



Original: **English**

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

Date: **20 June 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 Formally Submit CAR-D24-0002-0003

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, 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 Article 67 of the Rome Statute, Rule 141 of the Rules of Procedure and Evidence and Regulation 35(2) of the Regulations of the Court, issues the following 'Decision on Arido Defence Request to Formally Submit CAR-D24-0002-0003'.

1. On 29 April 2016, the Presiding Judge declared the presentation of evidence closed in this case.¹ 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.'²
2. On 6 June 2016, the defence for Mr Arido requested the formal submission of item CAR-D24-0002-0003 so that the Chamber may consider it in its judgment pursuant to Article 74 of the Statute ('Request').³
3. On 8 June 2016, the Office of the Prosecutor ('Prosecution') responded, submitting that the relief sought be rejected ('Response').⁴
4. As indicated by the Arido Defence, CAR-D24-0002-0003 is an attendance record of a meeting which appears to indicate that P-260 had a military background. P-260 testified before Trial Chamber III that he was in the military, and testified before this Chamber that this was false testimony.⁵ The Arido Defence argues that this document is 'exculpatory and an important document for the defence of Mr Arido'.⁶ The Arido Defence also indicates that the document was used in its examination of P-260, despite not being formally submitted, and therefore

¹ Decision Closing the Submission of Evidence and Further Directions, ICC-01/05-01/13-1859.

² ICC-01/05-01/13-1859, para. 5.

³ Narcisse Arido's Request for Inclusion of CAR-D24-0002-0003 on its List of Evidence for the Purposes of Consideration in Trial Chamber VII's Judgement, ICC-01/05-01/13-1923.

⁴ Prosecution's Response to Narcisse Arido's "Request for Inclusion of CAR-D24-0002-0003 on its List of Evidence for the Purposes of Consideration in Trial Chamber VII's Judgement", ICC-01/05-01/13-1926.

⁵ Transcript of Hearing, 12 October 2015, ICC-01/09-01/11-T-18-Red2-ENG, page 35 line 13 to page 38 line 11.

⁶ Request, ICC-01/05-01/13-1923, para. 3.

would not prejudice the other parties since 'it already in most ways forms part of the record'.⁷

5. The Chamber notes the Prosecution's argument that the Arido Defence fails to substantiate why it is seeking the admission of this document so late in the proceedings.⁸ The Prosecution's argument does have merit, but it is also true that: (i) the document, on its face, challenges an important credibility point in P-260's testimony and, even more importantly, (ii) no prejudice results from considering it. P-260 was shown the document and given full opportunity to comment on it. The Prosecution also had the possibility to subsequently put any further questions to the witness concerning the document. Despite the evidence presentation being closed, the Chamber considers it necessary for a fair trial to nevertheless consider document CAR-D24-0002-0003 in its judgment. The Prosecution's arguments on the authenticity of this document⁹ will also be considered in the judgment.
6. The Chamber emphasises that the circumstances surrounding this particular document constitute truly exceptional circumstances. The evidence presentation in this case is closed, and any future requests of this kind will be considered with great circumspection – including materials submitted late through no fault of the parties.

⁷ Request, ICC-01/05-01/13-1923, para. 4.

⁸ Response, ICC-01/05-01/13-1926, para. 2.

⁹ Response, ICC-01/05-01/13-1926, para. 3.

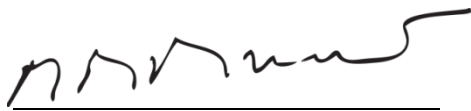
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request, recognising CAR-D24-0002-0003 as formally submitted.

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

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Judge Bertram Schmitt, Presiding Judge

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Judge Marc Perrin de Brichambaut

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

Judge Raul C. Pangalangan

Dated 20 June 2016

At The Hague, The Netherlands