

**Cour
Pénale
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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***

Public Redacted Document

Public redacted version of “Prosecution’s Response to Narcisse Arido’s Requested Remedies”, 15 June 2016, ICC-01/05-01/13-1932-Conf

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I. Introduction

1. Trial Chamber VII (“Chamber”) should reject the remedies requested by Arido relating to the Office of the Prosecutor’s (“Prosecution”) alleged intrusion into Arido’s and his family’s life, and Arido’s challenges to the Prosecution’s collection of Western Union records, emails, and call data records (“CDRs”).¹ Many of Arido’s allegations misunderstand the evidence, are unsupported, or ignore that the Chamber has previously disposed of the very same arguments. For these reasons, Arido’s challenges should be summarily dismissed.

2. The Prosecution takes no position on Arido’s allegations regarding the Registry’s treatment of him as a prospective Main Case witness.² However, there are reasons why the Chamber is not competent to grant the proposed remedies.

II. Confidentiality

3. This response is filed as “*Confidential*” because it responds to a filing of the same designation and contains confidential information. A “*Public Redacted*” version will be filed.

¹ ICC-01/05-01/13-1904-Conf, paras. 402-406, 409-411. The Prosecution does not address Arido’s general request that Arido be acquitted of all charges. ICC-01/05-01/13-1904-Conf, para. 407. Arido’s culpability for the charged crimes is detailed in the Prosecution’s Closing Brief and other trial submissions.

² ICC-01/05-01/13-1904-Conf, paras. 384-401, 408.

III. Submissions

A. The Prosecution takes no position on whether the Registry breached any obligations *vis-à-vis* Arido

4. The Prosecution takes no position on whether the Registry failed in its obligations toward Arido regarding his prospective testimony in the Main Case.³ However, nothing in the Statute, Rules of Procedure and Evidence, or Regulations of the Court confers on the Chamber the authority to order the Registrar to conduct the investigation requested by Arido.⁴ Further, as these issues concern the Registry's conduct in the Main Case, Arido's grievances should, at the very least, be directed to Trial Chamber III – which remains seized of the case – and not this Chamber.

B. Arido's allegations concerning Prosecution communications with [REDACTED] are baseless

5. Arido's serious allegation that the Prosecution "intru[ded] into [his] and his family's life" is wholly unsupported. His argument is predicated on a mischaracterisation of two statements purportedly made by the Prosecution to [REDACTED] representatives.

6. The first statement, that a "Prosecution team went to the [REDACTED] and tried [to] blackmail" Arido's wife "while demonizing Mr. Arido",⁵ relies upon a contorted construction of D24-0001's testimony — itself unreliable and unsupported. *First*, the Prosecution categorically denies this allegation. The Prosecution never had contact with D24-0001 or contact with [REDACTED] representatives in [REDACTED] which involved disparaging Arido or his wife. Indeed, D24-0001 testified that [REDACTED] "never met" with and had "never seen" the Prosecution investigator

³ ICC-01/05-01/13-1904-Conf, paras. 384-401.

⁴ ICC-01/05-01/13-1904-Conf, para. 408.

⁵ ICC-01/05-01/13-1904-Conf, para. 402.

on the case.⁶ *Second*, D24-0001 [REDACTED], contrary to Arido's suggestion, never claimed that the *Prosecution* told [REDACTED] representatives that Arido "was an immoral person, [...] raped women, killed people" and that [REDACTED]. D24-0001 testimony attributes those comments to "those people" ("*ces éléments*")⁷ without clarifying who "those people" are. It is unclear whether the witness was referring to other agents of the Court⁸ or other individuals [REDACTED] claimed to have interacted with in [REDACTED].⁹

7. *Third*, D24-0001 never provided a basis of knowledge for [REDACTED] assertions, rendering Arido's interpretation both speculative and self-serving. D24-0001 never explained how [REDACTED] came to believe that "those people" told [REDACTED] representatives that Arido "was an immoral person, [...] raped women, killed people".¹⁰ The comment was made in passing by D24-0001 and was never led by Arido or clarified during [REDACTED] re-examination. Absent that clarification, which Arido could have sought, the basis for [REDACTED] statement is impossible to discern.

