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No.: ICC-01/05-01/13  
Date: 30 October 2015

**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 Bemba and Arido Defence Requests to Declare Certain Materials  
Inadmissible**

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**

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**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* ('Bemba et al. case'), having regard, *inter alia*, to Article 69(7) of the Rome Statute ('Statute') and Rule 68 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on Bemba and Arido Defence Requests to Declare Certain Materials Inadmissible'.

## I. Background

1. On 31 July 2015, the Office of the Prosecutor ('Prosecution') sought the admission of recordings, logs and other material derivative of calls made on Mr Bemba's non-privileged telephone line at the Detention Centre ('Detention Centre Materials').<sup>1</sup>
2. On 21 August 2015, the Prosecution sought the admission of, *inter alia*, CAR-OTP-0074-1065 and CAR-OTP-0077-0169, which are statements made by Mr Arido to the French authorities ('Arido Statements').<sup>2</sup>
3. On 31 August 2015, the defence for Mr Bemba ('Bemba Defence') objected to the admission of the Detention Centre Materials, submitting, *inter alia*, that they are inadmissible under Article 69(7) of the Statute ('Bemba Defence Objections').<sup>3</sup>
4. On 14 September 2015, the defence for Mr Arido ('Arido Defence') objected to the admission of the Arido Statements, submitting, *inter alia*, that they are

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<sup>1</sup> 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, with confidential annex. A public redacted version was notified on 6 August 2015 (ICC-01/05-01/13-1113-Red).

<sup>2</sup> Public redacted version of "Prosecution's Third Request for the Admission of Evidence from the Bar Table", 21 August 2015, ICC-01/05-01/13-1170-Conf, with confidential annex. A public redacted version was filed on 18 September 2015 (ICC-01/05-01/13-1170-Red).

<sup>3</sup> Defence Response to the Prosecution's Second Bar Table Motion, 9 October 2015, ICC-01/05-01/13-1199-Conf, with confidential annex, paras 43-104. A public redacted version was notified on 9 October 2015 (ICC-01/05-01/13-1199-Red).

- (i) testimonial and therefore only admissible under Rule 68 of the Rules and
- (ii) inadmissible under Article 69(7) of the Statute ('Arido Defence Objections').<sup>4</sup>
5. On 24 September 2015, the Chamber, *inter alia*, found the Bemba Defence Objections and Arido Defence Objections to be new requests under Article 69(7) of the Statute and directed that any responses be filed within two weeks.<sup>5</sup> Noting submissions as to whether, *inter alia*, the Arido Statements must satisfy the requirements of Rule 68 of the Rules, the Chamber also indicated that it would provide relevant guidance in due course.<sup>6</sup>
6. On 9 October 2015, the Prosecution responded to the Bemba Defence Objections and Arido Defence Objections ('Response').<sup>7</sup>

## II. Submissions and Analysis

7. The Chamber recalls its approach to the admissibility of evidence under Article 69(4) of the Statute ('Article 69(4) Decision')<sup>8</sup> and the applicable law relating to Article 69(7) of the Statute as set out in previous decisions.<sup>9</sup>
8. In conducting an enquiry under Article 69(7) of the Statute, the Chamber must first determine whether evidence was obtained in violation of the Statute or internationally recognised human rights. If no such violation is established, the Chamber will not consider the criteria under Article 69(7)(a) or (b) of the Statute.

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<sup>4</sup> Narcisse Arido's Response to the Prosecution's Third Bar Table Motion (ICC-01/05-01/13-1170-Conf), 14 September 2015, ICC-01/05-01/13-1241-Conf, with confidential annex, paras 10-11, 14-15 and 33-58. A public redacted version was notified on 8 October 2015 (ICC-01/05-01/13-1241-Red).

<sup>5</sup> Decision on Prosecution Requests for Admission of Documentary Evidence (ICC-01/05-01/13-1013-Red, ICC-01/05-01/13-1113-Red, ICC-01/05-01/13-1170-Conf), 24 September 2015, ICC-01/05-01/13-1285 ('Article 69(4) Decision'), para. 14.

