

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 20 July 2015

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

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 the Arido Defence's
Request to Direct the Victims and Witnesses Unit to Seek the Consent of
Witnesses to Provide their Contact Information to the Defence, ICC-01/05-01/13-
1043-Conf", 6 July 2015, ICC-01/05-01/13-1059-Conf**

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**

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Michael Gosnell

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Mr Philippe Larochelle

The Office of Public Counsel for the Victims	The Office of Public Counsel for the Defence
---	---

States Representatives**Amicus Curiae****REGISTRY****Registrar**

Mr Herman von Hebel

Counsel Support Section**Victims and Witnesses Unit**

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section	Others
--	---------------

I. Introduction

1. The Office of the Prosecutor (“Prosecution”) defers to the discretion of Trial Chamber VII (“Chamber”) regarding the Arido Defence’s request to obtain the contact information of some 57 individuals from the Victims and Witnesses Unit (“VWU”) (“Request”).¹ Some of these individuals testified in the Main Case.² Others did not, and the basis of relevance for the information sought with respect to them is unclear. Nevertheless, the Prosecution makes two points in respect of the Request:

2. *First*, Arido is implicated in the prior interference with a witness in this case and the breach of confidentiality in respect of information disclosed to the Defence.³

3. *Second*, as there is yet no protocol on witness’ contacts, the Prosecution refers to the Chamber’s prior decisions setting down and applying the procedure for the VWU regarding contacts with witnesses.⁴

II. Confidentiality

4. This filing is classified as “Confidential”, as it references a filing of the same designation. A “Public Redacted” version will be filed subsequently.

¹ [REDACTED].

² ICC-01/05-01/08.

³ [REDACTED]; *see also* [REDACTED], para.42; [REDACTED], paras.32, 33 and 47.

⁴ *See* ICC-01/05-01/13-924 and [REDACTED].

III. Submissions

A. Arido is implicated in witness interference taking place in this case

5. Arido [REDACTED] interfered with a witness in this case.⁵ The incident occurred within weeks of the Prosecution's disclosure of confidential information to the Defence.⁶ As a result, [REDACTED]⁷ Notably, Arido did not affirmatively deny, nor has he denied the Prosecution's allegations concerning the circumstances of the alleged interference or his breach of confidentiality. As noted, the risk of witness interference associated with Arido, in particular, is clear.

B. The VWU should contact the witnesses and conduct a security assessment before disclosing the requested contact details

6. The procedure previously set down by the Chamber regarding Accused Fidèle Babala Wandu's request for the VWU to provide witness contact details⁸ and followed in the disposition of Accused Kilolo's similar request,⁹ should be followed here. The VWU should be directed to, (i) "enquire with the Witnesses whether they consent to providing their contact information [...] for the purpose of an interview" by the Defence¹⁰ – while explaining to the witnesses that the decision whether to consent is solely for the witness to make;¹¹ and (ii) in the event of the witness' consent to the provision of their contact details, that the VWU "conduct an assessment of any security impact that such disclosure would have on this witness."¹²

⁵ [REDACTED].

⁶ [REDACTED], paras.4-6.

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED], para.4.

¹⁰ ICC-01/05-01/13-924, para.7.

¹¹ *Ibid.*

¹² *Ibid.*

7. When a security assessment is required upon a witness' consent to the provision of their contact details, the Chamber noted that in evaluating possible security risks, "[a] prior refusal of any of the Witnesses regarding contact with another defence is only to be included in the assessment if it has an implication on the security situation."¹³ Here, the prior improper interference with a Prosecution witness, militates against Arido's Request with respect to any potential witness he seeks to contact.

IV. Relief Requested

8. Based upon the foregoing, the Prosecution defers to the Chamber's discretion, noting the prior interference with a Prosecution witness, and in view of the Chamber's prior direction to the VWU, as set out above.



Fatou Bensouda, Prosecutor

Dated this 20th Day of July 2015
At The Hague, The Netherlands

¹³ *Ibid.*, para.8.