

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **7 October 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 Request for Leave to Appeal ‘Decision on Arido Defence
Request to Interview Prosecution Investigators’**

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

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') and Rules 132 *bis* and 155 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on Defence Request for Leave to Appeal "Decision on Arido Defence Request to Interview Prosecution Investigators"'.

1. On 22 September 2015, the Single Judge rejected ('Impugned Decision') the request of the defence for Mr Arido ('Arido Defence') to interview investigators from the Office of the Prosecutor ('Prosecution').¹
2. On 28 September 2015, the Arido Defence requested that the full Chamber grant leave to appeal the following issue ('Request') from the Impugned Decision: 'under what conditions can a Trial Chamber compel a potential witness to appear for an interview under Article 64(6)(f)?' ('Issue').²
3. On 2 October 2015, the Prosecution responded, submitting that the Request does not satisfy the relevant criteria ('Response').³
4. At the outset, noting the request that the full Chamber decide the Request, the Single Judge finds that he is competent to rule on the Request, which concerns preparatory issues that do not fall within the exclusive competence of the Chamber within the meaning of Rule 132 *bis* of the Rules.

¹ Decision on Arido Defence Request to Interview Prosecution Investigators, ICC-01/05-01/13-1279.

² Narcisse Arido's Request for Leave to Appeal the Single Judge's Decision on Arido Defence Request to Interview Prosecution Investigators (ICC-01/05-01/13-1279), ICC-01/05-01/13-1311-Conf.

³ Prosecution's Response to Narcisse Arido's Request for Leave to Appeal the "Decision on Arido Defence Request to Interview Prosecution Investigators", ICC-01/05-01/13-1330-Conf.

5. 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.⁴
6. In the Impugned Decision, the Single Judge rejected the requested relief because he was not persuaded that judicial assistance was necessary. Indeed, the Arido Defence has other available avenues to obtain the information sought.⁵ At this stage, where the Arido Defence has not yet attempted to obtain the information by other available means and in the absence of any convincing arguments that the Issue would significantly affect the fair and expeditious conduct of the proceedings or outcome of the trial, the Single Judge does not consider that the Request satisfies the criteria of Article 82(1)(d) of the Statute.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request; and

ORDERS the Arido Defence and Prosecution to file public redacted versions of the Request (ICC-01/05-01/13-1311-Conf) and Response (ICC-01/05-01/13-1330-Conf), respectively, within 10 days of notification of this decision.

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



Judge Bertram Schmitt, Single Judge

Dated 7 October 2015

At The Hague, The Netherlands

⁴ Transcript of hearing on 5 October 2015, ICC-01/05-01/13-T-10-CONF-ENG ET, page 9, lines 23-24 and page 11, lines 3-12; 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.

⁵ Impugned Decision, ICC-01/05-01/13-1279, para. 6.