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TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

***THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

Public Redacted Document

Public redacted version of "Prosecution's Response to Arido's Application for Leave to Appeal the 'Decision on Requests by the Arido Defence provided in its Final Submissions'", 7 July 2016, ICC-01/05-01/13-1947-Conf

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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I. Submissions

1. Arido's application for leave to appeal¹ Trial Chamber VII's ("Chamber") "Decision on Requests by the Arido Defence provided in its Final Submissions"² should be rejected.

2. The proposed Issue, namely whether "Mr Arido had 'a reasonable apprehension for his safety' with regards to the incident"³, is not an appealable issue because it is not "a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination."⁴ The Chamber dismissed the arguments regarding the alleged security incident involving Arido, among other reasons, because "[REDACTED]"⁵ Accordingly, any arguments regarding the merits of the alleged "incident" or its consequences are irrelevant to the Chamber's decision to reject Arido's request in that respect.⁶

3. Even if, *arguendo*, the Issue were an appealable issue, it does not meet the criteria for leave to appeal under article 82(1)(d). In particular, contrary to Mr Arido's contention,⁷ the Issue does not have the potential to affect the outcome of the trial. In its closing brief, the Prosecution did not rely on Arido's motive for fleeing to France to establish his *mens rea* or any element of the offence of giving false testimony under article 70(1)(a) of the Rome Statute.⁸ It merely disclosed information to that effect [REDACTED].⁹ The Defence's suggestion that the Prosecution used the alleged

¹ ICC-01/05-01/13-1944-Conf ("Application").

² ICC-01/05-01/13-1943-Conf ("Decision").

³ Application, para. 9.

⁴ ICC-01/04-168 OA3, paras. 9. ICC-02/04-01/05-367, para. 22; ICC-02/05-02/09-267, p. 6; ICC-01/04-01/06-2463, para. 8; ICC-01/09-02/11-27, para. 7. *See also*, ICC-01/04-01/06-1433 OA11, (Dissenting Opinion of Judge Song), para. 4, specifying that "[a] decision 'involves' an issue if the question of law or fact constituting the issue was essential for the determination or ruling that was made."

⁵ Decision, para. 8.

⁶ Decision, para. 8. *See also*, Application, paras. 10-14.

⁷ Application, para. 15.

⁸ ICC-01/05-01/13-1905-Conf. The section on Arido's responsibility is detailed primary in the Cameroon Witnesses section (section V.C.2) and his individual criminal responsibility (section VI.E). In neither section is there any reference to Arido's flight to France as proof of his *mens rea* or any other element of the charged crimes.

⁹ ICC-01/05/01/13-1702-Conf, para. 5; *see also* other authorities referred to in Application, footnote 26.

incident to establish the Accused's guilt in this case is simply incorrect.¹⁰ However, even if the Chamber gave Arido's motive for fleeing to France some weight in its upcoming decision under article 74(2), this fact will not affect the ultimate outcome of the trial.

4. Finally, because of the Issue's irrelevance to the charges in this case, an immediate resolution of the Issue by the Appeals Chamber would not materially advance the proceedings.¹¹

5. The Application should therefore be rejected.

II. Confidentiality

6. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, the Prosecution files this document confidentially, as it relates to documents that are subject to the same classification.

III. Relief Requested

7. For the reasons above, the Prosecution requests the Chamber to reject the Application.



Fatou Bensouda, Prosecutor

Dated this 19th Day of July 2016
At The Hague, The Netherlands

¹⁰ *Contra*, Application, para. 15.

¹¹ *Contra*, Application, para. 16.