

**Cour
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**International
Criminal
Court**

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

Date: **10 July 2016**

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

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**

Confidential

**Public Redacted Version of
“Corrigendum of ‘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)”
(ICC-01/05-01/13-1165-Conf-Corr), filed 18 September 2015**

Source: Counsel for Narcisse Arido

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

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I. INTRODUCTION

1. On 12 August 2015, the Prosecution filed a confidential redacted version of the report made by its investigator [REDACTED] regarding the alleged disclosure of information related to [REDACTED] (hereinafter ‘the Report’).¹

2. Since the Report was not available to the Arido Defence at the time of filing, and in light of the crucial information contained therein in relation to P-0260, the Arido Defence hereby wishes to supplement its Request for Reclassification of Information related to an alleged incident between P-0260 and [REDACTED],² its Request for an Order on Disclosure Violation,³ and its Request to Interview Prosecution’s Investigators.⁴ As a result, it requests leave from the Trial Chamber to submit the following additional arguments.

II. CONFIDENTIALITY

3. Pursuant to Regulation 23*bis* of the Regulations of the Court (‘RoC’) and Regulation 24 of the Regulations of the Registry (‘RoR’), this request is submitted confidentially as it refers to confidential filings.

III. PROCEDURAL HISTORY

4. The Prosecution, including [REDACTED], interviewed P-0260 on 2, 3, and 29 April 2014.⁵ On 16 July 2014, [REDACTED] prepared a report regarding an alleged incident between P-0260 and [REDACTED], wherein it is alleged that [REDACTED].⁶ On 2 September 2014, [REDACTED] prepared another report, concerning the alleged disclosure of information related to [REDACTED].⁷ On 5 November 2014, the Prosecution interviewed P-0260 again, in the presence of [REDACTED] and Mr. Vanderpuye.⁸

5. On 30 June 2015, the Prosecution included P-0260 into the list of witnesses it intends to call at trial.⁹

¹ ICC-01/05-01/13-665-Conf-Anx-Red.

² ICC-01/05-01/13-1111-Conf.

³ ICC-01/05-01/13-1141-Conf.

⁴ ICC-01/05-01/13-1139-Conf.

⁵ CAR-OTP-0080-0007-R01, CAR-OTP-0080-0021; CAR-OTP-0080-0043; CAR-OTP-0080-0069; CAR-OTP-0080-0100-R01; CAR-OTP-0080-0135; CAR-OTP-0080-0159; CAR-OTP-0080-0494.

⁶ CAR-OTP-0082-1418/Annex to ICC-01/05-01/13-575-Conf-Exp.

⁷ ICC-01/05-01/13-665-Conf-Anx-Red.

⁸ CAR-OTP-0084-0412; CAR-OTP-0084-0442; CAR-OTP-0084-0472; CAR-OTP-0084-0487.

⁹ ICC-01/05-01/13-1048-Conf-AnxA-Red.

6. On 31 July 2015, the Arido Defence requested the Trial Chamber to order the reclassification of a number of documents related to the alleged [REDACTED].¹⁰ In particular, it requested to be given access to the VWU's risk assessment on P-0260, to the reports the Registry submitted to the Pre-Trial Chamber regarding the monitoring of Mr. Arido's non-privileged conversations and to the annex to the Prosecution's request for reconsideration of the Single Judge's decision to suspend the monitoring of Mr. Arido's non-privileged conversations alleging the disclosure of information related to [REDACTED].¹¹ The Arido Defence also requested to be provided with a copy of all recorded non-privileged conversations of Mr. Arido.¹²

7. On 10 August 2015, the Arido Defence submitted that the Prosecution violated its disclosure obligations pursuant to Rule 67 (2) of the Statute by failing to – *inter alia* – disclosing a number of documents from the Main Case related to Prosecution's witnesses in this case.¹³

8. On the same day, the Arido Defence also requested the Trial Chamber to order that Prosecution's investigators who participated in the interviews of P-0260 and P-0245, namely [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED], (the latter being also known as Prosecution's witness P-0433) attend an interview with the Arido Defence with a view to clarifying the circumstances of the interviews with P-0260 and P-0245, as part of its preparation for trial.¹⁴

9. On 12 August 2015, the Prosecution filed a confidential redacted version of the report made by its investigator [REDACTED], regarding [REDACTED] ('the Report').¹⁵ The Report indicates that P-0260 informed the Prosecution that he knew [REDACTED], and that he had been in regular contact with them throughout his stay in [REDACTED].¹⁶ The Report further states that on 27 August 2014, [REDACTED] called P-0260, who informed him that he had been trying to reach someone in the VWU.¹⁷ P-0260 stated that he had heard from "a friend" whose name is redacted that [REDACTED] that P-0260 was trying to be relocated outside of [REDACTED] by telling the Court that Mr. Arido would kill him when he comes out of prison. In addition, P-0260 also told [REDACTED] that [REDACTED].¹⁸ The Report is heavily

¹⁰ ICC-01/05-01/13-1111-Conf. For an overview of the relevant procedural background, *see ibid.*, paras 4-24.

