

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/05-01/13
Date: **24 November 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***

Confidential

Decision on Further Requests on the Support of the Registry to the Accused

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

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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

Mr Esteban Peralta Losilla

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 Articles 64(6)(e) and 67(1)(d) of the Rome Statute and Regulation 23 *bis*(3) of the Regulations of the Court, issues the following 'Decision on Further Requests on the Support of the Registry to the Accused'.

I. Procedural History and Submissions

1. On 14 October 2015, the Single Judge issued the 'Decision on Mangenda Request for Directions to the Registry' ('Single Judge Decision').¹ Therein, he found, *inter alia*, that the daily living allowance provided by the Registry on a discretionary basis was not manifestly unreasonable, considering it was provided to Mr Mangenda merely to enable him to exercise his right to be present at trial.²
2. On 16 October 2015, the defence teams for Mr Babala ('Babala Defence') and Mr Kilolo ('Kilolo Defence') filed a joint request that the Registry be ordered to provide a higher daily allowance to Mr Babala and Mr Kilolo ('Allowance Request').³ The Babala and Kilolo Defence also submit, *inter alia*, that the daily allowance the Registry has promised to provide is still outstanding.⁴

¹ ICC-01/05-01/13-1367-Conf-Exp. A confidential-redacted version was filed on the same day, ICC-01/05-01/13-1367-Conf-Red.

² Single Judge Decision, ICC-01/05-01/13-1367-Conf-Red, paras 7 and 8.

³ Requête de la Défense des MM. BABALA et KILOLO en vue de solliciter une injonction de la Chambre au Greffe aux fins de payer aux accusés un *per diem* décent et suffisant et conforme à la dignité humaine pendant la durée de leur séjour à La Haye pour le procès, conformément à l'article 21 du Statut de Rome en conjonction avec l'article 3 de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, ICC-01/05-01/13-1390-Conf-Exp.

⁴ Allowance Request, ICC-01/05-01/13-1390-Conf-Exp, para. 12.

3. On 9 November 2015, the defence for Mr Mangenda ('Mangenda Defence') filed a request for clarification of the Single Judge Decision ('Clarification Request').⁵
4. On 13 November 2015, the defence team for Mr Arido ('Arido Defence') filed a request for review of the Registry's determination of the daily allowance ('Review Request').⁶ Additionally, it requested the assistance of the Registry in respect of communicating with the French authorities on an issue concerning Mr Arido's return to France between the stages of the trial.⁷
5. On 19 November 2015, the Registry provided its observations on the Review Request ('Registry Observations').⁸ It submitted, *inter alia*, that the issue regarding Mr Arido's return to France was resolved.⁹

II. Analysis

6. As a preliminary matter, the Single Judge notes that neither the Allowance Request nor the Clarification Request contain justifications for their level of classification. The Arido Defence invokes merely that the matters are of 'a private nature'¹⁰ without providing further explanation why this prevents a 'confidential' classification. The filing parties and the Registry are therefore instructed to apply for re-classification of their submissions as 'confidential' or to provide confidential redacted versions, if necessary.

⁵ Defence Request for Clarification of Decision on Request for Directions to the Registry, ICC-01/05-01/13-1367, ICC-01/05-01/13-1470-Conf-Exp, available only to the Registry and Mangenda Defence with two confidential *ex parte* annexes.

⁶ Narcisse Arido's Request for a Review of the Registry's Determination of Daily Allowance for Mr. Arido, ICC-01/05-01/13-1482-Conf-Exp, available only to the Registry and the Arido Defence with four confidential *ex parte*, annexes, available only to the Registry and the Arido Defence.

⁷ Review Request, ICC-01/05-01/13-1482-Conf-Exp, paras 34-35.

⁸ Registry's Observations on the "Narcisse Arido's Request for a Review of the Registry's Determination of Daily Allowance for Mr. Arido" ICC-01/05-1482-Conf-Exp, ICC-01/05-01/13-1487-Conf-Exp, *ex parte*, available only to the Registry and Arido Defence.

The Single Judge notes that, despite the Chamber's instruction to provide the observations by 18 November, the Registry filed its observations by 19 November 2015. However, given the fact that the Registry provided the content of its observation on 18 November 2015 to the Chamber and Arido Defence via email and the fact that they are useful for the resolution of the request, the Single Judge takes them into consideration in the interests of justice.

⁹ Registry Observations, ICC-01/05-01/13-1487-Conf-Exp, para. 6.

¹⁰ Review Request, ICC-01/05-01/13-1482-Conf-Exp, para. 2.

7. In respect of the part of the Review Request which concerns the Registry providing assistance for Mr Arido's return to France, the Single Judge notes that the issue has been resolved and, accordingly, considers this part of the Request as moot.
8. In respect to the remainder of the Review Request, the Arido Defence, in essence, argues that the Registry should be ordered to take into consideration the everyday living costs of the accused. The Single Judge recalls that the Registry provided the allowance on a discretionary basis in order to enable the accused to exercise their right to attend trial it is not provided as a general living allowance.¹¹ Mindful of the overall financial assistance provided to Mr Arido by the Court as a consequence of the non-detained accused's right to attend trial,¹² the Single Judge is of the view that the Registry did not 'abuse its discretion' and is not obliged to assist Mr Arido further. The Single Judge recalls his previous finding that the amount provided solely to ensure the accused's attendance at trial is not manifestly unreasonable¹³ and, accordingly, rejects this part of the Review Request.
9. For the reasons laid out in the previous paragraph and expressed in the Single Judge Decision, the Single Judge also rejects the Allowance Request. However, the Registry is to provide Mr Kilolo and Mr Babala with any outstanding allocation of the daily allowance as promised to them, as the case may be.
10. In respect to the Clarification Request, Mr Mangenda seeks clarification as to whether the Single Judge Decision meant that the Registry 'reimburse all costs necessary to attend court hearings'¹⁴, including transportation from the accused's place of accommodation in The Hague. The Single Judge recalls that

¹¹ Single Judge Decision, ICC-01/05-01/13-1367-Conf-Red, para. 7.

¹² ICC-01/05-01/13-1487-Conf-Exp, para. 1; ICC-01/05-01/13-1347-Conf-Red, para. 4.

¹³ Single Judge Decision, ICC-01/05-01/13-1367-Conf-Red, para. 7.

¹⁴ Clarification Request, ICC-01/05-01/13-1470-Conf-Exp, para. 4.

the Registry provided Mr Mangenda with assistance to travel to and from the Court in the form of a daily allowance.¹⁵ In its Clarification Request, the Mangenda Defence confirms that the alleged travel costs to and from the Court are in fact less than the daily allowance provided. Accordingly, the Single Judge considers that the transportation costs to and from Mr Mangenda's accommodation in The Hague are covered by the daily allowance provided to Mr Mangenda.

¹⁵ Single Judge Decision, ICC-01/05-01/13-1367-Conf-Red, para. 7; see also ICC-01/05-01/13-1347-Conf-Red, para. 4.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

ORDERS the Babala, the Kilolo and the Mangenda Defence and the Registry to apply for re-classification of their filings as 'confidential' or to provide confidential redacted versions, if necessary;

ORDERS the Registry to provide Mr Babala and Kilolo with any outstanding allocation of their daily allowance, as the case may be;

DISMISSES the part of the Review Request concerning the request for assistance of the Registry for Mr Arido's return to France as moot;

REJECTS the remainder of the Review Request and the Allowance Request; and

PROVIDES guidance on the Single Judge Decision as set out in paragraph 10.

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



Judge Bertram Schmitt, Single Judge

Dated 24 November 2015

At The Hague, The Netherlands