a description of its relevance and intended probative value, indicating specifically to which Accused(s) the document relates to (“Request of the Defence team for Mr Arido”).⁴

II. CONFIDENTIALITY

4. The instant Request refers to documents classified as confidential. Under regulation 23 *bis* of the Regulations of the Court, this Request is therefore being submitted with the same level of confidentiality. The Defence has no objection to this document subsequently being reclassified as public.

¹ ICC-01/05-01/13-T-8-CONF-FRA.

² ICC-01/05-01/13-899, paras. 107-120.

³ ICC-01/05-01/13-1013-Conf.

⁴ ICC-01/05-01/13-1038-Conf, para. 17.

III. SUBMISSION

5. The Defence hereby concurs with the Request of the Defence team for Mr Arido and endorses the observations and arguments presented in it. According to the Defence, having regard to the jurisprudence of the Court, the Prosecution's Request is weak. The Prosecution has not provided sufficient information to enable the Defence to present observations on the admissibility of the documents concerned. A new table must be filed complying with the criteria laid down in the jurisprudence, so that the Defence is sufficiently informed to adopt a position.
6. In addition, the Defence would request the Chamber to order the Prosecution to file the table simultaneously in the two languages of the Court. Failing that, the Defence will request that the Chamber order that the time limit in which to respond to the Prosecution's table should begin when the Defence is notified of the French version.
7. Pursuant to regulation 34(b) of the Regulations of the Court, a party may file a response within 21 days of notification of the document to which the party is responding. An amendment to the time limit may be ordered by the Chamber only if "good cause" is shown.⁵
8. The Defence recalls that, during the first appearance hearing, the applicant chose French as the language of the proceedings.⁶ The applicant insists that this linguistic choice must be respected.
9. The table filed with the Request to present evidence not introduced through a witness ("the Table") is vital if the Defence is to prepare properly, in accordance with the provisions of article 67(1) of the Rome Statute. According to the jurisprudence in *Lubanga*, the expression "material to the preparation of the defence" should be understood as referring to "all objects that are relevant for the

⁵ Regulation 35, Regulations of the Court.

⁶ ICC-01/05-01/13-T-1-FRA, p. 6, line 9: [TRANSLATION] "Mr President, I would like to request that French be used as far as I am concerned."

preparation of the defence.”⁷ The aim of the Request is to file a large body of evidence in the record of the case. The evidence that the Prosecution has to present for each document will enable the Defence to submit observations on whether each item of evidence in the Prosecution’s list is admissible.

10. In addition, pursuant to articles 50 and 67(1)(a) and (f) of the Rome Statute, Mr Babala has the right to be informed of the nature, cause and content of the charges in a language which he understands. The presentation of evidence, in terms of form and substance alike, is the practical expression of these provisions and must comply with the principle of equality of arms – or the content of the evidence will be impaired. Each party must, therefore, have a reasonable opportunity to defend its interests. Denying Mr Babala the right to have access to the documents concerning the charges against him in his working language – which is also an official language and working language of the Court – would put him at a disadvantage not only in terms of his ability fully to exercise his right to defend himself, but also vis-à-vis at least three of his co-defendants, who were presented with the same evidence in their working language. The Single Judge stated in the instant case that “the right to translation is instrumental to the preservation of the fairness of the proceedings”⁸ and went on to order that the time limit for the Defence to present applications for leave to appeal the Decision on the Confirmation of the Charges would start running as of the date of the notification of the French version of that Decision.
11. The need to have a translated version has already been accepted as a reason to extend time limits before the Court in a number of cases. In *Bemba*, for example, the Appeals Chamber agreed to extend the time limit to appeal against a decision because of “Mr Bemba’s limited understanding of ‘legal English’”⁹. In the same case Pre-Trial Chamber II decided, when confirming the charges, that the time

⁷ ICC-01/04-01/06-1433, 11 July 2008, para. 2, ICC-01/04-01/06-2517-Red, para. 27.

⁸ ICC-01/05-01/13-756, para. 5.

⁹ ICC-01/05-01/08-827, para.3

limit for requesting leave to appeal “shall start running for the Defence as of the date of notification of the French translation of this decision.”¹⁰ Similarly, in *Mbarushimana* the Chamber accepted that the time limit for requesting leave to appeal against the decision on the confirmation of charges would begin to run only from the date of notification of the French version of the decision to the Accused.¹¹ Similar examples can be seen in *Lubanga*¹² and *Gbagbo*¹³.

12. In particular, in *Ngudjolo*, the Prosecution responded positively to the request of the Defence team for Mr Ngudjolo for the submission of a French version of the request, aiming to file in the record of the case evidence not introduced through a witness,¹⁴ having filed only the English version. The Defence notes that it would have requested the French version directly from the Prosecution if, in keeping with Court practice, the Prosecution had first submitted its request to the parties, before filing it with the Chamber.
13. The Defence recalls that, before the Nuremberg International Military Tribunal, evidence not introduced through a witness was admitted on the condition that it was submitted in the respective languages of each member of the Tribunal and the Defence Counsel received a copy in German.¹⁵
14. The Defence respectfully submits that filing the Request simultaneously in both languages would be the most effective way to avoid delaying the proceedings, given that the Prosecution has a translation service. Alternatively, the Defence will contact the Court translation service to obtain the translation of the Prosecution’s Request. In the latter case, the Defence would respectfully request that the time limit to respond to the Prosecution’s Request be suspended until such a time as the translation into French has been notified.

¹⁰ ICC-01/05-01/08-424, p.185, para. g.

¹¹ ICC-01/04-01/10-465, p. 164.

¹² ICC-01/04-156.

¹³ ICC-02/11-01/11-434, ICC-02/11-01/11-489 OA5.

¹⁴ ICC-01/04-01/07-2290, para. 8.

¹⁵ Sluiter, G. et al. (Eds.), *International Criminal Procedure: Principles and Rules*, Oxford University Press, 2013, p. 1048.

FOR THESE REASONS,

MAY IT PLEASE THE CHAMBER TO:

- (a) ORDER that the Prosecution's Request be amended as requested by the Defence team for Mr Arido in its Request; and
- (b) ORDER that this amended Request be filed simultaneously in English and in French;
- (c) Otherwise, DECIDE not to apply the time limits for submitting a response provided for under regulation 34 of the Regulations of the Court.

AND JUSTICE SHALL BE DONE.

RESPECTFULLY SUBMITTED.

[signed]

Mr Jean-Pierre Kilenda Kakengi Basila
Counsel for Mr Fidèle Babala Wandu

Dated this 2 July 2015

At Brussels