



Original: **English**

No.: ICC-01/05-01/13
Date: **1 September 2016**

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul C. 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

Decision on Arido Defence Request to Admit an Item into Evidence

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Gosnell

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Others

Trial Chamber VII ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Rule 68 of the Rules of Procedure and Evidence ('Rules') and Regulation 35 of the Regulations of the Court ('Regulations'), issues the following 'Decision on Arido Defence Request to Admit an Item into Evidence'.

I. Procedural History and Submissions

1. On 9 March 2016, the Presiding Judge of the Chamber set a deadline of 8 April 2016 ('8 April Deadline') for all evidentiary submissions, including requests to recognise material as formally submitted.¹
2. On 29 April 2016, the Presiding Judge declared the presentation of evidence closed in this case.² In so doing, the Presiding Judge indicated that 'in order for the closing of the evidence presentation to have meaning and to ensure the fair and expeditious conduct of the proceedings, any applications to re-open the evidence presentation will be granted on a truly exceptional basis.'³
3. On 14 August 2016, the defence for Mr Arido ('Arido Defence') filed a request to admit an additional item into evidence ('Request').⁴ The item is an interview by a national authority with one of the witnesses who was allegedly interfered with in the case of *Prosecutor v. Jean-Pierre Bemba Combo* ('Interview').⁵
4. The Arido Defence explains that the Prosecution disclosed the Interview on 25 July 2016 and that a translation into one of the working languages of the Court was only received on 5 August 2016.⁶ It submits that, accordingly, it was unable to request the admission into evidence before the 8 April Deadline for reasons

¹ Hearing of 9 March 2016, ICC-01/05-01/13-T-42-Red2, p.54, line 18 to p.43, line 12.

² Decision Closing the Submission of Evidence and Further Directions, ICC-01/05-01/13-1859.

³ ICC-01/05-01/13-1859, para. 5.

⁴ Narcisse Arido's Request that Trial Chamber VII Admit CAR-OTP-0094-1580-R01 into Evidence, ICC-01/05-01/13-1968-Conf.

⁵ CAR-OTP-0094-1580-R01 and the English translation CAR-D24-0005-0056.

⁶ Request, ICC-01/05-01/13-1968-Conf, paras 1 and 3.

outside its control, therefore fulfilling the criteria of Regulation 35(2) of the Regulations.⁷ In view of the Arido Defence, the Interview contains exculpatory information ‘which had not yet come to light and has not been discussed at trial’.⁸

5. The Arido Defence further cites to previous Chamber jurisprudence where it considered a request regarding an item after the closing of evidence and closing statements on grounds that the parties weren’t aware of the existence of the item and this was not due to any lack of diligence. In its view the same reasoning applies in the present case.⁹
6. On 19 August 2016, the Office of the Prosecutor (‘Prosecution’) provided its response to the Request (‘Response’).¹⁰ It submits that the Arido Defence knew about the content of the Interview prior to receiving it and could have procured and requested its submission into evidence earlier.¹¹

II. Analysis

7. As a preliminary issue, the Chamber notes that the Arido Defence announced that a public redacted version of its Request will be ‘shortly filed’ but never provided such version.¹² Accordingly, the Chamber instructs the Arido Defence to file a public redacted version of its Request forthwith. As proposed,¹³ on receipt of this version the Prosecution is instructed to file a public redacted version of its Response.

⁷ Request, ICC-01/05-01/13-1968-Conf, para.10.

⁸ Request, ICC-01/05-01/13-1968-Conf, para.14.

⁹ Request, ICC-01/05-01/13-1968-Conf, para. 12, citing to ICC-01/05-01/13-1948.

¹⁰ Prosecution’s Response to Narcisse Arido’s Request that Trial Chamber VII Admit CAR-OTP-0094-1580-R01 into Evidence (ICC-01/05-01/13-1968-Conf), ICC-01/05-01/13-1975-Conf.

¹¹ Response, ICC-01/05-01/13-1975-Conf, paras 3-7.

¹² Request, ICC-01/05-01/13-1968-Conf, para. 5.

¹³ Response, ICC-01/05-01/13-1975-Conf, para. 2

8. The Chamber notes that the Arido Defence intended to call the witness who gave the Interview during the defence case.¹⁴ Even though it ultimately withdrew this witness,¹⁵ in the overview of his anticipated testimony the Arido Defence indicated both issues which it identified as exculpatory in the Interview.¹⁶ Accordingly, the information as such is not new to the Arido Defence. The Arido Defence presumably spoke to the witnesses before deciding to put him on its witness list and was able to question him on the matters at issue. This is also evidenced by the declarations made by the Arido Defence in its opening statement, with regard to the witness, that it 'will present evidence and demonstrate that in [the Interview], he stated that he was a soldier'.¹⁷ Consequently, the Chamber is persuaded that, contrary its submissions,¹⁸ the Arido Defence not only knew of the existence of the Interview but also had knowledge of its contents.
9. Further, the Arido Defence does not provide any information as to why it did not itself try to obtain the Interview. The fact the Interview was only disclosed after the 8 April Deadline – upon investigation conducted by the Prosecution – does not relieve the Arido Defence of its duty to prepare its defence and acquire all documents it considers necessary to mount its case.
10. The Chamber repeats that applications to reopen the evidence will be granted only on a 'truly exceptional basis'.¹⁹ The Arido Defence was aware of the existence of the Interview, presumably knew its contents and did not provide any explanation as to why it did not itself obtain the Interview at an earlier point in time. Accordingly, the Chamber does not find that exceptional circumstances warranting a belated admission exist.

¹⁴ Narcisse Arido's List of Witnesses and Evidence, 21 January 2016, ICC-01/05-01/13-1557 and confidential annex A, ICC-01/05-01/13-1557-Conf-AnxA.

¹⁵ Narcisse Arido's Notification of its Revised List of Witnesses and Supplementary Submissions, 7 March 2016, ICC-01/05-01/13-1705-Conf.

¹⁶ CAR-D24-0004-0092, at -0097.

¹⁷ Hearing of 1 March 2016, ICC-01/05-01/13-T-39-Conf-Eng, p. 33, lines 16-17.

¹⁸ Request, ICC-01/05-01/13-1968-Conf, para. 11.

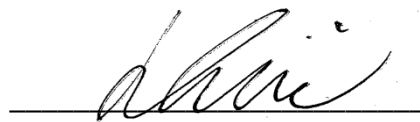
¹⁹ Decision Closing the Submission of Evidence and Further Directions, ICC-01/05-01/13-1859, para. 5.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

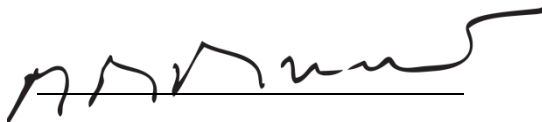
REJECTS the Request; and

INSTRUCTS the Arido Defence to file a public-redacted version of its Request forthwith and the Prosecution to file a public-redacted version of its Response thereafter.


Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt, Presiding Judge



Judge Marc Perrin de Brichambaut



Judge Raul C. Pangalangan

Dated 1 September 2016

At The Hague, The Netherlands