

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/05-01/13
Date: 25 February 2016

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Single Judge

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***

Public

**Decision on Arido Defence Request for Disclosure of Documents Related to the
Cooperation between the Prosecution and the Cameroonian Authorities**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Gosnell

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Others

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber VII ('Single Judge' and 'Chamber', respectively) of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Rules 77 and 81(1) of the Rules of Procedure and Evidence ('Rules') and Regulation 23 *bis* of the Regulations of the Court, issues the following 'Decision on Arido Defence Request for Disclosure of Documents Related to the Cooperation between the Prosecution and the Cameroonian Authorities'.

1. On 18 February 2016, the defence team for Mr Arido ('Arido Defence') requested the Chamber to order the Office of the Prosecutor ('Prosecution') to disclose certain materials referenced in its requests for assistance to Cameroon in relation to this case ('Request'). Specifically, the Arido Defence requests disclosure of: (i) the agreements between the Prosecution and the Cameroonian authorities that permitted the Prosecution to investigate on Cameroonian territory; (ii) the correspondence between the Prosecution and the Cameroonian authorities; (iii) records of the meetings between the Prosecution and the Cameroonian authorities and (iv) any other documents relating to the involvement, presence, and participation in the investigation on the Cameroonian territory.¹
2. On 24 February 2016, the Prosecution responded to the Request ('Response'), submitting that it be rejected.²
3. The Single Judge recalls the applicable law on disclosure as set out in previous decisions of the Single Judge and Chamber.³

¹ Narcisse Arido's Request for a Rule 77 Disclosure Order Concerning the Documents Related to the Cooperation between the Prosecution and the Cameroonian Authorities, ICC-01/05-01/13-1637-Conf (with six confidential annexes; filing notified 19 February 2016).

² Prosecution's Consolidated Response to Arido's Disclosure Requests (ICC-01/05-01/13-1637-Conf and ICC-01/05-01/13-1640-Conf), ICC-01/05-01/13-1656-Conf.

4. As regards agreements, correspondence and records of meetings referred to in its requests for assistance to Cameroon, the Prosecution submits that it has reviewed its collection for such documents and provided two additional documents to the defence teams.⁴ The Single Judge is satisfied that no disclosure order is necessary for these items.
5. As regards ‘any other documents relating to the involvement, presence, and participation in the investigation on the Cameroonian territory’, the Arido Defence makes no submission on the materiality of this type of information. The Prosecution submits that this part of the Request is overbroad.⁵ The Single Judge considers that the Arido Defence’s description is too vague to substantiate materiality in the sense of Rule 77 of the Rules⁶ – this part of the Request is rejected.
6. As a final matter, the Annexes of the Request show that the Prosecution has applied certain internal work product redactions to its requests for assistance. The Single Judge recalls that the Prosecution’s external correspondence does not qualify under Rule 81(1) of the Rules,⁷ meaning that, unless there is another

³ Decision on Defence Request for Disclosure of Information concerning the Fourteen Witnesses; ICC-01/05-01/13-1172, para. 17; Decision on ‘Defence Request for Disclosure and Judicial Assistance’, 21 August 2015, ICC-01/05-01/13-1166-Conf. For previous decisions in this case concerning disclosure of material which enables the defence to assess the legality of evidence which the Prosecution intends to rely upon at trial, *see* Decision on Bemba Defence Request for Disclosure and Lifting of Redactions Related to Collection of Telecommunication Evidence, 17 February 2016, ICC-01/05-01/13-1632, paras 13-15; Public redacted version of Decision on the Bemba Defence Request for Disclosure of Communication with the Dutch Authorities, ICC-01/05-01/13-1542-Red; Decision on ‘Joint Defence Request for remedies for disclosure violations’, 28 September 2015, ICC-01/05-01/13-1308-Conf; Decision on Defence Requests for Prosecution Requests for Assistance, Domestic Records and Audio Recordings of Interviews, 10 September 2015, ICC-01/05-01/13-1234-Conf; Decision on Mangenda Defence Request for Cooperation, 14 August 2015, ICC-01/05-01/13-1148-Conf.

⁴ Response, ICC-01/05-01/13-1656-Conf, para. 8.

⁵ Response, ICC-01/05-01/13-1656-Conf, para. 9.

⁶ *See similarly* ICC-01/05-01/13-1148-Conf, para. 11 (‘However, 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 [...]’).

⁷ ICC-01/05-01/13-1632, para. 19.


basis in the redaction protocol⁸ for redacting this information, these redactions must be lifted.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the relief sought in the Request, subject to paragraph 6 above; and

ORDERS the Registry to reclassify the Request (ICC-01/05-01/13-1637-Conf) and Response (ICC-01/05-01/13-1656-Conf) as 'public'.

Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt, Single Judge

Dated 25 February 2016

At The Hague, The Netherlands

⁸ Annex to the Decision on Modalities of Disclosure, 22 May 2015, ICC-01/05-01/13-959-Anx.