

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 August 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**

Public

**Decision on Joint Defence Request for Variation of the Deadline to Respond to the
Second Bar Table Request**

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 (the ‘Chamber’) of the International Criminal 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 Regulations 34 and 35 of the Regulations of the Court (the ‘Regulations’), issues the following ‘Decision on Joint Defence Request for Variation of the Deadline to Respond to the Second Bar Table Request’.

1. On 17 June 2015, the Office of the Prosecutor (the ‘Prosecution’) requested the Chamber to admit 345 items of evidence from the bar table (the ‘First Bar Table Request’).¹ All five defence teams (collectively, the ‘Defence’) subsequently filed responses or other submissions in relation to this request.²
2. On 31 July 2015, the Prosecution requested the Chamber to admit a further 579 items through the bar table (the ‘Second Bar Table Request’).³ The response deadline for this request is currently 24 August 2015.⁴

¹ Public redacted version of “Prosecution’s First Request for the Admission of Evidence from the Bar Table”, 16 June 2015, ICC-01/05-01/13-1013-Conf, ICC-01/05-01/13-1013-Red (with annex; redacted version notified 23 June 2015).

² Narcisse Arido’s Request for an Order to the Prosecution to Re-File its First Bar Table Motion (ICC-01/05-01/13-1013-Conf), 26 June 2015, ICC-01/05-01/13-1038-Conf; Requête de la Défense de M. Fidèle Babala aux fins d’obtenir une version amendée de la «Bar Table Motion» telle que soumise pour admission dans la «Prosecution’s First Request for the Admission of Evidence from the Bar Table» (ICC-01/05-01/13-1013-Conf), 2 July 2015, ICC-01/05-01/13-1051-Conf; Réponse de la Défense de M. Fidèle Babala à «Prosecution’s First Request for the Admission of Evidence from the Bar Table» (ICC-01/05-01/13-1013-Conf), 9 July 2015, ICC-01/05-01/13-1073-Conf; Defence Response to Prosecution’s First Request for the Admission of Evidence from the Bar Table (ICC-01/05-01/13-1013-Conf), 9 July 2015, ICC-01/05-01/13-1074-Conf (with three annexes); Réponse de la Défense de M. Aimé Kilolo à la «Prosecution’s First Request for the Admission of Evidence from the Bar Table ICC-01/05-01/13-1013-Conf», 9 July 2015, ICC-01/05-01/13-1075-Conf; Response to “Prosecution’s First Request for the Admission of Evidence from the Bar Table”, 9 July 2015, ICC-01/05-01/13-1076-Conf; Narcisse Arido’s Response to the Prosecution’s First Bar Table Motion (ICC-01/05-01/13-1013-Conf), 9 July 2015, ICC-01/05-01/13-1077-Conf (with annex); Response to Narcisse Arido’s Request for an Order to the Prosecution to Re-File its Bar Table Motion, 10 July 2015, ICC-01/05-01/13-1078-Conf; Defence Response to Narcisse Arido’s Request for an Order to the Prosecution to Re-File its First Bar Table Motion (ICC-01/05-01/13-1013-Conf), 10 July 2015, ICC-01/05-01/13-1079-Conf. *See also* Prosecution’s Consolidated Response to the Arido and Babala Requests regarding the Prosecution’s First Request for the Admission of Evidence from the Bar Table (ICC-01/05-01/13-1038-Conf, ICC-01/05-01/13-1051-Conf), 8 July 2015, ICC-01/05-01/13-1070-Conf.

³ Public redacted version of “Prosecution’s Second Request for the Admission of Evidence from the Bar Table”, 31 July 2015, ICC-01/05-01/13-1113-Conf, 31 July 2015, ICC-01/05-01/13-1113-Red (with annex; redacted version notified 6 August 2015).

⁴ Regulation 34(b) of the Regulations.

3. On 6 August 2015, the Defence filed the 'Urgent Joint Defence Request for Variation of the Deadline for the Defence Response to the Prosecution's Second Request for the Admission of Evidence from the Bar Table' (the 'Defence Request').⁵ The Prosecution did not respond to this request.⁶
4. The Defence requests the Chamber to: (i) suspend the deadline for the Defence response to the Second Bar Table Request until after the conclusion of the Prosecution case; (ii) in the alternative, suspend the running of the deadline for the Defence response until after the Chamber has issued its decision on the First Bar Table Request, and enlarge the period for responding by a further three weeks, so that the total time allocated is 42 days; (iii) as an interim measure, immediately suspend the deadline for the Defence response pending the Chamber's decision on this request; and (iv) in all scenarios, suspend the deadline for the response until after the Defence has received the French translation of the Second Bar Table Motion.⁷
5. The Defence submits that there is good cause to suspend the deadline until after the conclusion of the Prosecution case due to: (i) the sheer quantity of items which are the subject of the Second Bar Table Request; (ii) the presumption – as set out in Article 64(8) of the Statute – that evidence should be submitted after the commencement of the trial; (iii) the prejudicial impact of requiring the Defence to advance their case theory concerning key elements of the charges, before the defendants have entered their pleas, and before related witness testimony has been heard; and (iv) the impact that litigating these issues would have on the commencement of the trial, and the time available for Defence pre-trial preparation.⁸

⁵ ICC-01/05-01/13-1123.

⁶ The response deadline was shortened to 13 August 2015. Email from a Legal Officer of the Chamber to the parties, 7 August 2015 at 11:56.

⁷ Defence Request, ICC-01/05-01/13-1123, para. 30.

⁸ Defence Request, ICC-01/05-01/13-1123, para. 2.

6. The Chamber sees no reason why, after filing timely responses to the First Bar Table Request, the Defence finds itself incapable of doing the same with the Second Bar Table Request. The Defence cannot persuasively argue that responses should be suspended because of Article 64(8) of the Statute, or that responding before making an admission of guilt or a plea of not guilty would be unduly prejudicial, or the existence of some hypothetical impact that 'litigating these issues would have on the commencement of the trial', after demonstrating that it can file responses on the same type of motion in nearly identical circumstances. The Chamber also notes that all the defence teams routinely demonstrate a capacity to respond to filings made in English, and recalls that it has previously rejected requests to make any document filed in English simultaneously available in French.⁹

7. The only distinguishing factor between the First and Second Bar Table Requests is that the Second Bar Table Request implicates 234 more items. The Chamber considers that good cause exists to allow a short extension to respond to the Second Bar Table Request solely for this reason.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ORDERS that any responses to the Second Bar Table Request be filed by 16:00 on Monday, 31 August 2015; and

REJECTS all other requests.

⁹ Transcript of Hearing, 24 April 2015, ICC-01/05-01/13-T-8-Red-ENG, page 24 line 25 to page 26 line 4.

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



Judge Chile Eboe-Osuji, Presiding



Judge Olga Herrera Carbuca



Judge Bertram Schmitt

Dated 17 August 2015

At The Hague, The Netherlands