

**Cour  
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**International  
Criminal  
Court**



Original: **English**

No.: **ICC-01/05-01/13**  
Date: **9 November 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***

**Confidential Document**

**Prosecution's Response to "Narcisse Arido's Request for Leave to Appeal the  
'Decision on Requests for Variation of Deadlines in the Sentencing Calendar'  
(ICC-01/05-01/13-2001)"**

**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. Introduction

1. Narcisse Arido's request for leave to appeal Trial Chamber VII's ("Chamber") Decision on Requests for Variation of Deadlines in the Sentencing Calendar ("Application")<sup>1</sup> should be dismissed. *First*, Arido's Application relies on a misreading of the Impugned Decision and raises no appealable issue. *Second*, to the extent the Application might address the gravamen of the Impugned Decision, it advances arguments which merely disagree with the Chamber's findings. *Third*, the Application fails to demonstrate that the Impugned Decision has any discernible impact on the fair and expeditious conduct of the proceedings or the outcome of trial, or show how the Appeals Chamber's immediate resolution of the matter would materially advance the proceedings.

## II. Confidentiality

2. This filing is classified as "*Confidential*" as it responds to a filing of the same designation. The Prosecution does not object to its reclassification as "*Public*".

## III. Submissions

3. The Application fails to identify an issue arising from the Impugned Decision, nor "[a]n identifiable subject or topic requiring a decision for its resolution."<sup>2</sup> Instead, the Application is predicated on a misreading of the Impugned Decision, or otherwise merely advances the Arido Defence's conflicting opinions. In any case, the

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<sup>1</sup> ICC-01/05-01/13-2001 ("Impugned Decision").

<sup>2</sup> See ICC-01/04-168 OA3, para. 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; ICC-01/05-01/13-1898, para. 8. See also ICC-01/04-01/06-1433 OA11 (Partly 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." See also ICC-01/05-01/08-532, para. 17; ICC-02/05-02/09-267, para. 25; ICC-01/04-01/06-1557, para. 30; ICC-01/04-01/07-2035, para. 25; ICC-02/05-03/09-179, para. 27.

Application does not meet the well-established criteria for interlocutory appeals pursuant to article 82(1)(d).

**A. The Issue does not arise from the Impugned Decision**

4. The Issue—“[w]hether the Trial Chamber erred in its rejection of the Defence requests for the suspension or variation of the sentencing deadlines where the Accused has not be[sic] provided the entire judgement, thus violating the fair trial rights of the Accused”<sup>3</sup>—does not arise from the Impugned Decision.

5. Arido’s formulation of the Issue rests on a misreading of the Impugned Decision, namely that the Chamber “analysed the Defence Request only within a narrow interpretation of Article 67(1)(f).”<sup>4</sup> This is plainly not the case.

6. The Impugned Decision thoroughly considered the fairness requirements of article 67(1)(f) as well as rule 144(1) and (2) of the Rules of Procedure and Evidence, in view of the relief sought by the Defence under regulation 35 of the Regulations of the Court (*i.e.*, whether ‘good cause’ was shown for a variance of the sentencing schedule on the basis of the unavailability of an advance full French translation of the article 74 Decision). The Chamber thus duly assessed the applicable requirements of fairness in the context of the scope of sentencing submissions,<sup>5</sup> and identified the salient portions of the Judgment relevant for those submissions, ensuring their timely translation and availability.<sup>6</sup>

<sup>3</sup> ICC-01/05-01/13-2004-Conf (“Application”), para. 2.

<sup>4</sup> Application, para. 4.

<sup>5</sup> See Impugned Decision, paras. 10, 13 (noting in part that the Chamber would “not enter into a discussion of the evidence supporting the factual findings of the Chamber or the applicable law pertaining to Articles 25 and 70 of the Statute”).

<sup>6</sup> Impugned Decision, paras. 11-12.

7. The Chamber also considered other related matters. For instance, it noted that “much of the evidence relied upon [in the Judgment] is available in French and can also be evaluated by the convicted persons using the electronic registration numbers provided in the Judgement.”<sup>7</sup> Further, the Chamber identified avenues of which the Arido Defence was free to avail itself as it may consider necessary to prepare for the sentencing proceedings,<sup>8</sup> including the Registry’s further assistance and the engagement of French interpreters and other language assistance.<sup>9</sup>

8. Altogether, the Chamber evaluated all of the attendant circumstances in assessing the overall fairness of the sentencing calendar in relation to the availability of a limited French translation of the article 74 Decision. Contrary to Arido’s assertions, the Chamber appropriately assessed all of the procedural requirements of fairness under the statutory framework, given the limited extent of the remainder of trial, the nature of the evidence advanced, and other options available to the Arido Defence.<sup>10</sup>

## **B. The Application constitutes no more than a mere disagreement with the Impugned Decision**

9. The Application is not appealable as it merely advances an opinion contrary to the Impugned Decision without more.<sup>11</sup>

10. Arido’s implicit assertion that the Chamber failed to appreciate that “the issue at stake in [his] request was [his] right to prepare and present his defence, under Article 67”<sup>12</sup> and that “Mr. Arido be given the opportunity to identify all factors that

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<sup>7</sup> Impugned Decision, para. 12.

