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

Date: **28 October 2016**

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, AIMÉ KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA
WANDU AND NARCISSE ARIDO**

Public

**Narcisse Arido and Fidèle Babala's Request for a Variation of Deadlines in the
Sentencing Calendar (ICC-01/05-01/13-1990)**

Source: Counsel for Narcisse Arido
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Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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I. INTRODUCTION

1. The Arido and Babala Defences hereby formally notify Trial Chamber VII ('Trial Chamber') of the need and their request to suspend or vary the deadlines in the Sentencing Schedule provided on 20 October 2016. The variation of these deadlines is necessary to avoid infringing Mr. Arido's and Mr. Babala's rights through bypassing their ability to provide input and instructions to their teams based upon their reading of the Judgement in a language they can understand.

II. BACKGROUND

2. On the day following the delivery of the Judgment,¹ on 20 October 2016, the Arido Defence wrote to the Trial Chamber to raise the problem that Mr. Arido is not an English speaker and thus cannot read the Judgement. The Defence requested the Trial Chamber to consider this when preparing the sentencing schedule. In particular, the Defence noted that Mr. Arido's participation in sentencing or further appeal would be hindered where all his understanding was mediated through other's interpretations of the Judgement.

3. Later that day, the Trial Chamber provided the Sentencing Schedule.² This schedule included three deadlines:³ (a) provision of a list of additional witnesses the party seeks to call on 4 November 2016, (b) the disclosure and formal submission of any further evidence by 23 November 2016, and (c) any written submissions by 7 December 2016.

4. Following the notification of the Sentencing Schedule, the same day, the Babala Defence wrote the Trial Chamber to join the Arido Defence request, indicating that Mr. Babala is in a similar situation as Mr. Arido, having French as the only language he fully understands. Furthermore, Counsel Kilenda noted that having the judgment available only in English impaired Counsel's ability to analyse and advise his client, as the team is essentially francophone.⁴

5. In response, the Trial Chamber ordered the Arido Defence by email⁵ to consult with the Registry and report back to the Chamber by 26 October 2016 on whether a satisfactory arrangement on the issue of translations was reached.

¹ ICC-01/05-01/13-1989.

² ICC-01/05-01/13-1990.

³ *Ibid.*, para. 2.

⁴ Email, 20 October 2016, sent 15hh28, subject line : 'RE: French translation of the Judgement'.

⁵ Email, 20 October 2016, sent 17h49, subject line: 'RE: French translation of the Judgement'.

6. The Defence wrote to the Registry on 24 October 2016⁶ and the Registry responded to all parties,⁷ including the Trial Chamber, that four sections of the Judgement would be made available in draft form during the week of 24-28 October 2016 and 31 October to 4 November 2016. The largest section of the Judgement – Assessment of Evidence – was not mentioned.

7. On 24 October 2016, the Arido Defence clarified⁸ its 20 October 2016 position noting that Article 67 would be violated if Mr. Arido could not read the Judgement with enough time to instruct his Defence. Also mentioned was that Rule 136(2) of the Rules of Procedure and Evidence (‘RPE’) was relevant insofar as those Co-Accused who can read English would have more time to consider the Judgement and prepare than Mr. Arido. The Babala Defence joined the Arido Defence position later that day.⁹

8. The Arido Defence wrote¹⁰ to the Trial Chamber on 26 October 2016, following its 20 October 2016 email direction, to explain that the Defence considered the current Sentencing Schedule a risk to Mr. Arido’s rights given the uncertainty as regards the date of delivery of key sections of the Judgement. The Trial Chamber ordered¹¹ the Arido Defence to make a request by way of formal filing by 28 October 2016 with responses to be made by 31 October 2016.

III. APPLICABLE LAW

9. Pursuant to Article 67(1) of the Statute, the Accused has the right “(a) [t]o be informed promptly and in detail of the nature, cause and content of the charge, *in a language which the accused fully understands and speaks*; (b) [t]o have adequate time and facilities for the preparation of the defence (...); and (f) [t]o have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings of or documents presented to the Court are not in a language which the accused fully understands and speaks” (emphasis added)¹².

10. Pursuant to Article 50(2) “[t]he working languages of the Court shall be English and French”.

⁶ Email to Counsel Support Section, 21 October 2016, sent 13h41, subject line: ‘RE: French translation of the Judgement’.

⁷ Email, 24 October 2016, sent 16h22, subject line: ‘RE: French translation of the Judgement’.

⁸ Email, 24 October 2016, sent 14h21, subject line: ‘RE: French translation of the Judgement’.

⁹ Email, 24 October 2016, sent 15h04, subject line : ‘RE: French translation of the Judgement’.

¹⁰ Email, 26 October 2016, sent 17h14, subject line: ‘RE: French translation of the Judgement’.

¹¹ Email, 26 October 2016, sent 18h29, subject line: ‘RE: French translation of the Judgement’.

¹² Article 67(1)(a),(b) and (f) of the Rome Statute.

11. Rule 144 of the RPE establishes that any decision concerning the criminal responsibility of an Accused shall be provided as soon as possible to “the accused in a language he fully understands or speaks, if necessary to meet the requirements of fairness under article 67, paragraph 1”.

