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**International
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TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul C. 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 redacted version of

Decision on Requests by the Arido Defence provided in its Final Submissions

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

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REGISTRY

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Mr Herman von Hebel

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Victims Participation and Reparations Section

Trial Chamber VII ('Chamber') of the International Criminal Court ('Court' or 'ICC'), 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 and 67(1) of the Rome Statute ('Statute'), issues the following 'Decision on Requests by the Arido Defence provided in its Final Submissions'.

I. Procedural History

1. On 24 May 2016, the defence for Mr Arido ('Arido Defence') provided its final written submissions. Therein, it made, besides the request to acquit Mr Arido, submissions on a range of different issues ('Request').¹
2. On 10 June 2016, after having been invited by the Chamber to provide observations,² the Registry made reference to earlier observations ('Earlier Observations') and stated that it had no further submissions on the Request.³
3. On 15 June 2016, the Office of the Prosecutor ('Prosecution') filed its response to the Request ('Response').⁴

II. Submissions and Analysis

4. The Chamber will address the four different issues addressed by the Arido Defence separately.

(i) *Security Incident involving Mr Arido*⁵

5. The first issue raised by the Arido Defence concerns [REDACTED].⁶

¹ Narcisse Arido's Closing Submissions, a corrigendum was filed on 15 June 2016, ICC-01/05-01/13-1904-Conf-Corr, paras 408 to 411.

² Email from the Chamber to the Registry and parties on 08 June 2016, at 14:19.

³ Email from the Registry to Trial Chamber VII Communications on 10 June 2016, at 15:44.

⁴ Prosecution's Response to Narcisse Arido's Requested Remedies, ICC-01/05-01/13-1932-Conf.

⁵ Request, ICC-01/05-01/13-1904-Conf-Corr, para.408.

⁶ Request, ICC-01/05-01/13-1904-Conf, paras 382-390.

6. The Arido Defence requests that the Chamber (i) find that Mr Arido had ‘a reasonable apprehension for his safety’ with regards to the incident described above; (ii) order ‘a further investigation as to whether the ICC fulfilled its responsibilities to protect Mr Arido’ and (iii) order the Registrar to determine why there has been no official response to the communications of Mr Arido.⁷
7. The Earlier Observations made by the Registry,⁸ which are available to the Arido Defence, [REDACTED],⁹ that [REDACTED]¹⁰ and that [REDACTED].¹¹ The Registry further explained why this was the case¹² and stated that [REDACTED].¹³
8. Considering the above, the continued contention by the Arido Defence [REDACTED]¹⁴ is clearly disproven on the information available to the Chamber. The Arido Defence does not present any evidence as to the factual claims made but provides mere speculation. Additionally, upon the facts presented, the only finding that is proven is that [REDACTED]. Moreover, the Arido Defence makes no attempt to provide a legal basis for the requested relief. It is not in the power or mandate of the Chamber to assess Mr Arido’s actions with respect to events unrelated to the charges. Furthermore, the Arido Defence has access to the Earlier Observations of the Registry and is therefore in possession of all the facts related to the incident. Accordingly, the Chamber rejects this part of the Request.

⁷ Request, ICC-01/05-01/13-1904-Conf, para. 408.

⁸ Third redacted version of the “Report of the Registrar on the events experienced by staff member of the Victims and Witnesses Unit in [Redacted]” (ICC-01/05-01/08-2261-Conf-Red), 15 September 2014, ICC-01/05-01/08-2261-Conf-Exp-Red3, available only to the Registry and the Arido Defence. Victims and Witnesses Unit Observations on the “Narcisse Arido’s Request for a disclosure order to the Prosecutor” (ICC-01/05-01/13-413-Conf-Exp), 19 June 2014, ICC-01/05-01/13-506-Conf-Exp, available only the Registry. On 10 June 2016, the decision was re-classified as ICC-01/05-01/13-506-Conf-Exp, available only the Registry and the Arido Defence.

⁹ ICC-01/05-01/08-2261-Conf-Exp-Red3, para.1.

¹⁰ ICC-01/05-01/08-2261-Conf-Exp-Red3, para. 7.

¹¹ ICC-01/05-01/08-2261-Conf-Exp-Red3, para. 8.

¹² ICC-01/05-01/08-2261-Conf-Exp-Red3, para. 8.

¹³ ICC-01/05-01/08-2261-Conf-Exp-Red3, paras 29-31.

¹⁴ Request, ICC-01/05-01/13-1904-Conf-Corr, page 84, *see* title.

