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**International
Criminal
Court**

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TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

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

Confidential Document

Prosecution's Consolidated Response to Arido's Disclosure Requests
(ICC-01/05-01/13-1637-Conf and ICC-01/05-01/13-1640-Conf)

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the Regulations of the

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I. Introduction

1. The Arido Defence's requests for the disclosure of documents relating to the cooperation between the Office of the Prosecutor ("Prosecution") and the Cameroonian authorities¹ ("First Request"), and for the disclosure of material related to its witnesses² ("Second Request") (collectively "Requests") should be dismissed. The Requests are moot because the material sought has already been disclosed or otherwise provided to the Defence *via* email, pending formal disclosure.

II. Confidentiality

2. This response is filed confidentially because it responds to filings of the same designation. The Prosecution does not object to this filing being reclassified as "Public".

III. Submissions

A. Disclosure of material related to Arido's witnesses

3. Contrary to the Requests, the Prosecution cannot have been expected to identify and disclose material related to Arido's witnesses as early as 5 May 2015.³ The identities of Arido's provisional list of witnesses were first made known on 11 December 2015 – with a delay of eight days from the date the Defence was required to communicate this information.⁴ The final list was provided on 21 January 2016.⁵

4. The Arido Defence's reticence in initially identifying its witnesses undermines any claimed urgency in respect of the disposition of the Requests. As the Trial Chamber VII ("Chamber") found, the Arido Defence's failure to timely reveal the

¹ ICC-01/05-01/13-1637-Conf.

² ICC-01/05-01/13-1640-Conf.

³ Second Request, para. 5.

⁴ ICC-01/05-01/13-1521-Conf-AnxA.

⁵ ICC-01/05-01/13-1557-Conf-AnxA.

identities of its witnesses was unjustified.⁶ Further, nothing prevented the Arido Defence from filing its final list of witnesses in advance of the 21 January 2016 deadline, instead of joining in a request resulting in the extension of the original 7 January 2016 deadline by two weeks,⁷ particularly given that its witnesses remained unchanged between its provisional and final lists.⁸

5. In any event, the Prosecution has timely disclosed to the Arido Defence all materials that are relevant to its preparation of these witnesses. Both prior to, and following its receipt of the Arido Defence's final list of witnesses, the Prosecution conducted targeted reviews of its evidence collection and disclosed related material on a rolling basis, beginning on 18 December 2015,⁹ then on 22 January 2016,¹⁰ 4 February 2016,¹¹ and finally on 23 February 2016.¹²

6. Similarly, in relation to those Arido witnesses allegedly involved in the charged incidents, disclosure has been effected regularly since the early stages of the Prosecution case.¹³

⁶ In accordance with the Chamber's 'Directions on Defence Presentation of Evidence', each Defence team was instructed to provide a provisional list of witnesses on 3 December 2015. See ICC-01/05-01/13-1450, para. 9. On 4 December 2015, the Arido Defence submitted its provisional list of witnesses' pseudonyms without revealing the witnesses' identities. See ICC-01/05-01/13-1510-Conf-AnxB. The Chamber found that this is not a satisfactory response to its earlier directions and ordered the Arido Defence to re-file its provisional list with the identities of the persons it intends to call forthwith. See ICC-01/05-01/13-1518, para. 19. Following the latter instructions, the Arido Defence revealed the identities of the witnesses it intended to call on 11 December 2015 indicating that its understanding was that the identity of its potential witnesses did not have to be disclosed until 7 January 2016. See ICC-01/05-01/13-1521, para. 5; ICC-01/05-01/13-1521-Conf-AnxA. Finally, the Arido Defence submitted its final list of witnesses on 21 January 2016, see ICC-01/05-01/13-1557-Conf-AnxA, after seeking jointly with the other defence teams an extension from the Chamber to the original 7 January 2016 deadline to file, among others, its final list of witnesses. See ICC-01/05-01/13-1500-Conf. Following this request, the Chamber extended the 7 January deadline to 21 January 2016. See ICC-01/05-01/13-1518.

⁷ ICC-01/05-01/13-1500-Conf.

⁸ See ICC-01/05-01/13-1645-Conf-AnxA.

⁹ Documents related to witnesses D24-P-0001, D24-P-0012 (D-0007), D24-P-0010 (D-0008) and D24-P-0013 (D-0011) were disclosed on 18 December 2015 in Trial Rule 77 – Package 38.

¹⁰ Documents related to witnesses D24-P-0002 (D-0052), D24-P-0012 (D-0007) and D24-P-0013 (D-0011) were disclosed on 22 January 2016 in Trial Rule 77 – Package 39.

¹¹ Documents related to witnesses D24-P-0001, D24-P-0002 (D-0052), D24-P-0009 (D-0006), D24-P-0010 (D-0008) and D24-P-0013 (D-0011) were disclosed on 4 February 2016 in Trial Rule 77 – Package 40.

¹² Documents related to witnesses D24-P-0001, D24-P-0002 (D-0052), D24-P-0003 (D-0004), D24-P-0009 (D-0006), D24-P-0010 (D-0008) and D24-P-0012 (D-0007) were disclosed on 23 February 2016 in Trial Rule 77 – Package 41.

