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

Date: **19 July 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 Request for Leave to Appeal the Decision on Requests by the Arido
Defence Provided in its Final Submissions**

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

The Office of the Prosecutor

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Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

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Mr Christopher Gosnell

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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 82(1)(d) of the Rome Statute ('Statute') and Rule 155 of the Rules of Procedure and Evidence, issues the following 'Decision on Request for Leave to Appeal the Decision on Requests by the Arido Defence Provided in its Final Submissions'.

I. Procedural background

1. On 29 June 2016, the Chamber rendered its 'Decision on Requests by the Arido Defence provided in its Final Submissions' ('Impugned Decision'), rejecting a variety of requests made in the closing submissions by the defence for Mr Arido ('Arido Defence').¹
2. On 4 July 2016, the Arido Defence sought leave to appeal the Impugned Decision ('Request').²
3. On 7 July 2016, the Prosecution filed its response to the Request ('Response'), submitting that it be rejected.³
4. The Arido Defence seeks leave to appeal the Impugned Decision to the extent that the Chamber rejected the Arido Defence Request 'that the Chamber find that Mr Arido had "a reasonable apprehension for his safety" with regards to the incident described' in the Impugned Decision. The Arido Defence states that the issue arising from the Impugned Decision is the Chamber's 'lack of reasoning and unarticulated conclusion' leading to this rejection, which 'goes towards proof of the elements of charges'.⁴ It is argued that the Chamber's failure to provide reasons for its conclusion could potentially have an impact on

¹ ICC-01/05-01/13-1943-Conf.

² ICC-01/05-01/13-1944-Conf.

³ ICC-01/05-01/13-1947-Conf.

⁴ Request, ICC-01/05-01/13-1944-Conf, para 9.

the outcome of the trial and that the immediate resolution of the issue would materially advance the proceedings.

5. The Chamber recalls the applicable law relating to Article 82(1)(d) of the Statute as set out in previous decisions.⁵ As formulated by the Appeals Chamber, ‘an issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination.’⁶
6. The issue as identified by the Arido Defence cannot be considered an issue the resolution of which is essential for the determination of matters arising in the Impugned Decision. In the Impugned Decision, the Chamber stated that the Arido Defence made no attempt to provide a legal basis for the requested relief and that ‘it is not in the power or mandate of the Chamber to assess Mr Arido’s actions with respect to events unrelated to the charges’.⁷ Even if it was conceded that Mr Arido had ‘a reasonable apprehension for his safety’, the Chamber’s reasons for rejecting the corresponding remedies requested by the Arido Defence⁸ would not change.
7. Further, given the irrelevance of the incident in relation to the charges, the issue cannot significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.
8. Since the criteria of Article 82(1)(d) are cumulative, the conclusion that the request fails to identify an appealable issue arising from the Impugned Decision

⁵ Decision on Babala Defence request for leave to appeal ICC-01/05-01/13-800, 27 March 2015, ICC-01/05-01/13-877, paras 5-7; Decision on the Request for Leave to Appeal the Decision ICC-01/05-01/13-893-Red, 28 May 2015, ICC-01/05-01/13-966, paras 12-13; Decision on Babala Defence Request for Leave to Appeal the Decision Related to the Timing of Opening Statements, 16 September 2015, ICC-01/05-01/13-1258, para. 8.

⁶ Appeals Chamber, *Situation in the Democratic Republic of the Congo*, Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, ICC-01/04-168, OA 3, para. 9.

⁷ Impugned Decision, ICC-01/05-01/13-1943-Conf, para. 8.

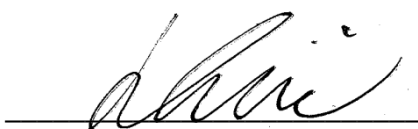
⁸ Specifically, the Arido Defence requested the Chamber to order ‘a further investigation as to whether the ICC fulfilled its responsibilities to protect Mr Arido’ and order the Registrar to determine why there has been no official response to the communications of Mr Arido. *As summarised in* Impugned Decision, ICC-01/05-01/13-1943-Conf, para. 6.

means that there is no need for the Chamber to further assess the remaining criteria. The relief sought must be rejected.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request.

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 19 July 2016

At The Hague, The Netherlands