

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 28 August 2015

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Single Judge

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

With Confidential, *EX PARTE*, Annex - only available to the Prosecution and VWU

**Public redacted version of "Prosecution Response to Arido Defence Request for
Reclassification of Materials", 12 August 2015, ICC-01/05-01/13-1145-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**

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I. Introduction

1. The Office of the Prosecutor (“Prosecution”) defers in part to the Chamber’s discretion regarding the Arido Defence’s request for the reclassification of certain documents (“Request”).¹

2. Of the requested documents, the Prosecution has access to only two: (1) an investigator’s report filed by the Prosecution, which will be filed in an appropriately redacted form, and (2) [REDACTED] for which the Prosecution proposes redactions to sensitive information concerning innocent third parties and P-0260’s protection. The remaining documents are Registry documents to which the Prosecution lacks access and cannot assess their sensitivity or the propriety of their reclassifications. It thus defers to the Chamber.

3. Separately, the Prosecution rejects the Defence’s unfounded accusations that it has misrepresented facts concerning an alleged incident involving Arido [REDACTED] and Prosecution Witness P-0260.

II. Confidentiality

4. This filing is classified as “Confidential” as it responds to a filing of the same designation.

III. Submissions

A. Requested documents

5. The Request seeks the reclassification or the provision of a redacted or summary form of:

- a. An investigator’s report annexed² to a [REDACTED].³

¹ ICC-01/05-01/13-1111-Conf (“Request”).

² ICC-01/05-01/13-665-Conf-Exp-Anx.

³ ICC-01/05-01/13-665-Conf-Exp.

The Prosecution will file a confidential redacted version of this document. It bears noting however that Arido never requested this document before seizing the Chamber.

- b. [REDACTED] of P-0260 in light of the reported incident involving P-0260 and Arido [REDACTED].⁴

The Prosecution does not object to the reclassification of this document, *albeit*, with limited redactions applied to sensitive information concerning innocent third parties and P-0260's protection;⁵

- c. [REDACTED].⁶

Because the Prosecution does not have access to these documents, it is not in a position to assess the sensitivity of their content, and therefore defers to the discretion of the Chamber on the propriety of their reclassification.

B. Alleged Prosecution misrepresentations

6. The Prosecution rejects Arido's accusations of previous misrepresentations before the Court outright.⁷ The Prosecution has not mischaracterised or misrepresented any allegation of fact concerning the incident involving P-0260 and Arido [REDACTED]. Not only are Arido's claims unfounded, they are inapposite to the subject matter of the reclassification request, and impermissibly circumvent the Court's well-established procedures⁸ by seeking to advance arguments responsive to previously litigated issues and matters currently *sub-judice*.

⁴ ICC-01/05-01/13-603-Conf-Exp. See Request, para.25.a.

⁵ The proposed redactions are highlighted in the annex appended to this filing. The Annex is classified as confidential, *ex parte*, Prosecution and VWU in conformity with the classification accorded to the original annex ICC-01/05-01/13-603-Conf-Exp-Anx1.

⁶ ICC-01/05-01/13-585-Conf-Exp and its annexes and ICC-01/05-01/13-589-Conf-Exp and its annexes. Request, para. 25.b. and c.

⁷ Request, paras.28-35.

⁸ For instance, the Arido Defence argues that the Prosecution relied on the alleged events and its requalification of it to support requests on delayed disclosures, protective measures, contact with witnesses and interim release (See Request, paras.28-32). These issues are subject to separate litigations. The Arido Defence should be barred

7. Given their irrelevance to the thrust of the Request, the Prosecution will not address in detail each allegation raised. However, even the very limited response below demonstrates their lack of any substance.

8. *First*, Arido's disagreement with the Prosecution's characterisation of facts does not equate to a misrepresentation. Contrary to the Request, the Prosecution's characterisation of a reported incident in which Arido [REDACTED] a [REDACTED] witness in public as "intimidation", is an entirely reasonable description and one that is hardly contestable in the circumstances.⁹ The Request plainly ignores that the potential compromise of a [REDACTED] witness's identity as such, threatens their security and, is therefore intimidating.¹⁰

9. *Second*, Arido grounds his claims of prosecutorial misrepresentations on statements taken in isolation and out of context. For instance, the Request claims that in its 16 July 2014 filing, the Prosecution misrepresented the investigator's report when describing the incident by stating that Arido [REDACTED], whereas the investigator's report makes clear that [REDACTED] when the incident took place.¹¹ The Request disregards the fact that the Prosecution laid out the details of the allegations in an annex to the same filing before the Pre-Trial Chamber, and to which it made clear reference in the very next sentence – leaving no room for any misapprehension – which the Request omits.¹² Further, in claiming that the Prosecution misrepresented the incident by suggesting that it was [REDACTED] around Arido [REDACTED], the Request misses the point at issue, namely exposing and intimidating a [REDACTED] witness and revealing confidential information in *public* irrespective of the [REDACTED] of Arido [REDACTED] at the moment.

from circumventing the established procedures to present arguments on these issues without obtaining the requisite leave especially that when addressing these issues, it failed to request the reclassification of these documents that it believes would support its arguments.

⁹ Request, paras.29, 34.

¹⁰ [REDACTED]. See ICC-01/05-01/13-665-Conf-Exp-Anx.

¹¹ Request, para.33.

¹² The paragraph, with which the Request takes issue, reads in the relevant part: "[REDACTED]. The attached Investigator's Note at Annex, provides further details on the interaction." See ICC-01/05-01/13-575-Conf-Exp (emphasis added).

10. Although the Prosecution has not fully addressed this aspect of the Request, it reserves the right to do so, should it become pertinent to the determination of any issue relevant to the Request.

IV. Conclusion

11. The Prosecution will file a confidential redacted version of document ICC-01/05-01/13-665-Conf-Anx; proposes redactions to document ICC-01/05-01/13-603-Conf-Exp and defers to the Chamber's discretion as to the reclassification of the remaining documents sought in the Request.



Fatou Bensouda, Prosecutor

Dated this 28th Day of August 2015
At The Hague, The Netherlands