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

Date: **9 November 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

**Narcisse Arido's Response to
"Prosecution's Renewed Request to Obtain Financial Information from the Registry"
(ICC-01/05-01/13-2007)**

Source: Counsel for Narcisse Arido

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

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I. SUBMISSIONS

1. On 4 November 2016, the Prosecution renewed¹ ('Renewed Request') its initial request² for the Trial Chamber VII ('Trial Chamber') to direct the Registry to provide the Prosecution with financial information relating to (a) the costs associated with *The Prosecutor v. Jean-Pierre Bemba* ('Main Case') generally, and (b), the costs specifically incurred by the Court in relation to the 14 Main Case Defence witnesses who are the subjects of the offences in the Article 70 case ('Requested Information'). The same day of the Renewed Request, the Trial Chamber shortened the deadline for responses to 9 November 2016.³

2. The Prosecution submits that a report containing the Requested Information is relevant to the Trial Chamber's determination of the appropriate sentences to be imposed on the convicted persons.⁴ The Arido Defence opposes this request and submits that it should be rejected.

3. The Prosecution's arguments in its first Request, which are included by reference in its Renewed Request,⁵ make substantive arguments concerning the relevance of the Requested Information to a sentence to be decided upon by the Trial Chamber. The submissions due on 7 December 2016 on sentence, ordered⁶ by the Trial Chamber, are the appropriate venue for full and comprehensively researched submissions on these matters. Because of this, and also due to the shortened deadline imposed by the Trial Chamber, the Arido Defence submissions below are directed to the merits of the Renewed Request and are not the final arguments as to whether the evidence should be considered in the imposition of a sentence. The Arido Defence thus reserves its rights to present further arguments at a later stage should the Renewed Request be granted.

4. The Arido Defence re-iterates and incorporates by reference its arguments that the Request should be raised with Trial Chamber III⁷ and it is an unwarranted intrusion into Defence preparation.⁸

5. The Prosecution's request unfairly prejudices the Defence. The Renewed Request claims that the Requested Information is being sought because it is relevant to the Trial Chamber's determination of sentence, as it will aid in assessing (1) "the potential loss to the Court had the

¹ ICC-01/05-01/13-2007.

² ICC-01/05-01/13-1966.

³ Email, 4 November 2016 at 16h30, subject 'shortening of response deadline for ICC-01/05-01/13-2007'.

⁴ Renewed Request, para. 5; *see also* ICC-01/05-01/13-1966, paras 4-9.

⁵ *Ibid.*, para. 5.

⁶ ICC-01/05-01/13-1990, para. 2(iii).

⁷ ICC-01/05-01/13-1971, para. 11.

⁸ *Ibid.*, paras 6-7.

unlawful scheme successfully undermined the trial”⁹ and (2) “the actual pecuniary loss by the Court”.¹⁰

6. As regards (1), the purpose of asking for the cost of the whole Main Case, based on the risk previously posed, should be rejected because it is speculative, and the Defence will never be able to fairly respond. Whether the conduct for which Mr. Arido was convicted ever actually risked the outcome of the Main Case is nigh impossible to assess as it involves many hypothetical questions. Secondly, the Arido Defence will never be able to begin to fairly respond to this question without access to the Main Case proceedings.

7. Similarly, part (2) of the Prosecution’s requests should be rejected as it also requires access to the Main Case record and potentially confidential Defence communications. For this reason, it is incorrect for the Prosecution to claim that “granting this Motion does not require the Registry to disclose confidential information emanating from the Main Case”.¹¹

8. Finally, the Arido Defence submits that the Prosecution’s Requested Information as “potentially [an] aggravating factor to augment any future sentence(s)”¹² should be rejected as a matter of law. The Prosecution’s Request is based on Article 78(1), and the criterion of “gravity of the crime.” The Arido Defence submits that the Prosecution’s reliance on “gravity” within Article 78(1) is misplaced and does not reflect the text of the Statute. Article 78(1) refers to gravity of “crime[s]”, whereas Article 70, by contrast, refers to “offences”. Therefore, the legal criterion of “[g]ravity of the crime” is inapplicable to an Article 70 offence.¹³

⁹ Renewed Request, para. 4.

¹⁰ *Ibid.*

¹¹ *Ibid.*, para 9.

¹² ICC-01/05-01/13-1979, para. 17.

¹³ *See relatedly*, ICC-01/05-01/13-1989-Conf, para. 15. *See also* Rule 163(2) of the Rules of Procedure and Evidence.

II. CONCLUSION

9. In light of the above, the Arido Defence respectfully requests Trial Chamber VII to reject the Prosecution's Renewed Request.

A handwritten signature in black ink, appearing to read 'Charles', with a long horizontal flourish extending to the right.

Chief Charles Achaleke Taku, Counsel for Mr. Arido

Dated this 9th Day of November 2016

The Hague, The Netherlands