<sup>6</sup> Article 69(4) Decision, ICC-01/05-01/13-1285, para. 15.

<sup>7</sup> Prosecution Consolidated Response to the Bemba and Arido Defences' Challenges to Legality of Prosecution Evidence pursuant to Article 69 (ICC-01/05-01-13-1199-Conf and ICC-01/05-01/13-1241-Conf), 9 October 2015, ICC-01/05-01/13-1359-Conf.

<sup>8</sup> Article 69(4) Decision, ICC-01/05-01/13-1285, para. 9.

<sup>9</sup> Decision on Kilolo Defence Motion for Inadmissibility of Material, 16 September 2015, ICC-01/05-01/13-1257 ('First Article 69(7) Decision'), paras 7-9; Decision on Request to declare telephone intercepts inadmissible, 24 September 2015, ICC-01/05-01/13-1284 ('Second Article 69(7) Decision'), para. 17.

## A. Detention Centre Materials

### *Submissions*

9. The Bemba Defence submits that the decision of the Single Judge of Pre-Trial Chamber II ('Single Judge') to authorise Prosecution access to the Detention Centre Materials violated Mr Bemba's statutory and human rights because it was (i) unlawful, particularly insofar as the decision was made on an *ex parte* basis and the Detention Centre Materials were part of Mr Bemba's detention record;<sup>10</sup> (ii) unsupported by evidence of a grounded suspicion of criminal activity;<sup>11</sup> (iii) unnecessary to fulfil the objective of the Prosecution's request; and (iv) disproportionate 'in reference to the interests of the Prosecution's investigations, vis-à-vis the right to privacy and legal privilege of the persons affected,' as well as the principles of equality of arms and adversarial proceedings.<sup>12</sup>
10. The Prosecution responds, *inter alia*, that the Detention Centre Materials: (i) were lawfully recorded and transmitted on the basis of reliable information implicating Mr Bemba; (ii) do not contain privileged conversations; and (iii) were recorded and transmitted in a manner which does not unduly affect Mr Bemba's privacy rights.<sup>13</sup>

### *Analysis*

11. The Chamber recalls that a finding of inadmissibility under Article 69(7) of the Statute requires, as a first step, that the evidence be obtained either in violation of the Statute or internationally recognised human rights. The Bemba Defence raises arguments pertaining to both limbs.

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<sup>10</sup> Bemba Defence Objections, ICC-01/05-01/13-1199-Red, paras 44, 47-51 and 92-95.

<sup>11</sup> Bemba Defence Objections, ICC-01/05-01/13-1199-Red, paras 44 and 57-59.

<sup>12</sup> Bemba Defence Objections, ICC-01/05-01/13-1199-Red, paras 44-45 and 74-91.

<sup>13</sup> Response, ICC-01/05-01/13-1359-Conf, paras 5-29.

12. As regards the purported violation of the Statute, the Chamber notes that, in authorising access<sup>14</sup> and thereafter clarifying its scope,<sup>15</sup> the Single Judge acted under Articles 57(3)(a) and 70 of the Statute. Contrary to the Bemba Defence submissions and as emphasised by the Single Judge, there is no requirement that a detained person have an opportunity to be heard where an application is made under Article 57(3)(a) of the Statute.<sup>16</sup> This is all the more true in the particular circumstances of this case, where prior consultations with Mr Bemba would have defeated the purpose for which the Article 57(3)(a) request was made.
13. Moreover, the Bemba Defence has provided no cogent reason that would lead the Chamber to depart from the Single Judge's decision that the Detention Centre Materials were not part of the detention record within the meaning of Regulation 92 of the Regulations.<sup>17</sup> Even assuming, *arguendo*, that the Detention Centre Materials were part of the detention record, the Bemba Defence Objections overlook Regulation 92(4) of the Regulations, which provides that an order granting access may, in exceptional circumstances, be made prior to the detained person being informed of the request, so long as that person is informed and given an opportunity to be heard as soon as practicable.<sup>18</sup> The Bemba Defence makes no submission that it has not been given such an opportunity – indeed, the Bemba Defence Objections themselves demonstrate that it has been given an opportunity

<sup>14</sup> Pre-Trial Chamber II, Decision on the Prosecutor's "Request for judicial assistance to obtain evidence for investigation under Article 70", 8 May 2013, ICC-01/05-46 ('First Access Decision').

