



Original: **English**

No.: ICC-01/05-01/13
Date: **5 December 2016**

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Single Judge

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 Prosecution Request for Submission of an Additional Document
for Purposes of Sentencing**

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

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber VII ('Single Judge' and 'Chamber', respectively) 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 Article 64(2) of the Rome Statute ('Statute') and Regulation 35 of the Regulations of the Court, issues the following 'Decision on Prosecution Request for Submission of an Additional Document for Purposes of Sentencing'.

1. On 20 October 2016, the Single Judge set a deadline of 23 November 2016 ('Deadline') for the disclosure and submission of any additional material for sentencing.¹
2. On 23 November 2016, the Office of the Prosecutor ('Prosecution') accordingly filed its list of additional evidence for the purposes of sentencing ('List of Evidence').²
3. On 30 November 2016, the Prosecution requested leave to add one document to its List of Exhibits for sentencing purposes ('Request').³
4. On 2 December 2016,⁴ the defence for Mr Bemba⁵ and Mr Arido⁶ ('Bemba Defence' and 'Arido Defence', respectively) submitted their responses ('Bemba Response' and 'Arido Response', respectively), arguing that the Request be rejected.
5. The Prosecution submits that the item in question, a publicly available briefing report from a non-governmental organisation ('Report'), is authentic, reliable and *prima facie* relevant to the sentencing proceedings, since it addresses the nature and

¹ Sentencing Calendar, ICC-01/05-01/13-1990.

² Prosecution's Formal Submission of Additional Evidence to be Considered for Sentencing, ICC-01/05-01/13-2047. The materials on the List of Evidence at sentencing are deemed to be submitted for the Chamber's sentencing determinations. *See* ICC-01/05-01/13-1990, para. 2(ii).

³ Prosecution Motion pursuant to Regulation 35 to Add one Document to the "Additional Evidence" Submitted regarding the Sentencing Proceedings, ICC-01/05-01/13-2070.

⁴ The response deadline was shortened via an Email from the Chamber to the parties, Email from Legal Officer, 30 December 2016, at 17:23.

⁵ Response to the 'Prosecution Motion pursuant to Regulation 35 to Add one Document to the "Additional Evidence" Submitted regarding the Sentencing Proceedings', ICC-01/05-01/13-2073.

⁶ Narcisse Arido's Response to 'Prosecution Motion pursuant to Regulation 35 to Add one Document to the "Additional Evidence" Submitted regarding the Sentencing Proceedings' (ICC-01/05-01/13-2070), ICC-01/05-01/13-2074.

extent of witness interference at the Court and therefore provides a picture of the overall consequences of the conduct of the convicted persons.⁷

6. As to the timing of the submission, the Prosecution asserts that the Report seems to have been published on 16 November 2016, before the Deadline, but that it only became aware of its existence on 28 November 2016.⁸ It further argues that the admission of the Report would not unfairly prejudice the convicted persons due to its limited length, the fact that it is publicly available, has already been disclosed to the parties, and the fact that it does not entail the calling of any additional evidence.⁹
7. The Bemba Defence submits that the Prosecution fails to explain why it could not have submitted the Report within the Deadline,¹⁰ that the addition would be unduly prejudicial to the Defence¹¹ and that the Report lacks probative value.¹²
8. The Arido Defence also argues that the Prosecution could have filed the Report before the Deadline and that it lacks probative value.¹³ Further, it submits that it lacks relevance, being 'insufficiently tailored to the individual crimes and circumstances for which Mr Arido is convicted'.¹⁴
9. The Single Judge considers that whereas the Report appears to have been available since 16 November 2016, the Prosecution does not present any justifiable explanation why it was unable to obtain the document before the Deadline. Therefore, the criteria of Regulation 35(2) of the Regulations are not fulfilled. However, as previously stated by this and other chambers,¹⁵ the fact that the

⁷ Request, ICC-01/05-01/13-2070, paras 3, 6-7.

⁸ Request, ICC-01/05-01/13-2070, para. 5.

⁹ Request, ICC-01/05-01/13-2070, para. 8.

¹⁰ Bemba Response, ICC-01/05-01/13-2073, paras 2-6.

¹¹ Bemba Response, ICC-01/05-01/13-2073, para. 10-11.

¹² Bemba Response, ICC-01/05-01/13-2073, para. 7-8.

¹³ Arido Response, ICC-01/05-01/13-2074, paras 2-3.

¹⁴ Arido Response, ICC-01/05-01/13-2074, para. 4.

¹⁵ See Article 64(2) of the Rome Statute and Regulation 29 of the Regulations, Decision on Prosecution Request to add 12 Items to its List of Evidence, 27 August 2015, ICC-01/05-01/13-1191. *In the same vein*, Trial Chamber IX, *Prosecutor v. Dominic Ongwen*, Decision on Prosecution Request to Add Items to its List of Evidence, to include a

conditions of Regulations 35 of the Regulations are not fulfilled does not bar a chamber from extending a deadline if this is in the interests of justice and preserves the fair and expeditious proceedings, as stipulated in Article 64(2) of the Statute. In respect to the objections that the Report lacks probative value, the Single Judge notes that the Chamber will assess the materials submitted for sentencing at a later stage. The purpose of making items available to the parties for the purposes of the sentencing hearing – as previously explained by the Single Judge¹⁶ – is to place them in a position to fully present the arguments they consider relevant for this hearing.

10. The Single Judge notes that the Report is of limited length (6 pages), relies only on publicly available information and that the defence was aware of the Prosecution's intent to rely on this document as of 29 November 2016.¹⁷ Accordingly, the Single Judge finds that the Report can be added to the List of Evidence and grants the Request. This is without any prejudice to the actual assessment of the information and arguments that are ultimately presented by the parties.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request.

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



Judge Bertram Schmitt, Presiding Judge

Dated 5 December 2016

At The Hague, The Netherlands

Witness on its List of Witnesses and to Submit Two Prior Recorded Testimonies under Rule 68(2)(b) and (c), 22 November 2016, ICC-02/04-01/15-600, para. 14.

¹⁶ Decision on the Prosecution Renewed Request to Obtain Financial Information from the Registry, 11 November 2016, ICC-01/05-01/13-2026, para. 14; Decision on the Bemba Defence Request to Obtain Information from the Registry, 14 November 2016, ICC-01/05-13-2028-Corr, para. 8.

¹⁷ Prosecution's Communication of Rule 77 Material disclosed to the Defence on 29 November 2016, 29 December 2016, ICC-01/05-01/13-2068, with confidential annex A, containing disclosure notice of the Report.