

**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 'Narcisse Arido's Request for a Disclosure Order for Material Related
to the Witnesses Indicated in ICC-01/05-01/13-1521-Conf-AnxA, pursuant to
Article 67(2) and Rule 77'**

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

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Others

Judge Bertram Schmitt, Single Judge of Trial Chamber VII ('Chamber') 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 Articles 64(2) and 67(2) of the Rome Statute ('Statute') and Rule 77 of the Rules of Procedure and Evidence ('Rules'), issues the Decision on 'Narcisse Arido's Request for a Disclosure Order for Material Related to the Witnesses Indicated in ICC-01/05-01/13-1521-Conf-AnxA, pursuant to Article 67(2) and Rule 77'.

I. Procedural History and Submissions

1. On 19 February 2016, the defence team for Mr Arido ('Defence') requested that the Chamber order the Office of the Prosecutor ('Prosecution') to disclose material related to Defence witnesses (as listed in ICC-01/05-01/13-1557-Conf-Anx), pursuant to Article 67(2) of the Statute and Rule 77 of the Rules and to grant the Defence permission to add any material disclosed by the Prosecution to its list of evidence ('Application').¹
2. On 24 February 2016, the Prosecution filed a response to the Application, submitting that it had disclosed to the Defence all materials that were relevant to its preparation in respect of Defence witnesses.²

II. Analysis

3. Rule 77 of the Rules provides for the inspection by the defence of material in the possession or control of the Prosecutor which is, *inter alia*, material to the preparation of the defence. Given that the Defence has previously sought disclosure of such materials from the Prosecution, in the instant Application

¹ Narcisse Arido's Request for a Disclosure Order for Material Related to the Witnesses Indicated in ICC-01/05-01/13-1521-Conf-AnxA, pursuant to Article 67(2) and Rule 77, ICC-01/05-01/13-1640-Conf, para. 37.

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, para. 5.

the Defence is in essence requesting the Chamber to order the Prosecution to aver that it has in fact conducted such an assessment pursuant to Rule 77 of the Rules, and has in fact disclosed all relevant material.

4. The Defence has not put forward sufficient grounds to suggest that the Prosecution has failed to discharge its disclosure obligations. Responsibility for ensuring that the Prosecution fulfils its disclosure obligations lies first with the Prosecution itself pursuant to Article 67(2) of the Statute and Rule 77 of the Rules.³ The Defence points to uncertainty as to whether the Prosecution has conducted a ‘comprehensive and specific inquiry’ with respect to its material relating to Defence witnesses.⁴ However, there is no *prima facie* evidence before the Single Judge suggesting that the Prosecution has under-disclosed information relating to Defence witnesses and, given the Prosecution’s submission that it last conducted a targeted review of its collection of evidence as late as 23 February 2016 and has disclosed all information relevant to the Defence’s preparation,⁵ the Single Judge rejects the Application as moot.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Application as moot.

³ *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the Defence Request for disclosure of pre-interview assessments and the consequences of non-disclosure, 9 April 2010, ICC-01/05-01/08-750-Conf, paras 30 and 37; Decision on the ‘Defence Motion on Prosecution contact with its witnesses’, 22 May 2014, ICC-01/05-01/08-3070, para. 20.

⁴ Application, ICC-01/05-01/13-1640-Conf, para. 34.

⁵ 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, para. 5.

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