<sup>15</sup> Pre-Trial Chamber II, Decision on the "Registry's Observations pursuant to regulation 24 *bis* of the Regulations of the Court on the implementation of the 'Decision on the Prosecutor's "Request for judicial assistance to obtain evidence for investigation under Article 70'"", 27 May 2013, ICC-01/05-50 ('Second Access Decision'); Pre-Trial Chamber II, Decision on the "Prosecution's request for recordings of telephone calls between Messrs Bemba and Mangenda to be referred to Independent Counsel", 17 December 2013, ICC-01/05-01/13-48 ('Third Access Decision').

<sup>16</sup> Second Access Decision, ICC-01/05-50, paras 9-10. *See also* Pre-Trial Chamber II, Joint decision on applications for leave to appeal decisions issued in the situation following their reclassification, submitted by the Defence for Mr Mangenda, the Defence for Mr Kilolo and the Defence for Mr Bemba, 14 February 2014, ICC-01/05-01/13-187, pages 6-8.

<sup>17</sup> First Access Decision, ICC-01/05-46, para. 9.

<sup>18</sup> The Chamber further notes that, although Regulation 175(10) of the Regulations of the Registry provides that telephone conversations actively monitored and transcribed by the Registry shall not be handed over as evidence of contempt of court without prior notice and disclosure to counsel for the detained person, this provision does not apply to recordings of passively monitored calls subject to a judicial order providing access.

to be heard and seek remedies for any alleged prejudice. As a result, the Chamber finds that the Detention Centre Materials were not obtained by means of a violation of the Statute.

14. As regards the purported violation of internationally recognised human rights, the Chamber notes that the human right to privacy protects a detained person's communications.<sup>19</sup> Pursuant to Article 69(5) of the Statute, such communications may also, in certain circumstances, be protected as, *inter alia*, attorney-client or other confidential communications under Rule 73 of the Rules or confidential work-product under Rule 81(1) of the Rules. Any measure impacting on such rights, including of detained persons, must be lawful, necessary and proportionate to the aim pursued.<sup>20</sup>
15. First, the Chamber recalls that the measures taken had a basis in law. Articles 57(3)(a) and 70 of the Statute, when read in conjunction with Regulation 100(3) of the Regulations of the Court ('Regulations') and Regulations 174 and 175 of the Regulations of the Registry,<sup>21</sup> are accessible, foreseeable as to their effects and sufficiently precise in order to enable Mr Bemba to regulate his conduct.<sup>22</sup> In particular, Mr Bemba was on notice that his non-privileged communications were passively monitored<sup>23</sup> and could be disclosed and/or reviewed if there were

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<sup>19</sup> Article 17 of the International Covenant on Civil and Political Rights; Article 8 of the European Convention on Human Rights; Article 11 of the American Convention on Human Rights; Principle 5 of the Basic Principles for the Treatment of Prisoners. *See also* First Article 69(7) Decision, ICC-01/05-01/13-1257, para. 16; Second Article 69(7) Decision, ICC-01/05-01/13-1284, para. 18.

<sup>20</sup> *The Prosecutor v. Ntaganda*, Trial Chamber VI, Decision on restrictions in relation to certain detainees, 18 August 2015, ICC-01/04-02/06-786-Red4, para. 33, *citing* ECtHR, *Messina v. Italy*, Appl. no. 25498/94, Judgment, 28 September 2000, paras 59-74; *Lavents v. Latvia*, Appl. no. 58442/00, Judgement, 28 November 2002, paras 134-143; *Van der Ven v. The Netherlands*, Appl. no. 50901/99, Judgement, 4 February 2003, paras 64-72; *Kornakovs v. Latvia*, Appl. no. 61005/00, Judgement, 15 June 2006, paras 134-36. *See also* First Article 69(7) Decision, ICC-01/05-01/13-1257, para. 16.

