

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 21 September 2015

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 Defence Requests for Leave to Appeal Decision ICC-01/05-01/13-1188

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

The Office of the Prosecutor

Ms Fatou Bensouda

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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

Others

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber VII ('Single Judge' and 'Chamber', respectively) 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'), Rule 132 *bis* of the Rules of Procedure and Evidence ('Rules') and Regulation 23 *bis* of the Regulations of the Court ('Regulations'), issues the following 'Decision on Defence Requests for Leave to Appeal Decision ICC-01/05-01/13-1188'.

1. On 27 August 2015, the Single Judge, *inter alia*, dismissed as premature ('Impugned Decision') defence requests related to disclosure of materials from the record in the case of the *The Prosecutor v. Jean-Pierre Bemba Gombo*.¹
2. On 1 September 2015, the defence for Mr Mangenda ('Mangenda Defence') requested leave to appeal ('Mangenda Defence Request') the Single Judge's decision that the relevant requests were premature ('Mangenda Defence Issue').² It submits that the Single Judge erroneously ruled that the Office of the Prosecutor ('Prosecution') has no independent disclosure obligation in the present case if a request for access to the same material is pending in another case.³ On this basis, it submits that the leave to appeal criteria are satisfied.⁴
3. Also on 1 September 2015, the defence for Mr Arido ('Arido Defence') requested⁵ ('Arido Defence Request'; together with the Mangenda Defence Request,

¹ Decision on Defence Requests for Disclosure of Materials from the Record of the Case of *The Prosecutor v. Jean-Pierre Bemba Gombo* and Related Matters, ICC-01/05-01/13-1188, para. 13.

² Leave to Appeal Decision on Defence Requests for Disclosure (ICC-01/05-01/13-1188), ICC-01/05-01/13-1204.

³ Mangenda Defence Request, ICC-01/05-01/13-1204, para. 7.

⁴ Mangenda Defence Request, ICC-01/05-01/13-1204, paras 1, 6-15.

⁵ Narcisse Arido's Request for Leave to Appeal 'Decision on Defence Requests for Disclosure of Materials from the Record of the Case of *The Prosecutor v. Jean-Pierre Bemba Gombo* and Related Matters' (ICC-01/05-01/13-1188), ICC-01/05-01/13-1207 ('Arido Defence Request').

‘Requests’) that the full Chamber decide⁶ whether to grant leave to appeal the following issues (together with the Mangenda Defence Issue, ‘Issues’): (i) whether Rule 132 *bis*(6) of the Rules allows a single judge to rule on a disclosure violation (‘Arido Defence Issue One’);⁷ (ii) the standard applicable to a request for a finding of a disclosure violation (‘Arido Defence Issue Two’);⁸ and (iii) whether Rule 132 *bis*(3) of the Rules requires that a party have the opportunity to request that the full Chamber consider its request (‘Arido Defence Issue Three’).⁹

4. On 3 September 2015, the defence for Mr Bemba (‘Bemba Defence’) responded in support of the Mangenda Defence Request (‘Bemba Defence Response’).¹⁰
5. On 7 September 2015, the Prosecution responded to the Requests, submitting that the Issues do not meet the leave to appeal criteria.¹¹
6. As a preliminary matter, the Single Judge notes that the Bemba Defence Response was filed as confidential due to references to confidential filings before Trial Chamber III. Noting that these filings have since been reclassified as ‘public’¹² and that the Bemba Defence does not object to reclassification, the Single Judge considers that there is nothing in the Bemba Defence Response that warrants confidential classification. Pursuant to Regulation 23 *bis*(3) of the Regulations, the Single Judge therefore reclassifies the Bemba Defence Response as ‘public’.

⁶ Arido Defence Request, ICC-01/05-01/13-1207, paras 9 and 45.

⁷ Arido Defence Request, ICC-01/05-01/13-1207, paras 10-21.

⁸ Arido Defence Request, ICC-01/05-01/13-1207, paras 22-35.

⁹ Arido Defence Request, ICC-01/05-01/13-1207, paras 36-44.

¹⁰ Response to the “Leave to Appeal Decision on Defence Requests for Disclosure (ICC-01/05-01/13-1188)”, ICC-01/05-01/13-1213-Conf.

¹¹ Prosecution’s Consolidated Response to Defence Applications for Leave to Appeal Decision on Defence Requests for Disclosure (ICC-01/05-01/13-1188), ICC-01/05-01/13-1221.

¹² *The Prosecutor v. Jean-Pierre Bemba Gombo*, Trial Chamber III, Decision on “Registry Transmission of a Joint Request received from the Defence teams in the Bemba et al. case (ICC-01/05-01/13)”, ICC-01/05-01/08-3298, para. 16.

7. As a further preliminary matter, noting the Arido Defence request that the full Chamber decide the Requests, the Single Judge finds that he is competent to rule on the Requests as the present decision concerns preparatory issues relating, *inter alia*, to disclosure that do not fall within the exclusive competence of the Chamber within the meaning of Rule 132 *bis* of the Rules.
8. Turning to the merits, the Single Judge recalls the applicable law relating to Article 82(1)(d) of the Statute as set out in previous decisions.¹³
9. The Single Judge finds that the Mangenda Defence Issue, Arido Defence Issue One and Arido Defence Issue Two, as presented, are premised on the erroneous assertion that the Single Judge decided on a standard applicable to and/or merits of the disclosure-related requests addressed in the Impugned Decision. In fact, the Single Judge dismissed such requests without prejudice because a parallel request concerning the same underlying materials was pending before Trial Chamber III, which has primary authority concerning access to those materials. Accordingly, these Issues do not arise from the Impugned Decision. The Single Judge therefore finds that the Mangenda Defence Issue, Arido Defence Issue One and Arido Defence Issue Two do not constitute appealable issues within the meaning of Article 82(1)(d) of the Statute.
10. In relation to Arido Defence Issue Three, concerning the Single Judge's power to decide matters without first consulting the parties, the Single Judge notes that Rule 132 *bis*(3) of the Rules does not require the Single Judge to consult the parties before issuing a decision. Rather, it enables the parties to request that the Single Judge 'refer specific issues to the Trial Chamber for its decision'. After the designation of the Single Judge, no request was made for the full Chamber, as

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 and the decision cited in footnote 14; 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.

opposed to the Single Judge, to deal with any of the matters addressed in the Impugned Decision. In these circumstances, where the Arido Defence had an opportunity to request that the full Chamber consider the relief sought and failed to do so, the Single Judge finds that Arido Defence Issue Three does not arise from the Impugned Decision.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Requests; and

INSTRUCTS the Registry to reclassify the Bemba Defence Response (ICC-01/05-01/13-1213-Conf) as 'public'.

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



Judge Bertram Schmitt, Single Judge

Dated 21 September 2015

At The Hague, The Netherlands