

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 22 September 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, AIMÉ KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA
WANDU and NARCISSE ARIDO***

Public

Decision on Arido Defence Request to Interview Prosecution Investigators

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 Gosnell

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Others

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber VII ('Single Judge' and 'Chamber', respectively) of the International Criminal Court, 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 Article 64 of the Rome Statute and Regulation 23 *bis*(3) of the Regulations of the Court ('Regulations'), issues the following 'Decision on Arido Defence Request to Interview Prosecution Investigators'.

1. On 10 August 2015, the defence for Mr Arido ('Arido Defence') requested that the Chamber order or, alternatively, invite the investigators ('Investigators') from the Office of the Prosecutor ('Prosecution') who conducted the interviews of witnesses P-260 and P-245 to participate in an interview with the Arido Defence ('Request').¹ It submits that (i) the Chamber has the power to grant the primary² and alternative³ relief requested; (ii) the interviews are necessary for defence preparations,⁴ as there are reasonable grounds to believe that the Investigators have material information;⁵ and (iii) the Request does not unduly burden the Prosecution.⁶ The Arido Defence repeatedly stresses that the requested relief is its only opportunity to 'fairly understand and investigate the conditions in which P-260 and P-245 have reversed their testimony'.⁷
2. On 21 August 2015, the Arido Defence filed an addendum to the Request, submitting that newly disclosed information further demonstrates that it is

¹ Narcisse Arido's Request to Interview Prosecution's Investigators, ICC-01/05-01/13-1139-Conf, with seven confidential annexes.

² Request, ICC-01/05-01/13-1139-Conf, paras 10-18.

³ Request, ICC-01/05-01/13-1139-Conf, paras 19-21.

⁴ Request, ICC-01/05-01/13-1139-Conf, paras 24-28 and 33.

⁵ Request, ICC-01/05-01/13-1139-Conf, paras 24 and 29-33.

⁶ Request, ICC-01/05-01/13-1139-Conf, para. 34.

⁷ Request, ICC-01/05-01/13-1139-Conf, para. 28. *See also* paras 1, 26-27 and 30-32.

necessary to interview the Investigators in order to explore P-260's credibility and clarify certain matters regarding the relevant witness interviews ('Addendum').⁸

3. On 24 August 2015,⁹ the Prosecution responded to the Request ('Response').¹⁰ It submits that the Chamber has no authority to require one party's investigators to submit to interviews by another¹¹ and that, in any event, the Arido Defence does not demonstrate a legitimate forensic purpose.¹² The Prosecution further submits that, as the Arido Defence has not exhausted other reasonable measures, the Request fails to establish that the Chamber's intervention is necessary.¹³
4. As a preliminary matter, the Single Judge, noting that the Prosecution does not object to reclassification of the Response, considers that nothing therein warrants confidential classification. Accordingly, pursuant to Regulation 23 *bis*(3) of the Regulations, the Single Judge reclassifies the Response as 'public'.
5. Turning to the merits, the Single Judge recalls that the Chamber has generally required the parties to, in good faith, exhaust *inter partes* and other reasonable measures before requesting the Chamber's assistance in matters relating to the conduct of investigations.¹⁴
6. In the instant case, the Single Judge notes that the Prosecution has not definitively refused the requested interviews. The Prosecution has also provided other avenues to the Arido Defence to obtain the information sought, for example, via

⁸ Narcisse Arido's Addendum to its Request for Reclassification of Information (ICC-01/05-01/13-1111-Conf), its Request for an Order on Disclosure Violation (ICC-01/05-01/13-1141-Conf) and its Request to Interview Prosecution's Investigators (ICC-01/05-01/13-1139-Conf), ICC-01/05-01/13-1165-Conf, paras 1-2 and 19. The Arido Defence filed a corrigendum on 18 September 2015 (ICC-01/05-01/13-1165-Conf-Corr).

⁹ The Chamber shortened the deadline for any responses to the Request to 24 August 2015. See Email communication from Legal Officer of the Trial Chamber to the parties on 12 August 2015 at 18:51.

¹⁰ Prosecution Response to the Arido Defence's Request to Interview Prosecution Investigators, ICC-01/05-01/13-1177-Conf, with four confidential annexes.

¹¹ Response, ICC-01/05-01/13-1177-Conf, para. 2.

¹² Response, ICC-01/05-01/13-1177-Conf, paras 6-8, 14 and 17-23.

¹³ Response, ICC-01/05-01/13-1177-Conf, paras 3, 9-11 and 15-16.

¹⁴ See, *inter alia*, Decision on 'Defence Request for Disclosure and Judicial Assistance', 21 August 2015, ICC-01/05-01/13-1166-Conf, para. 21; Decision on Kilolo Defence Request to Obtain Contact Information of P-201 and P-264, 17 August 2015, ICC-01/05-01/13-1155-Conf, para. 11; Transcript of Hearing, 24 April 2015, ICC-01/05-01/13-T-8-Red-ENG, page 4 lines 16-21.

the submission of a list of questions.¹⁵ Moreover, it appears that persons other than the Investigators, P-260 and P-245 were present at the relevant interviews. The Arido Defence should be able to identify these persons if it wishes to contact them.¹⁶ At trial, the Arido Defence will also have the opportunity to examine P-260 and P-245 – who are as well-placed as the Investigators to provide at least some of the information sought – when they appear before the Chamber. In sum, the Arido Defence does not demonstrate, as appropriate, (i) that it exhausted these or other measures to interview the Investigators or obtain the information sought, or (ii) that these or other measures would be inadequate.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request;

INSTRUCTS the Registry to reclassify the Response (ICC-01/05-01/13-1177-Conf) as ‘public’; and

ORDERS the Arido Defence to, within 10 days of notification of this decision, file public redacted versions of the Request (ICC-01/05-01/13-1139-Conf) and Addendum (ICC-01/05-01/13-1165-Conf-Corr).

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

Judge Bertram Schmitt, Single Judge

Dated 22 September 2015

At The Hague, The Netherlands

¹⁵ Response, ICC-01/05-01/13-1177-Conf, paras 3, 9-11 and 15-16.

¹⁶ See Decision on Prosecution's Application for Non-Standard Redactions, 17 June 2015, ICC-01/05-01/13-1015-Conf, para. 10.