<sup>21</sup> Pursuant to Regulation 93 of the Regulations, a detained person is provided with a copy of these and other portions of the publicly available Regulations and Regulations of the Registry relevant to detention matters in a language he or she fully understands.

<sup>22</sup> *See* First Article 69(7) Decision, ICC-01/05-01/13-1257, para. 16.

<sup>23</sup> Regulation 174(3) of the Regulations of the Registry.

reasonable grounds to believe that the detained person or interlocutor may be attempting to, *inter alia*, interfere with a witness or the administration of justice.<sup>24</sup>

16. Second, the Prosecution's access to the Detention Centre Materials was necessary. Pursuant to Article 57(3)(a) of the Statute,<sup>25</sup> apparently applying a standard of 'reasonable suspicion'<sup>26</sup> and on the basis of the information available,<sup>27</sup> the Single Judge was satisfied that logs of telephone calls received or placed by Mr Bemba while at the Detention Centre, as well as any recordings of non-privileged calls, 'may be of essence for the Prosecution to be able to shed further light on the relevant facts [...] for purposes of [its] investigation'.<sup>28</sup> The Bemba Defence does not claim that any other reasonable measure was available in order to obtain such information for that purpose.

17. Third, the Chamber is satisfied that access to the Detention Centre Materials was proportionate to its objective. The Single Judge emphasised that the Prosecution could only directly access recordings of non-privileged calls.<sup>29</sup> In particular, before the relevant Detention Centre Materials were reviewed,<sup>30</sup> the Single Judge found that (i) the 'nature and legal status' of communications between Mr Bemba and Mr Mangenda on a non-privileged line did not preclude direct access, and (ii) the

<sup>24</sup> Regulation 174(2) and 175 of the Regulations of the Registry. *See also* Article 70 of the Statute.

<sup>25</sup> Article 57(3)(a) of the Statute provides that the Pre-Trial Chamber may '[a]t the request of the Prosecutor, issue such orders and warrants *as may be required for the purposes of an investigation*' (emphasis added).

<sup>26</sup> First Access Decision, ICC-01/05-46, para. 9; Second Access Decision, ICC-01/05-50, para. 10; The potential suitability of this standard is acknowledged by the Bemba Defence. *See* Bemba Defence Objections, ICC-01/05-01/13-1199-Red, para. 69.

<sup>27</sup> The Single Judge noted Prosecution submissions that it possessed (i) evidence indicating that, *inter alia*, Mr Bemba was involved 'in a scheme to provide benefits to defence witnesses in exchange for false testimony and false documents' and (ii) reliable information suggesting that Mr Bemba 'may be using the Detention Centre telephone system to contact supporters'. First Access Decision, ICC-01/05-46, paras 1-2, *citing* Request for Judicial Assistance to Obtain Evidence for Investigation under Article 70, 3 May 2013, ICC-01/05-44-Red, paras 1, 3-4 and 23-24.

<sup>28</sup> First Access Decision, ICC-01/05-46, para. 4. *See also* Second Access Decision, ICC-01/05-50, para. 10.

<sup>29</sup> First Access Decision, ICC-01/05-46, para. 4; Second Access Decision, ICC-01/05-50, paras 10-11. *See also* Decision on the Prosecutor's "Request for judicial order to obtain evidence for investigation under Article 70", 29 July 2013, ICC-01/05-52-Red2, para. 6.

<sup>30</sup> The Bemba Defence is mistaken in its assertion that the Single Judge did not rule on whether privilege attached to recording of calls between Mr Bemba and Mr Mangenda until after they were accessed and reviewed. *See* Bemba Defence Objections, ICC-01/05-01/13-1199-Red, paras 86-87 (arguing that the Single Judge 'offend[ed] the consistent train of case law which prohibits *post facto* ratification of surveillance'). In fact, the Prosecution refrained from accessing and reviewing such calls, pending the Single Judge's ruling as to whether privilege could attach thereto and the appropriate review process. *See* Third Access Decision, ICC-01/05-01/13-48, paras 1 and 8.