¹¹ *Ibid.*, para. 44.

¹² *Ibid.*, para. 45.

¹³ ICC-01/05-01/13-1141-Conf.

¹⁴ ICC-01/05-01/13-1139-Conf.

¹⁵ ICC-01/05-01/13-665-Conf-Anx-Red.

¹⁶ *Ibid.*, p. 2.

¹⁷ *Ibid.*, p. 3.

¹⁸ ICC-01/05-01/13-665-Conf-Anx-Red, p. 3.

redacted, including information which appears material to P-0260's credibility and the investigation into P-0260's allegations, such as the identity of individuals with whom P-0260 discussed his evidence in the present case, including the fact that he was going to be a witness for the Prosecution and the underlying reasons why he was doing so.¹⁹ The Report also refers to the fact that [REDACTED] told P-0260 that his actions endangered his safety but also could discredit him.²⁰ P-0260 informed [REDACTED] that he has not been in contact with these individuals since [REDACTED] and he told them about his evidence in the present case.²¹

IV. SUBMISSIONS

10. The Report contains information which is highly relevant to the Trial Chamber's assessment of the three Arido Defence's Requests related to disclosure violations and to P-0260's credibility. As a result, the submissions below constitute an addendum to the Arido Defence's Request for Reclassification of Information related to an alleged incident [REDACTED],²² its Request for an Order on Disclosure Violation,²³ and its Request to Interview Prosecution's Investigators.²⁴

A. The Report shows that the Prosecution violated its Article 67 (2)'s obligations

11. The Arido Defence submits that the Report constitutes yet another example of the Prosecution's failure to meet its disclosure obligations under Article 67 (2) of the Statute.²⁵

12. Article 67 (2) states unequivocally that evidence which may affect the credibility of Prosecution evidence must be disclosed to the Defence as soon as practicable. The Report indicated that P-0260 talked about the evidence he gave to the Prosecution in the present case to other individuals [REDACTED], and also talked about Mr. Arido and his motives for giving evidence against him. While their identity is redacted, it is clear that these individuals are [REDACTED] and [REDACTED]. The Prosecution's investigator himself noted that discussing

¹⁹ *Ibid.*, pp. 3-4.

²⁰ *Ibid.*, p. 4.

²¹ *Ibid.*, p. 4.

²² ICC-01/05-01/13-1111-Conf.

²³ ICC-01/05-01/13-1141-Conf.

²⁴ ICC-01/05-01/13-1139-Conf.

²⁵ *See* ICC-01/05-01/13-1141-Conf.

his evidence with these individuals could affect the credibility of P-0260 evidence, and informed him as such.²⁶

13. Yet, despite being in the possession of the Prosecution since early September 2014, the Prosecution only disclosed the Report to the Defence on 12 August 2015. The Arido Defence notes that, unlike what the Prosecution purports to present,²⁷ it had previously asked for the Report to be made accessible to it, as early as 8 September 2014,²⁸ therefore further highlighting the importance of this document for the preparation of Mr. Arido's Defence.

14. The Arido Defence submits that the Report highlights the Prosecution's lack of diligence in respecting its disclosure obligations. It respectfully requests the Trial Chamber to find that the Prosecution violated its Article 67 (2) disclosure obligations and to order the Prosecution to review the totality of the information at its disposal with a view to identify and disclose to the Defence information/documents falling under the scope of Article 67 (2) of the Statute.

15. The Arido Defence also submits that the Report clearly relates to the alleged incident [REDACTED] and the question of the alleged disclosure of confidential information by Mr. Arido, as it provides further context. It also relates to his credibility and is therefore relevant for the preparation of P-0260's cross-examination. As a result it falls under Rule 77 of the RPE as it is material for the preparation of the Arido Defence both in responding to the Prosecution's allegations of disclosure of confidential information by Mr. Arido and in preparing for the cross-examination of P-0260.

B. The Report further illustrates the importance for the Arido Defence to obtain access to all the documents regarding the alleged incident [REDACTED]

16. The Arido Defence also submits that the Report provides further context and background to the Prosecution's allegation that Mr. Arido disclosed confidential information [REDACTED].²⁹ It also shows the close link between the 'peripheral' allegations made by P-0260 and the allegations against Mr. Arido.

