

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 April 2016

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***

Public Document

**Prosecution's Observations on "Narcisse Arido's Notification of its Revised List of
Witnesses and Supplementary Submissions" (ICC-01/05-01/13-1705-Conf), and
Allegations of Prosecutorial Misconduct**

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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Amicus Curiae

REGISTRY

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Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section Others

I. Observations

1. The Office of the Prosecutor ("Prosecution") provides its observations on the Arido Defence's representations alleging misconduct in the investigation of this case set out in "Narcisse Arido's Notification of its Revised List of Witnesses and Supplementary Submissions" ("Notice"),¹ and further articulated in the record of the proceedings on 11 March 2016² (together, "Defence Representations").³

2. Throughout the course of these proceedings and the investigation of this case, the Prosecution has conducted itself in accordance with the Court's statutory framework and the decisions and protocols issued by its various Chambers. Insofar as the Defence Representations assert, expressly or impliedly, what is tantamount to professional misconduct, the Prosecution categorically rejects these accusations. The objective facts amply demonstrate that these allegations are simply unfounded.

3. In its dealings with all persons for whom the Prosecution has grounds to believe have committed crimes under the Statute, the Prosecution has consistently and scrupulously observed article 55(2) of the Rome Statute and rule 112 of the Rules of Procedure and Evidence. This necessarily includes the Prosecution's contact with Defence witnesses pursuant to the relevant Protocol,⁴ where it has evidence of their complicity in the commission of the charged crimes confirmed by Pre-Trial Chamber II.

4. The Prosecution's legitimate right to investigate Defence witnesses to determine the truth in proceedings before this Court is indisputable. It has consistently done so fairly and in accordance with the Court's statutory framework. The same is true with

¹ ICC-01/05-01/13-1705-Conf.

² ICC-01/05-01/13-T-44-ENG ET, pp. 8-11.

³ The Prosecution previously indicated that it would submit these observations in writing: ICC-01/05-01/13-T-42-CONF-ENG ET, p. 5, lns. 17-22; ICC-01/05-01/13-T-44-ENG ET, p. 11, lns. 12-18.

⁴ ICC-01/05-01/13-1093-Anx, pp. 7-10.

respect to the Prosecution's acquisition and use of evidence obtained from State parties during the course of its investigations, notwithstanding the Defence's wholly unsubstantiated claims to the contrary.

5. Although Arido is entitled to withdraw his intention to call witnesses at will — as he has done here — his Defence is not free to misrepresent the facts and distort the record of these proceedings to disguise a strategic decision as being the result of prosecutorial misconduct.

6. The Arido Defence's attempt to blame the Prosecution for difficulties it may have encountered in the conduct of its defence or for the withdrawal of its witnesses is unsubstantiated, self-serving, and has no basis in the objective facts on record.



Fatou Bensouda, Prosecutor

Dated this 8th day of April, 2016
At The Hague, The Netherlands