different composition of Prosecution teams in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ('Main Case') and the *Bemba et al.* case adequately addressed concerns regarding defence rights and the integrity of the proceedings.<sup>31</sup> Trial Chamber III also has confirmed that the Prosecution's access to, *inter alia*, the Detention Centre Materials resulted in no violation of Mr Bemba's rights in respect of the Main Case.<sup>32</sup> Finally, the Registry and Prosecution indicated that, as noted with approval by the Single Judge, the Prosecution would only receive recordings identified as relevant to its investigations.<sup>33</sup>

18. The Bemba Defence only claims that the Detention Centre Materials relating to one recording are privileged and concern confidential defence strategy.<sup>34</sup> However, emphasising that this call between Mr Mangenda and Mr Bemba was made on a non-privileged line, falls within the relevant time period and relates to the role of and communications between two accused, the Chamber does not consider that the Bemba Defence has provided any cogent reason that would lead it to depart from the finding of the Single Judge that such communications are not privileged. Accordingly, the Chamber finds that the Detention Centre Materials were not obtained by means of a violation of internationally recognised human rights.
19. In sum, the Detention Centre Materials' admission is not prohibited by Article 69(7) of the Statute. In line with the Chamber's approach set out in the Article 69(4) Decision, the Chamber defers consideration of the material concerned under Article

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<sup>31</sup> Third Access Decision, ICC-01/05-01/13-48, paras 3-7. *See also* Appeals Chamber, Decision on the requests for the Disqualification of the Prosecutor, the Deputy Prosecutor and the entire OTP staff, 22 August 2014, ICC-01/05-01/13-648-Red3, para. 59 (finding that 'the Prosecutor's impartiality may not reasonably be doubted on the basis of Mr Kabongo's argument because, *according to the Prosecutor, she in fact ensured that neither she nor any member of her office working on the Bemba case had access to the conversations of Mr Kabongo that had been recorded by the Registrar*') (emphasis added).

<sup>32</sup> *See, inter alia*, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Trial Chamber III, Decision on Defence Request for Interim Relief, 2 May 2014, ICC-01/05-01/08-3059; Decision on "Defence Motion on Privileged Communications", 3 June 2014, ICC-01/05-01/08-3080; Decision on "Defence Urgent Request for Disclosure and Injunctive Relief concerning Privileged Defence Communications" and Addendum, 3 July 2014, ICC-01/05-01/08-3101; Decision on "Defence Request for Relief for Abuse of Process", 17 June 2015, ICC-01/05-01/08-3255.

<sup>33</sup> Second Access Decision, ICC-01/05-50, paras 1, 5 and 8.

<sup>34</sup> ICC-01/05-01/13-1199-Conf-AnxA, page 18.

69(4) of the Statute until deliberating on its judgment pursuant to Article 74(2) of the Statute.

## **B. Arido Statements**

### *Submissions*

20. The Arido Defence submits that the Arido Statements are testimonial and must therefore satisfy Rule 68 of the Rules, as any other procedure would infringe the right to confront witnesses and the right against self-incrimination.<sup>35</sup> In relation to Article 69(7) of the Statute, the Arido Defence submits that the Arido Statements were obtained in violation of the Court's statutory framework and internationally recognised human rights reflected therein because (i) they were not recorded in accordance with Rule 112 of the Rules;<sup>36</sup> (ii) prior to questioning, Mr Arido was improperly informed of the offences he was suspected of having committed;<sup>37</sup> and (iii) Mr Arido's rights to legal assistance and, by extension, to remain silent and against self-incrimination were infringed, particularly insofar as assigned counsel was not approved by the Registry, had no prior experience in international criminal law, and did not have access to Mr Arido's criminal file.<sup>38</sup>
21. The Prosecution responds that (i) the Arido Statements conformed to the relevant requirements of national law and the Court's statutory framework; (ii) the Arido Defence does not substantiate its claim of ineffective legal assistance; and (iii) Mr Arido was fully informed of the charges and his rights.<sup>39</sup>

### *Analysis*

22. At the outset, in relation to the Arido Defence submissions concerning the appropriate provision on admissibility, the Chamber holds that, by its plain

<sup>35</sup> Arido Defence Objections, ICC-01/05-01/13-1241-Red, paras 11 and 14-18.

