

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 10 February 2015

TRIAL CHAMBER VII

Before: Judge Olga Herrera Carbuccion
Judge Robert Fremr
Judge Chile Eboe-Osuji

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 Response to the Arido Defence Request
for Disclosure", 26 May 2014, ICC-01/05-01/13-426-Conf-Exp**

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Kweku Vanderpuye

Counsel for the Defence of Jean-Pierre Bemba

Melinda Taylor

Counsel for the Defence of Aimé Kilolo Musamba

Paul Djunga Mudimbi

Counsel for the Defence of Jean – Jacques Mangenda Kabongo

Jean Flamme

Counsel for the Defence of Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Counsel for the Defence of Narcisse Arido

Göran Sluiter

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

Victims Participation and Reparations Section Others

I. Introduction

1. The Office of the Prosecutor (“Prosecution”) opposes the Arido Defence’s 20 May 2014 “Request for a Disclosure Order to the Prosecution” (“Request”).¹ The Request seeks information that is not in the Prosecution’s possession, or irrelevant to the charges against Arido. The Chamber should dismiss the Request.

II. Confidentiality

2. This filing is classified as “Confidential, *EX PARTE*, only available to the Prosecution and Arido Defence” in response to a filing so designated.

3. The Prosecution opposes the re-classification of the Request as “confidential”,² and the disclosure of unredacted versions of the documents referencing [REDACTED] to the other suspects.³ The other suspects have no “legitimate interest”⁴ in the disclosure of [REDACTED]’s identity because there is no nexus between the alleged joint commission of the Article 70 offences and the incident between Arido and [REDACTED].

4. Contrary to the Request, this incident did not form a “significant part”⁵ of the arrest warrant application. Reference to Arido’s failure to testify in the arrest warrant application was limited and circumscribed: (i) to demonstrate risk of flight;⁶ and (ii) to imply his “consciousness of guilt”.⁷ As for the arrest warrant application, the incident does not form the basis of the charges to be pled in the document containing

¹ ICC-01/05-01/13-413-Conf-Exp.

² See ICC-01/05-01/13-413-Conf-Exp, para. 4.

³ See ICC-01/05-01/13-413-Conf-Exp, para. 21.

⁴ ICC-01/05-01/13-413-Conf-Exp, para. 4.

⁵ ICC-01/05-01/13-413-Conf-Exp, para. 2.

⁶ ICC-01/05-01/13-19-Conf, para. 111.

⁷ ICC-01/05-01/13-19-Conf, paras 103-105.

the charges, or any element thereof, against him or the other suspects, and does not support the alleged joint nature of the commission of the offences.

III. Submissions

A. The Request seeks information that is not in the Prosecution's possession

5. The information about the incident between Arido and [REDACTED] in the Prosecution's possession comes exclusively from the material seized from Arido – the hard drive of his computer and his email account. Both of these have been returned to and are thus available to the suspect.

6. With respect to questions (a) and (b) in the Request,⁸ the Prosecution cannot speculate about the details of [REDACTED]'s employment or otherwise in other Court organs. With respect to question (c),⁹ the Prosecution had no contact with [REDACTED] regarding the incident [REDACTED] with Arido.

B. The Request seeks information irrelevant to the charges against Arido

7. Questions (d) and (e)¹⁰ are not material to the preparation of the defence in this case. Although broad, the Prosecution's "disclosure obligations under Rule 77's materiality prong are . . . not, however, unlimited".¹¹ These requests fall outside the rule.

⁸ ICC-01/05-01/13-413-Conf-Exp, para. 20 ("a. Was/is [REDACTED] working for the ICC? If so, during what period?"; "b. If so, could the Prosecution indicate his position and the nature of his work, in a detailed manner?").

⁹ ICC-01/05-01/13-413-Conf-Exp, para. 20 ("c. If [REDACTED] was not an ICC staff or a contractor, did the Prosecution have any contact with [REDACTED]?").

¹⁰ ICC-01/05-01/13-413-Conf-Exp, para. 20 ("d. Has the Prosecution undertaken any investigation or taken any other measure regarding any potential breach of protective measure or misused identity of ICC staff, including by raising the issue before the relevant Chamber or through the Registry?"; "e. If the Prosecution has not taken any measure, could it please indicate why it did not?")

¹¹ See, e.g., ICC-01/05-01/08-1594-Red, para. 21.

8. Based on the arrest warrant application, details of the incident may be relevant only to the extent that they bear on Arido's failure to testify. If Arido had a legitimate reason not to testify, this is not affected by whether [REDACTED] may be criminally responsible for the precipitating conduct.

IV. Requested Relief

9. The Prosecution requests the Chamber to deny the Request.



Fatou Bensouda, Prosecutor

Dated this 10th Day of February 2015

At The Hague, The Netherlands