12. Pursuant to Rule 136(2) of the RPE “[i]n joint trials, each accused shall be accorded the same rights as if such accused were being tried separately”

13. Finally, pursuant to Regulation 35(2) RoC “[t]he Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard.” In a post-conviction procedural context, the Appeals Chamber has considered the absence of a French translation as a factor in establishing ‘good cause’ to extend a deadline.¹³

IV. SUBMISSIONS

14. The Trial Chamber ordered the Defence to report back to it on whether a satisfactory arrangement has been reached with the Registry. In this regard, the Defence has not found a satisfactory solution as regards the 4 November 2016 deadline or the subsequent Sentencing Schedule deadlines. Given the impact on fairness to the Accused outlined below,¹⁴ the Defence submits that there is good cause pursuant to Regulation 35(3) RoC to vary – or suspend – the deadlines impacted by the later delivery of the French translated Judgement.

15. According to Article 67(1)(f), Mr. Arido and Mr. Babala have a right to have translations of documents presented to the Court. As further reinforced by Article 50 and Rule 144 of the RPE, the Judgement is clearly one of the documents that must be translated.

16. The Judgement is large – 458 pages. A legal professional reading this document, without translating it aloud, takes time. Counsel for Mr. Arido can explain sections of the Judgement in sessions, but this process denies Mr. Arido the opportunity to re-review pages at his leisure, read sections in conjunction with other sections, and generally take the time to understand the nuance of particular issues so that he can receive assistance from Counsel and then direct his team. In short, not having a translation in a language he can understand unfairly limits Mr. Arido’s meaningful participation in something that critically concerns him.

¹³ ICC-01/05-01/08-3370 (A), para. 6.

¹⁴ See paras 16-18, 21, and 22.

17. Mr. Babala is in a similar situation, further aggravated by the fact that his defence team is essentially francophone and Counsel is not in a position to advise him until a French translation of the Judgment is made available.

18. The Defence position is that, to be able to comprehend and reflect on the Judgement, the Accused should be able to read it in full and not in a piecemeal fashion. Reading the Judgement piecemeal risks compromising the analysis. Comprehension of details and information are lost if sections are read in another order than the one they were written in. There are also cross-references to different sections which would at minimum require multiple reads through upon delivery of new sections.

19. That said, while the Registry has communicated working drafts of three sections¹⁵ of the Judgement, these roughly 92 pages comprise only one fifth of the whole Judgement. In other words, in preparation for the various deadlines in the Sentencing Schedule, including one due the week following the filing of this request, only 20% of the Judgement is in a language that Mr. Arido and Mr. Babala or his Counsel can read and analyse. Moreover, it is important to underscore that the largest section – Assessment of Evidence – has not yet been provided. In this section, there are 80 pages which are essential for Mr Arido and Mr. Babala to be able to understand the judgement. These are the sections relating to D2, D3, D4, D6, D-57 and D-64; Evidentiary Assessment and Methodology; and Evidentiary Discussion: Modes of Liability.

20. The Arido Defence has sought clarification¹⁶ regarding the delivery date of this major section and/or sub-sections, and while the translators are working hard to complete the drafts and ensure they will be made available as they reach a good quality, the Registry is at present¹⁷ neither able to provide an estimated delivery date for these sections,¹⁸ nor the final deadline when the complete Judgment would be available.

21. As described, fairness requires a suspension or variance of the deadlines. Not knowing when the Defence will receive the complete readable draft, the Defence is not presently in a position to venture the number of days of delay that are needed. This is why the Defence has

¹⁵ The Registry has communicated working drafts of several sections of the Judgement. These are: Applicable law, Findings of Fact, and Legal Characterisation of the Conduct of the Accused. These were on 24, 25, and 27 October 2016.

¹⁶ Email to Counsel Support Section, 28 October 2016, 10h26, subject line: 'RE: re: estimate of remaining time for translation of judgement'.

¹⁷ Email from Counsel Support Section, 28 October 2016, 10h27, subject line: 'RE: re: estimate of remaining time for translation of judgement'.

¹⁸ E.g. Assessment of Evidence.

requested a suspension of the 4 November 2016 deadline. A relevant factor in setting a new deadline is that the Accused, who are not legal professionals, must have at least two weeks to review the Judgement and provide instructions to their Counsel.

22. An additional factor pointing to a variance or suspension of the deadlines comes from Rule 136(2) RPE. Those Co-Accused who can read English will have more time to consider the Judgement and prepare than Mr. Arido and Mr. Babala. They will thus be given a greater opportunity and effectively right for input on sentencing matters.

23. To conclude, the present sentencing schedule risks infringing the rights of Mr. Arido and Mr. Babala and fairness demands that – at an absolute minimum – the 4 November 2016 deadline for notification of witnesses should be varied or suspended; however, for fairness, the other deadlines in the Sentencing Schedule should also be varied according to the delay in receiving the translation.

V. RELIEF

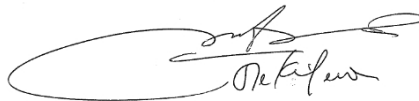
24. In light of the above, the Arido and Babala Defences respectfully request Trial Chamber VII to:

- a. Suspend the 4 November 2016 deadline until a full French translation of the Judgement is available;
- b. Set the deadline for provision of a list of witnesses no less than two weeks after delivery of the full-judgement in French, taking into consideration the factors described in paragraphs 16, 17 and 21; and
- c. Suspend and vary accordingly the later sentencing deadlines in accordance with the principles of fairness taking into account the date of delivery of the fully translated Judgement.



Chief Charles Achaleke Taku

Counsel for Mr. Arido



Counsel Jean-Pierre Kilenda Kakengi Basila

Counsel for Mr. Babala

Dated this 28th Day of October 2016