<sup>36</sup> Arido Defence Objections, ICC-01/05-01/13-1241-Red, para. 35.

<sup>37</sup> Arido Defence Objections, ICC-01/05-01/13-1241-Red, para. 39.

<sup>38</sup> Arido Defence Objections, ICC-01/05-01/13-1241-Red, paras 40-52.

<sup>39</sup> Response, ICC-01/05-01/13-1359-Conf, paras 30-37.

language, Rule 68 of the Rules only applies to the prior recorded testimony of a witness. Mr Arido is an accused in this case – he is not a witness.<sup>40</sup> Thus, as the Arido Statements are not the prior recorded testimony of a witness, Rule 68 of the Rules does not apply. Rather, the Arido Statements are governed by the general admissibility requirements set out in Article 69 of the Statute.<sup>41</sup> In relation to arguments concerning the right against self-incrimination, the Chamber notes that Mr Arido was informed of this right before making the Arido Statements,<sup>42</sup> in accordance with Article 55(2)(b) of the Statute. Further, any inability of the defence to question Mr Arido concerning the Arido Statements is a consideration relevant to an assessment of probative value and prejudice under Article 69(4) of the Statute to be conducted at the conclusion of the trial.<sup>43</sup>

23. Turning to submissions relating to a purported violation of the Statute under Article 69(7) of the Statute, the Chamber notes that, where there are grounds to believe that a person has committed a crime within the Court's jurisdiction, Article 55(2) of the Statute guarantees certain rights to that person during questioning. Further, Rules 111 and 112 of the Rules impose requirements on the record of questioning in connection with an investigation.
24. As regards the propriety of the recording of the Arido Statements, the Chamber recalls, first that the requirements of Rule 112 of the Rules only apply '[w]henver the Prosecutor questions a person'. Pursuant to Article 99(1) of the Statute, a State shall execute a cooperation request, including for the questioning of a person, in accordance with the relevant procedure under national law.<sup>44</sup> French authorities

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<sup>40</sup> In accordance with his rights under Article 67 of the Statute, the Prosecution may not summon Mr Arido as a witness in the *Bemba et al.* case.

<sup>41</sup> The ICTY Appeals Chamber has reached similar conclusions regarding the admissibility of suspect statements of an accused, finding, *inter alia*, that they are not governed by the requirements of Rules 92*bis* and 92*quater* of the ICTY Rules of Procedure and Evidence (which are analogous to portions of Rule 68 of the Rules). ICTY, *Prosecutor v. Prlić et al.*, Appeals Chamber, IT-04-74-AR73.6, Decision on Appeals against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence, 23 November 2007 ('*Prlić et al.* Decision'), paras 37-63.

<sup>42</sup> See, *inter alia*, CAR-OTP-0074-1061; CAR-OTP-0074-1065; CAR-OTP-0077-0169.

<sup>43</sup> See *Prlić et al.* Decision, paras 52-54; ICTY, Appeals Chamber, *Prosecutor v. Aleksovski*, IT-95-14/1, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para.15.

<sup>44</sup> See also Articles 89, 91, 92, 93 and 96 of the Statute.

took the Arido Statements on French territory in compliance with French law,<sup>45</sup> and this Chamber is precluded from ruling on whether French law was correctly applied in this context.<sup>46</sup>

25. Second, concerning the presumed lack of notice of the charges, the Chamber is satisfied that, as required by Article 55(2)(a) of the Statute, Mr Arido was informed, before questioning, of the charges against him at the time, namely corruptly influencing witnesses and presenting 14 items of documentary evidence that he purportedly knew were false or forged.<sup>47</sup> Contrary to the Arido Defence submissions,<sup>48</sup> it is irrelevant and inapposite that the charge relating to the documentary evidence under Article 70(1)(b) of the Statute was not confirmed by the Pre-Trial Chamber, or that certain interviews of Mr Arido allegedly focused only on that particular charge.
26. Third, in relation to submissions concerning assigned counsel, there is no requirement under Article 55(2)(c) of the Statute that assigned counsel must first be approved by the Registry, in particular where French authorities conduct an interview on French territory and in accordance with French law. Regardless, the Arido Defence does not demonstrate that counsel's qualifications and lack of access to the case record actually resulted in ineffective assistance, thereby impacting Mr Arido's ability to waive his right to remain silent and against self-incrimination. Indeed, Mr Arido and his assigned counsel were notified of the warrant of arrest, in accordance with French law and Article 59 of the Statute, and Mr Arido was