8. *Fourth*, D24-0001's evidence on [REDACTED] contacts with the Prosecution is unreliable. When asked whether [REDACTED] lawyers "inform[ed] you that the Prosecution wanted to meet with you", [REDACTED] responded "[n]o" and "[REDACTED] lawyers didn't say anything to me. They just said that I would come to testify before the Court. They didn't say anything about anyone from the Prosecution who wanted to meet me".¹¹ This statement was recanted seconds later after the Prosecution repeated the question, noting that the Prosecution had been told that [REDACTED] had declined to meet with them, to which the witness responded

⁶ ICC-01/05-01/13-T-46-CONF-ENG ET, p. 16, ln. 20-p. 17, ln. 8.

⁷ ICC-01/05-01/13-T-46-CONF-ENG ET, p. 40, ln. 22; ICC-01/05-01/13-T-46-CONF-FRA ET, p. 43, ln. 11.

⁸ See e.g. ICC-01/05-01/13-T-47-CONF-ENG ET, p. 6, ln. 23-p. 10, ln. 5.

⁹ See e.g. ICC-01/05-01/13-T-46-CONF-ENG ET, p. 21, ln. 20-p. 22, ln. 21, p. 24, lns. 20-23, p. 25, ln. 22-p. 26, ln. 22, p. 27, lns. 15-21.

¹⁰ ICC-01/05-01/13-T-46-CONF-ENG ET, p. 40, lns. 22-25.

¹¹ ICC-01/05-01/13-T-46-CONF-ENG ET, p. 40, lns. 6-10 (emphasis added).

“Yes. Yes. [Arido’s lawyers] said that representatives of the Prosecutor wanted to meet me, and I refused.”¹²

9. *Finally*, Arido fails to identify any evidence corroborating, much less substantiating, his interpretation of D24-0001’s claim, which is incumbent on his Defence to establish given the obvious ambiguities and contradictions.

10. The second statement, Arido’s allegation that the Prosecution “illegally sought and obtained protected” [REDACTED] information concerning Arido’s wife,¹³ is equally incorrect and misleading. Arido’s argument relies upon CAR-OTP-0073-0023¹⁴ — a [REDACTED] letter responding to a request of the [REDACTED] authorities, not the Prosecution.¹⁵ Nothing in that letter suggests that the Prosecution (or the [REDACTED] authorities) sought or obtained information about Arido’s wife from [REDACTED]. Rather, it details [REDACTED] attempt to contact Arido directly and indirectly through her.¹⁶

11. Importantly, Arido omits reference to the Prosecution’s requests for assistance (“RFAs”) to the [REDACTED] authorities, to which CAR-OTP-0073-0023 relates. Those RFAs, CAR-OTP-0091-0317 and CAR-OTP-0091-0320, make no mention of Arido’s wife or the collection of information from [REDACTED]. Rather, the Prosecution requested the [REDACTED] authorities to provide information of persons, including names and addresses, associated with four telephone numbers that the Prosecution identified as being associated with the criminal scheme.¹⁷ As the [REDACTED] letter shows, the [REDACTED] authorities contacted [REDACTED] for assistance in contacting Arido; acting “*par la Direction de la Police Judiciaire et daté du*

¹² ICC-01/05-01/13-T-46-CONF-ENG ET, p. 40, lns. 11-18 (emphasis added).

¹³ ICC-01/05-01/13-1904-Conf, para. 403.

¹⁴ ICC-01/05-01/13-1904-Conf, para. 403, fn. 352.

¹⁵ CAR-OTP-0073-0023, at 0023.

¹⁶ CAR-OTP-0073-0023, at 0023.

¹⁷ CAR-OTP-0091-0317, at 0318; CAR-OTP-0091-0320, at 0323.

29 mai 2013.”¹⁸ [REDACTED] letter was appended to a letter from the [REDACTED] authorities in execution of the Prosecution’s RFAs – CAR-OTP-0073-0023 – which detailed the information concerning the four numbers requested by the Prosecution.

12. Thus, contrary to Arido’s assertions, his wife was neither made a subject of the investigation, nor her [REDACTED] information sought or obtained. None of Arido’s allegations have any basis in law or fact.

C. Arido’s challenges to the emails, CDRs, and Western Union records have no basis

13. Arido’s challenges concerning the Prosecution’s collection and use of Arido’s emails and CDRs are at best unclear and should be summarily dismissed. *First*, Arido fails to develop any discernible challenge regarding the Prosecution’s collection of Arido’s emails. Arido also fails to cite the Single Judge’s decision ostensibly ordering that “emails which were irrelevant to the case [...] be returned to the client”.¹⁹ The Prosecution has previously explained why its collection of Arido’s emails was lawful²⁰ and Arido does nothing to address those arguments. Significantly, the Chamber has also previously approved the propriety of the Prosecution’s considered review and disclosure of those emails.²¹ Given the lawfulness of the collection of Arido’s emails and the Prosecution’s obligation under rule 77 to disclose those emails which are material to the facts of this case or any other, there is no basis for the requested “expungement” of such records.²² Nor is any such order appropriate given that the proceedings in this case are not yet final.