17. Further, P-0260 used the alleged disclosure [REDACTED] to refuse to meet with the Kilolo Defence,³⁰ which thereby impacts the ability of all the Defence teams to contact P-0260.

²⁶ ICC-01/05-01/13-665-Conf-Anx-Red, p. 4: "[REDACTED]"

²⁷ ICC-01/05-01/13-1145-Conf, para. 5.

²⁸ ICC-01/05-01/13-666-Conf-Exp, para. 9.

²⁹ See ICC-01/05-01/13-1111-Conf.

³⁰ CAR-OTP-0084-0472, l. 424-440: [REDACTED].

18. As a result, it requests the Trial Chamber to take it into account when considering the Narcisse Arido's Request for Reclassification of Materials Related to the Alleged Incident [REDACTED].³¹

C. The Report further supports the need for the Arido Defence to interview Prosecution's investigators

19. Last but not least, the Arido Defence wishes to point out to the importance of the Report regarding the necessity of interviewing Prosecution's investigators, in particular [REDACTED].³² Indeed, the Report is the only evidence regarding P-0260's discussion with the Prosecution regarding the allegations of [REDACTED]. As stated above, it plays an important role in the assessment of P-0260's credibility. Further, it also raises concerns regarding the manner in which the Prosecution approached P-0260, and the question as to whether it exercised undue influence on him. For instance, the report gives the impression that P-0260 was intending to talk to the VWU, but that the Prosecution instead took over the responsibility of P-0260's safety. It also shows that it was [REDACTED] who called P-0260. Clarification is needed regarding why such action was undertaken while it is clear that the Prosecution was aware that P-0260 was attempting to reach the VWU, not the Prosecution. Finally, the report refers to dates of interview of P-0260 of 1 and 2 April 2013, while the records made available to the Arido Defence are dated of 2 and 3 April 2014.³³ Interviewing [REDACTED] would provide the Defence with an opportunity to clarifying this issue.

D. The unredacted version is material to the preparation of Mr. Arido's Defence

20. The Arido Defence further wishes to request the Trial Chamber to order the Prosecution to provide an unredacted version of the report to the Arido Defence. Indeed, redactions are being made to the names of at least two individuals who [REDACTED], to whom P-0260 talked about [REDACTED], and most importantly, to whom he recognises having told the same thing that he told the Prosecution about the case and Mr. Arido.³⁴ The Report also redacts the name of an individual to whom [REDACTED] allegedly told that P-0260 gave evidence against Mr. Arido.³⁵

³¹ ICC-01/05-01/13-1111-Conf.

³² ICC-01/05-01/13-1139-Conf.

³³ See the date indicated on the cover pages of CAR-OTP-0080-0007-R01, CAR-OTP-0080-0021, CAR-OTP-0080-0043, CAR-OTP-0080-0069, CAR-OTP-0080-0100-R01, CAR-OTP-0080-0135, CAR-OTP-0080-0159.

³⁴ ICC-01/05-01/13-665-Conf-Anx-Red, p. 4: "[REDACTED]."

³⁵ *Ibid.*, p. 3, bottom.

21. The Arido Defence submits that access to the identity of these individuals is required by Article 67 (2) as well as Rule 77, as it impacts upon P-0260's credibility. It is also material to the preparation of the Arido Defence as investigating and contacting these individuals would permit to both test the veracity of P-0260's claims - and his credibility - [REDACTED].

V. CONCLUSION

22. In light of the above, the Arido Defence respectfully requests Trial Chamber VII to grant it leave to submit the above-mentioned additional arguments, and to take into account the present submissions when rendering its decisions on the Arido Defence's Request for Reclassification of Information related to an alleged incident [REDACTED],³⁶ its Request for an Order on Disclosure Violation,³⁷ and its Request to Interview Prosecution's Investigators.³⁸

23. Further, the Arido Defence respectfully requests the Trial Chamber to find that the Prosecution violated its Article 67 (2) disclosure obligation and order the Prosecution to review the totality of the information at its disposal with a view to identify and disclose to the Defence information/documents falling under the scope of Article 67 (2) of the Statute.

24. Finally, the Arido Defence requests the Trial Chamber to order the Prosecution to unredact the names of individuals with whom P-0260 talked about [REDACTED] and about his evidence in the present case.



Chief Charles Achaleke Taku, Counsel for Mr. Arido

Dated this 10th Day of July 2015

The Hague, The Netherlands.

³⁶ ICC-01/05-01/13-1111-Conf.

³⁷ ICC-01/05-01/13-1141-Conf.

³⁸ ICC-01/05-01/13-1139-Conf.