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<sup>45</sup> The French authorities confirmed that the recording of the Arido Statements complied with French law. *See* CAR-OTP-0089-0007.

<sup>46</sup> Article 69(8) of the Statute.

<sup>47</sup> At the time of the Arido Statements, the warrant of arrest reflected the relevant charges. *See* Pre-Trial Chamber II, Warrant of arrest for Jean-Pierre BEMBA GOMBO, Aimé KILOLO MUSAMBA, Jean-Jacques MANGENDA KABONGO, Fidèle BABALA WANDU and Narcisse ARIDO, 20 November 2013, ICC-01/05-01/13-1-Red2-tENG. On 21 November 2015, the day of his arrest, the French authorities notified Mr Arido of the warrant of arrest. *See* CAR-OTP-0074-1045. On 23 November 2013, before questioning, the French authorities again informed Mr Arido of the following charges: '*subornation de témoin dans le cadre d'une procédure judiciaire étrangère ou internationale*' and '*usage de faux en écriture*'. CAR-OTP-0074-1061. *See also* CAR-OTP-0074-1060; CAR-OTP-0074-1065; CAR-OTP-0077-0170.

<sup>48</sup> Arido Defence Objections, ICC-01/05-01/13-1241-Red, para. 39.

informed of the charges against him and his rights, *inter alia*, to remain silent and against self-incrimination.<sup>49</sup>

27. In light of the above findings, the Chamber also holds that the Arido Statements were not obtained in violation of internationally recognised human rights. No further arguments or facts have been adduced which warrant an enquiry into the second limb of Article 69(7) of the Statute.
28. Accordingly, the Chamber finds that the Arido Statements were not obtained by means of a violation of the Statute or internationally recognised human rights. In line with the Chamber's approach set out in the Article 69(4) Decision, the Chamber defers consideration of the material concerned until deliberating on its judgment pursuant to Article 74(2) of the Statute.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**REJECTS** the Bemba Defence Objections;

**REJECTS** the Arido Defence Objections;

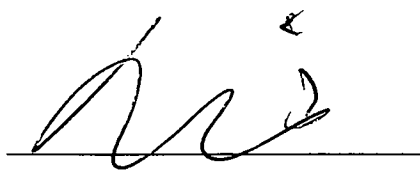
**REITERATES** that the Detention Centre Materials (as identified in ICC-01/05-01/13-1113-Conf-AnxA) and Arido Statements (CAR-OTP-0074-1065 and CAR-OTP-0077-0169) are recognised as formally 'submitted'; and

**ORDERS** the Prosecution to, within ten days of notification of this decision, file a public redacted version or request reclassification of the Response.

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<sup>49</sup> CAR-OTP-0074-1045; CAR-OTP-0074-1061; CAR-OTP-0074-1060; CAR-OTP-0074-1065; CAR-OTP-0077-0169.

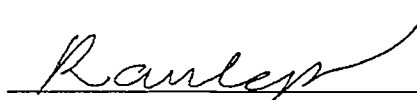
Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, appearing to be 'B. Schmitt', written over a horizontal line.

**Judge Bertram Schmitt, Presiding Judge**

A handwritten signature in black ink, appearing to be 'M. Perrin de Brichambaut', written over a horizontal line.

**Judge Marc Perrin de Brichambaut**

A handwritten signature in black ink, appearing to be 'Raul C. Pangalangan', written over a horizontal line.

**Judge Raul C. Pangalangan**

Dated 30 October 2015

At The Hague, The Netherlands