(ii) *Requests made in respect of Information obtained by the Prosecution*¹⁵

9. The second issue raised by the Arido Defence is in respect of information in possession of the Prosecution. The Arido Defence requests that information 'obtained about Mr Arido's family members and business associates which is unconnected to this case ['Information'] be expunged from all official records, and be excluded as evidence in this case, including but not limited to the Western Union records'. Further, it requests that '[t]he Prosecution should be prohibited from using this information, in relation to this case, as well as other ICC cases'.¹⁶
10. The Arido Defence contends that the Prosecution obtained illegally information concerning [REDACTED].¹⁷ Further, it submits that the [REDACTED].¹⁸
11. In its Response, the Prosecution argues that this part of the Request is 'at best unclear and should be summarily dismissed'.¹⁹ In respect of the collection of emails, the Prosecution submits that it has previously explained how they were obtained and avers that the Chamber has already ruled on the matter.²⁰
12. With regard to the [REDACTED], the Prosecution says it cannot destroy potentially relevant material, since it is legally obliged to disclose them under specific circumstances.²¹ Concerning the issue of Western Union records and Mr Arido's representation as a [REDACTED], the Prosecution submits that this was already part of a previous request by the Arido Defence regarding the Western Union documents and has been decided upon by the Chamber.²²
13. The Chamber recalls that the deadline for any applications related to adding or subtracting items of evidence the record was set for 8 April 2016, specifically

¹⁵ Request, ICC-01/05-01/13-1904-Conf-Corr, para.409.

¹⁶ Request, ICC-01/05-01/13-1904-Conf-Corr, para. 409.

¹⁷ Request, ICC-01/05-01/13-1904-Conf-Corr, para. 402.

¹⁸ Request, ICC-01/05-01/13-1904-Conf-Corr, para. 402.

¹⁹ Response, ICC-01/05-01/13-1932-Conf, para. 13.

²⁰ Response, ICC-01/05-01/13-1932-Conf, para. 13.

²¹ Response, ICC-01/05-01/13-1932-Conf, para. 14.

²² Response, ICC-01/05-01/13-1932-Conf, para. 15.

including any motion to exclude items of evidence pursuant to Article 69(7) of the Statute.²³ The part of the Request aiming to exclude the Information as evidence is a *de facto* request pursuant to Article 69(7) of the Statute. The Arido Defence does not present any argument, nor is any apparent to the Chamber, as to why this part of the Request is only presented at this point in time.

14. The Chamber also notes, that the Chamber already ruled on a request by the Arido Defence²⁴ to exclude the Western Union documents.²⁵ It is aware that there is a further pending request by the Arido Defence concerning the Western Union documents.²⁶ However, this separate request is based on the issuance of two decisions rendered by Austrian courts. In contrast, the arguments represented in the Request, including the scope of the initial request by the Prosecution and the mentioning of the Mr Arido as a suspect of genocide, have already been ruled upon. The Request does not attempt to provide any argument, nor is any apparent to the Chamber, how the criteria for reconsideration are satisfied. Accordingly, the Chamber rejects this part of the Request.
15. As to the aspect of the Request seeking to expunge the Information from all official records, the Arido Defence fails – again– to provide any legal basis for the motion. Furthermore, there is no factual foundation for the justification of the request: the Arido Defence presents only speculation as to why the deletion of the Information is justified.²⁷ The Chamber also notes that the Prosecution submitted that, should they consider being under a statutory obligation to disclose the Information, this will be done ‘subject to appropriate redactions’.²⁸

²³ Transcript of Hearing, 9 March 2016, ICC-01/05-01/13-T-42-RED2-ENG p.42, l.18 to p.43, l.12.

²⁴ Narcisse Arido’s motion on inadmissibility and exclusion of evidences, 8 April 2016, ICC-01/05-01/13-1795-Conf.

²⁵ Decision on Requests to Exclude Western Union Documents and other Evidence Pursuant to Article 69(7), 29 April 2016, ICC-01/05-01/13-1854.

²⁶ Narcisse Arido’s Request for an Effective Remedy in Light of Two Austrian Decisions, a corrected version was filed on 13 June 2016, ICC-01/05-01/13-1928-Conf-Corr.

²⁷ ‘*This situation created the possibility of potential further abuse, if the material were to be used for purposes unrelated to the case.*’ Request, ICC-01/05-01/13-1904-Conf-Corr, para. 404.

²⁸ Response, ICC-01/05-01/13-1932-Conf, para. 14.