¹³ For instance, documents related to D24-P-0003 (D-0004) were disclosed on 20 December 2013, 28 February, 28 May, and 9 June 2014; and 6 February 2015 in Pre-Confirmation INCRIM - packages 1 and 14, Pre-Confirmation Rule 77 - packages 4 and 10, and Trial INCRIM - package 19; documents related to D24-P-0009

B. Disclosure of material related to the cooperation between the Prosecution and the Cameroonian authorities

7. In compliance with the Chamber's orders, the Prosecution disclosed the Requests for Assistance ("RFAs") directed to Cameroon on 30 September 2015.¹⁴ Now, nearly five months later, the Arido Defence aims to broaden this disclosure, seeking two categories of documentation, absent any substantiation of their *prima facie* materiality.

8. The first category comprises material referred to specifically in the disclosed RFAs, *i.e.* agreements, correspondence, and records of meetings. Guided by the Chamber's recent clarification in its 17 February 2016 decision,¹⁵ the Prosecution has reviewed its collection and found that what the Requests describe as several agreements and correspondences are actually the same correspondences (two documents)¹⁶ referred to in different RFAs.¹⁷ These include general information about cooperation with national authorities regarding Prosecution investigative activities which are sufficiently detailed in the RFAs already disclosed. In any event, the Prosecution provided these two documents to the Defence *via* email on 24 February 2016. Formal disclosure will take place shortly. As to the meetings referred to in the Requests, no note-taking occurred, and thus, none have been disclosed.

(D-0006), were disclosed on 20 December 2013, 31 January, 20 and 27 June 2014, 25 February, 19 May, 4 and 30 June 2015, in Pre-Confirmation INCRIM - Packages 1, 3, 15, 16, Trial INCRIM - Packages 20, 24, 25, and Trial Rule 77 - package 23; documents related to D24-P-0012 (D-0007) were disclosed on 20 December 2013, 18 March, 11 April, 9 June 2014 and 19 May 2015 in Pre-Confirmation INCRIM - Packages 1, 7, 8, 14 and Trial INCRIM - package 24. Documents related to D24-P-0002 (D-0052) were disclosed on 20 December 2013, 11 April 2014, 19 May and 4 June 2015 through Pre-Confirmation Rule 77 - Packages 1, 7 and Trial INCRIM - Packages 24 and 25; documents related to D24-P-0011 were disclosed on 20 June 2014 and 4 June 2014 in Pre-Confirmation INCRIM - Package 15 and Trial INCRIM - Package 25.

¹⁴ The RFAs to the Cameroonian authorities were disclosed on 30 September 2015 in Trial Rule 77 - Package 30. Additionally, it is worth noting that the Prosecution has previously disclosed to the Defence other documents received from the Cameroonian authorities in relation to the Prosecution's investigative activities in Cameroon on 20 December 2013, 18 March and 28 May 2014, and 04 June 2015, in Pre-Confirmation INCRIM - Package 1, Pre-Confirmation Rule 77 - Packages 6 and 10 and Trial INCRIM - Package 25.

¹⁵ ICC-01/05-01/13-1632.

¹⁶ The documents concerned comprise a letter from the Prosecution and its response from the Cameroonian authorities. See CAR-OTP-0092-5497; CAR-OTP-0092-5498.

¹⁷ See First Request, paras. 16, 17, 18 and 19.

9. The second category comprises any other documents relating to the Prosecution's involvement, presence and participation in the investigation in Cameroon. Such blanket requests are clearly overbroad. And, this Chamber has found similar requests to be "too vague to substantiate materiality in the sense of Rule 77 of the Rules".¹⁸ Here, the request similarly falls short of even the minimal threshold demonstration of *prima facie* materiality for the items sought under rule 77.

10. The Requests, in this respect, fail as a matter of law, and should be dismissed. Nevertheless, the Prosecution has considered the Requests and reviewed its evidence collection accordingly, in the spirit of advancing the proceedings. As a result, seven documents within this category were further provided to the Defence on 23 and 24 February 2016.¹⁹

IV. Relief Requested

11. For the foregoing reasons, the Requests should be dismissed as moot.



Fatou Bensouda, Prosecutor

Dated this 24th Day of February 2016
At The Hague, The Netherlands

¹⁸The Chamber held that: "as to the Mangenda Defence's request to disclose 'any documents relevant to the production of any records from any source' the Chamber considers that this description is too vague to substantiate materiality in the sense of Rule 77 of the Rules or to justify a request for cooperation". ICC-01/05-01/13-1148-Conf, para. 11.

¹⁹ Four of these documents are "*procès-verbaux*" prepared by the Cameroonian authorities in implementation of the Prosecution's RFAs. They were disclosed on 23 February 2016 in Trial Rule 77 – Package 41. The remaining documents are two emails between the Prosecution and the Cameroonian authorities and an attachment to one of the emails containing an RFA which was previously disclosed. These remaining three documents were provided to the Defence *via* email on 24 February 2016 and will be formally disclosed shortly.