¹⁸ CAR-OTP-0073-0023, at 0023.

¹⁹ ICC-01/05-01/13-1904-Conf, para. 404.

²⁰ ICC-01/05-01/13-1833-Conf, paras. 53-61.

²¹ ICC-01/05-01/13-1711, paras. 4-8.

²² ICC-01/05-01/13-1904-Conf, para. 409 (a).

14. Arido's assertion that there might be "the possibility of potential further abuse, if [CDRs] were to be used for purposes unrelated to the case"²³ provides no legal basis of the requested relief. To the extent such records may be material to the facts of another case, the Prosecution is obligated to disclose them subject to appropriate redactions. The Prosecution cannot engage in the destruction of potentially relevant evidence and information, particularly based on Arido's speculative and unsubstantiated claims.

15. Arido's remaining challenge concerning the legality of the Prosecution's collection of Western Union records should also be summarily dismissed. While Arido's recent motion seeking the exclusion of Western Union documents is based on two purportedly recently acquired decisions by the Austrian courts,²⁴ the arguments advanced in the Closing Brief²⁵ simply recycle challenges previously considered and disposed of by this Chamber.²⁶ Both of Arido's challenges – concerning the Prosecution's screening of Western Union transactions and an Austrian court order listing Arido as a suspect for "genocide" – were originally raised in Arido's 8 April 2016 motion.²⁷ Those arguments were carefully considered and disposed of by the Chamber in its 29 April 2016 decision, which determined that there was "no violation of an internationally recognised human right".²⁸ In repeating his arguments, Arido ignores this prior litigation, the Chamber's 29 April 2016 decision, his unsuccessful efforts to appeal the decision,²⁹ and that his present request amounts to an improper request for reconsideration which manifestly fails to meet the relevant threshold criteria.³⁰ These omissions undermine Arido's arguments and the requested relief.

²³ ICC-01/05-01/13-1904-Conf, para. 404.

²⁴ ICC-01/05-01/13-1928-Conf-Corr.

²⁵ ICC-01/05-01/13-1904-Conf, paras. 405-406.

²⁶ ICC-01/05-01/13-1854.

²⁷ ICC-01/05-01/13-1795-Conf, paras. 39-44.

²⁸ ICC-01/05-01/13-1854, paras. 11-12, 42-61.

²⁹ ICC-01/05-01/13-1869; ICC-01/05-01/13-1898.

³⁰ See ICC-01/05-01/13-1282, para. 8; ICC-01/05-01/13-1854, paras. 75-76.

16. Finally, absent any showing of misconduct by the Prosecution — of which there has been none — Arido's requested remedies have no merit. To the extent Arido seeks to rectify mistakes made by the Austrian authorities in their documents,³¹ it is incumbent on them to raise this with the Austrian authorities. Notably, the relevant Austrian court order which identifies Arido as a "genocide" suspect is, and has always been, confidential.³² Arido's claim that the mistake caused "irreparable harm and prejudice to him within his community, and the international community" is unfounded.³³ Indeed, the only public revelation of any reference to Arido as a genocide suspect in this case emanated from the Arido Defence, which has repeatedly noted this fact in open session and in public filings throughout.³⁴ The Arido Defence cannot now seek a remedy for a harm they otherwise produced themselves.

IV. Conclusion

17. For the above-mentioned reasons, Arido's requested remedies should be denied.



Fatou Bensouda, Prosecutor

Dated this 12th Day of July 2016
At The Hague, The Netherlands

³¹ ICC-01/05-01/13-1904-Conf, paras. 406, 410 (b).

³² CAR-OTP-0092-0834.

³³ ICC-01/05-01/13-1904-Conf, para. 410 (b).

³⁴ See e.g. ICC-01/05-01/13-T-34-CONF-ENG CT, p. 17, lns. 1-11, p. 18, lns. 2-4; ICC-01/05-01/13-T-39-CONF-ENG ET, p. 5, lns. 12-18, p. 9, ln. 20-p. 10, ln. 4; ICC-01/05-01/13-1869, paras. 16-18.