<sup>8</sup> Impugned Decision, paras. 12, 16.

<sup>9</sup> Impugned Decision, para. 12.

<sup>10</sup> Impugned Decision, paras. 9-12.

<sup>11</sup> See ICC-01/05-01/13-1898, para. 10.

<sup>12</sup> Application, para. 4.

would mitigate his sentence [...] [that he be] able to read and understand the complete judgement to exercise his rights"<sup>13</sup> merely disagrees (without more) with the Chamber's findings, particularly that "[i]t is simply unreasonable for the Defence to assert that the *entire* Judgment is needed in order to advance *any* sentencing submissions or evidence."<sup>14</sup>

11. The Application thus amounts to a mere quarrel with the Chamber's express finding that the Defence requests failed to demonstrate "good cause to suspend or vary the Sentencing Calendar deadlines to the extent requested by the Defence"<sup>15</sup> as, "providing the Defence with targeted French draft translations of the Judgment is all that is necessary to provide for sentencing purposes under Article 67(1)(f) of the Statute."<sup>16</sup>

**C. The Issue does not affect the fair and expeditious conduct or outcome of the trial nor warrants immediate resolution by the Appeals Chamber**

12. The Application fails to show how the Issue would "significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial", thereby necessitating the Appeals Chamber's intervention. The Application effectively devotes one sentence to the impact of the Impugned Decision on the fair and expeditious conduct of the proceedings.<sup>17</sup> Not only is the Defence's assertion conclusory and unpersuasive, it is belied by Arido's unqualified and unreserved timely filing of his Notice of Witnesses for Sentencing,<sup>18</sup> underscoring the absence of any appreciable impact or prejudice of the sentencing calendar on his ability to prepare.

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<sup>13</sup> Application, para. 5.

<sup>14</sup> Impugned Decision, para. 13.

<sup>15</sup> Impugned Decision, para. 15.

<sup>16</sup> Impugned Decision, para. 14.

<sup>17</sup> Application, para. 7.

<sup>18</sup> See ICC-01/05-01/13-2001.

13. The fairness of the proceedings is not imperilled for the reasons also outlined in the Impugned Decision. The Chamber provided a reasoned assessment and conclusion that no good cause was shown for the variation of the sentencing calendar with specific consideration given to Arido's ability to properly develop sentencing arguments. French translations of the salient portions of the article 74 Decision were made available to the Defence, and the additional assistance of the Registry to accommodate their preparation is available, ensuring that there is no such significant impact.<sup>19</sup>

14. Arido's remaining arguments are speculative and unsubstantiated. Arido's assertion that absent the intervention of the Appeals Chamber, he would effectively be "deni[ed] the opportunity [...] to properly identify mitigating factors, including possible witnesses on his behalf"<sup>20</sup> is unsupported and belied by his decision not to call any witnesses for sentencing. He also provides no support for his suggestion that the absence of an entire French translation prevents the Arido Defence — which is able to negotiate the article 74 Decision completely in English — from "identify[ing] a relevant factor" and ensure "that mitigating factors are timely raised with the Trial Chamber."<sup>21</sup>

15. In these circumstances, permitting an interlocutory appeal would only serve to delay the trial's conclusion, impeding rather than materially advancing the proceedings. The Chamber has already found in different circumstances that any "'potentially reversible error' may be 'better and justly deferred to any final appeal under [a]rticle 81'"<sup>22</sup> — which applies with equal force here. To the extent the lack of

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<sup>19</sup> Impugned Decision, paras. 9-16.

<sup>20</sup> Application, para. 7.

<sup>21</sup> *Contra* Application, para. 7.

<sup>22</sup> ICC-01/05-01/13-1898, para. 17.

a French translation of certain parts of the Judgment may amount to an error in the sentencing procedure, this can be adequately addressed on appeal at its conclusion.

#### **IV. Conclusion**

16. For these reasons, the Application fails to meet the article 82(1)(d) criteria for leave to appeal and should be rejected.



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**Fatou Bensouda, Prosecutor**

Dated 9<sup>th</sup> Day of November 2016  
At The Hague, The Netherlands