

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 June 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 Redacted Document

**Public redacted version of "Prosecution's Response to the Arido Defence's Motion
for Disclosure," 13 April 2016, ICC-01/05-01/13-1803-Conf**

Source: The Office of the Prosecutor

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

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I. Introduction

1. The Office of the Prosecutor (“Prosecution”) opposes the Arido Defence’s request for the disclosure of: (i) the unredacted e-mail exchanges between the Prosecution and the Anonymous Informant (“First Request”); and (ii) the material that was used to corroborate the information received from the Anonymous Informant (“Second Request”).¹

2. The Pre-Trial and Trial Chambers have repeatedly confirmed the propriety of the redactions applied to the relevant e-mail exchanges, including in the context of a request for reconsideration. The Arido Defence fails to demonstrate that further reconsideration, if permitted, is necessary to remedy a “clear error of reasoning” or “to prevent an injustice.”

3. Further, the material corroborating the information received from the Anonymous Informant is already in the Defence’s hands. That material, which comprises the fruits of the Prosecution’s further investigations, was reviewed and disclosed long ago in accordance with rules 76 and 77 of the Rules of Procedure and Evidence, and article 67(2) of the Rome Statute. Consequently, the Second Request is moot.

II. Confidentiality

4. This response is filed “*Confidential*” because it responds to a filing of the same designation. The Prosecution will file a “*Public Redacted*” version following the Defence’s filing of the same.

¹ ICC-01/05-01/13-1793-Conf, p. 9.

III. Submissions

5. The Prosecution opposes the First Request. Both the Pre-Trial and the Trial Chambers have previously ruled on the issue, permitting redactions to ensure the safety and security of the Anonymous Informant.²

6. In its 21 August 2015 Decision, Trial Chamber VII held that:

“[REDACTED]”³

7. When the Bemba Defence raised the issue again in its 31 August 2015 “Defence Request for leave to appeal the ‘Decision on ‘Defence Request for Disclosure and Judicial Assistance’”,⁴ the Single Judge found no reason to reconsider these findings noting that the Bemba Defence advanced no new facts or arguments arising since the issuance of the Impugned Decision.

8. The Arido Defence’s First Request fails to address this ruling, and adds nothing to the facts or arguments already advanced by the Bemba Defence and rejected by the Single Judge.

9. Further, even if the First Request could be construed as validly seeking a second reconsideration of the Chamber’s previous decisions — which is doubtful at best,⁵ it would still fail, as it does not demonstrate any “clear error of reasoning” or that

² ICC-01/05-01/13-298, p. 5; ICC-01/05-01/13-337, p. 4; ICC-01/05-01/13-356, p. 4. The Single Judge has carefully evaluated the basis for all the proposed redactions, included in a dedicated hearing, see ICC-01/05-01/13-T-5-Red2-ENG.

³ ICC-01/05-01/13-1166-Conf, paras. 17-18.

⁴ ICC-01/05-01/13-1198-Conf, paras. 3-4.

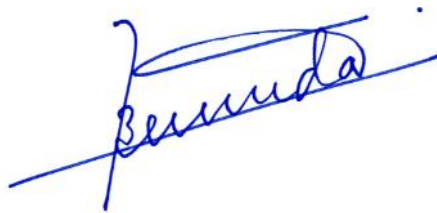
⁵ A Chamber’s reconsideration of an issue already reconsidered at the request of a Party should preclude revisiting the same issue when later raised by another Party in the same proceedings. If not for the sake of ensuring the finality of the Chamber’s decisions and certainty in the expeditious conduct of the proceedings, the interests of judicial economy require such preclusion.

reconsideration is necessary “to prevent an injustice.”⁶ The Chamber specifically considered the redactions concerned. As such, the Chamber’s previous decisions cannot reasonably warrant reconsideration as “manifestly unsound” or on the basis that their consequences are “manifestly unsatisfactory” such that they rest on a clear error of reasoning that would result in an injustice. The First Request does not meet the test for reconsideration in this respect and should therefore be dismissed.

10. In respect of the Second Request, the Prosecution has discharged its disclosure obligations. As mentioned by the Single Judge of Pre-Trial Chamber II, “any and all information provided by an informant [...] has to be regarded and treated as a mere investigative hint possibly assisting the Prosecutor in discharging his or her duties, as such to be subjected to close and careful scrutiny as to its truthfulness, reliability and relevance by means of further investigations”.⁷ The Prosecution conducted such investigations, resulting in the confirmed charges. All the information collected in this context was reviewed and disclosed in accordance with the applicable disclosure regime. The Second Request is therefore moot.

IV. Relief Requested

11. For the foregoing reasons, the First and the Second Requests should be dismissed.



Fatou Bensouda, Prosecutor

Dated this 17th Day of June 2016
At The Hague, The Netherlands

⁶ ICC-01/05-01/13-1800, para. 11. *See also*, ICC-01/05-01/13-1552, para. 6.

⁷ ICC-01/05-01/13-298, p. 5. *See also*: ICC-01/05-01/13-337, pp. 4-5; ICC-01/05-01/13-356, p. 4.