For these reasons, the Chamber rejects the part of the Request related to the deletion of the Information from the official records.

*iii) Requests made in respect of the violation of the rights of Mr Arido [REDACTED]*²⁹

16. The Arido Defence further requests that the Chamber declare that the Prosecution's investigations concerning [REDACTED] were illegal and violated [REDACTED]. Additionally, it submits that the Chamber declare Mr Arido's description as a [REDACTED] in the Austrian request to order financial records 'defamed his character and reputation, and caused irreparable harm and prejudiced to him within his community, and the international community.'³⁰
17. The Arido Defence submits that the Prosecution [REDACTED]³¹ and [REDACTED].³² With regards to the characterisation as a [REDACTED], the Arido Defence submits that the 'Prosecution's position to ignore the false representation has irreparably harmed Mr. Arido's reputation'.³³
18. The Prosecution submits that it never [REDACTED] and that the Arido Defence failed to present any evidence thereto.³⁴ Concerning the characterisation of Mr Arido as a [REDACTED], the Prosecution informs that this description is contained in a document of the Austrian authorities and that these materials have always be confidential and thus not accessible to the public.³⁵
19. The Chamber finds that, in regard to the assertions that the Prosecution violated [REDACTED], there is no evidence supporting this claim. The testimony of D24-1 does not substantiate the allegations made. The parts of the testimony the Arido Defence cites to³⁶ are too vague, especially considering that witness

²⁹ Request, ICC-01/05-01/13-1904-Conf-Corr, para. 410.

³⁰ Request, ICC-01/05-01/13-1904-Conf-Corr, para. 410 b.

³¹ Request, ICC-01/05-01/13-1904-Conf-Corr, para. 402.

³² Request, ICC-01/05-01/13-1904-Conf-Corr, para. 403.

³³ Request, ICC-01/05-01/13-1904-Conf-Corr, para. 406.

³⁴ Response, ICC-01/05-01/13-1932-Conf, paras 5-11.

³⁵ Response, ICC-01/05-01/13-1932-Conf, para. 16.

³⁶ Transcript of Hearing, 21 March 2016, ICC-01/05-01/13-T-46-CONF-ENG p.40, l.22-25.

[REDACTED]. Additionally, no other evidence in the testimony to buttress the assertions is apparent. The documents relied on by the Arido Defence³⁷ also fail to support the allegations. The first document³⁸ does not stem from the Prosecution but from national authorities in the execution of requests for assistance ('RFAs') of the Prosecution. The underlying RFAs³⁹ do not mention any requests in respect of [REDACTED]. The second document put forward by the Arido Defence⁴⁰ is actually unrelated to the facts of this issue. Accordingly, and also absent any submissions on the legal basis, the Chamber rejects this part of the Request.

20. As to the submissions in relation to Mr Arido's characterisation as [REDACTED], the Chamber notes that this was made in a document emanating from the Austrian authorities⁴¹ which is a confidential document and not accessible to the public at large. Accordingly, the fact that Mr Arido was, erroneously, characterised as [REDACTED] cannot be imputed to the Prosecution. The Chamber further fails to see how the Prosecution has 'ignored the false representation', as claimed by the Arido Defence, since it did at no point in time repeat this misrepresentation. No information is publicly available which repeats, supports or underscores these falsities. The Chamber fails to see how under these circumstances Mr Arido's character was defamed and prejudice was cause to him within any community, may it be personal or international. Accordingly, and in view of the above, this part of the Request is also rejected.

iv) Request for redress and reparation⁴²

21. The Chamber notes that, again, no arguments are made as to the legal basis of this part of the request. Further, in light of the above and the fact that there is no

³⁷ CAR-OTP-0073-0023 and ICC-01/05-01/13-1137-Conf-Anx3.

³⁸ CAR-OTP-0073-0023.

³⁹ CAR-OTP-0091-0317 and CAR-OTP-0091-0320

⁴⁰ ICC-01/05-01/13-1137-Conf-Anx3.

⁴¹ CAR-OTP-0002-1349.

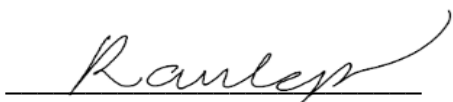
⁴² Request, ICC-01/05-01/13-1904-Conf-Corr, para. 411.

finding of a purported violation of right of Mr Arido [REDACTED], the Chamber also rejects this part of the Request.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request.

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


Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul C. Pangalangan

Dated 29 June 2016

At The Hague, The Netherlands