

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 March 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 Order on Prosecution's Disclosure
Violations**

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

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Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

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Counsel for Jean-Jacques Mangenda Kabongo

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Counsel for Fidèle Babala Wandu

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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

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Others

REGISTRY

Registrar

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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 Articles 54(1)(a) and 67(2) of the Rome Statute ('Statute') and Regulation 23 bis(3) of the Regulations of the Court, issues the following 'Decision on Arido Defence Request for Order on Prosecution's Disclosure Violations'.

I. Procedural History and Submissions

1. On 26 February 2016, the defence for Mr Arido ('Arido Defence') filed an application requesting that the Chamber find that the Office of the Prosecutor ('Prosecution') has violated its duties as set out in Articles 54(1)(a) and 67(2) of the Statute. Additionally, it requested that the Prosecution be ordered to certify that it has disclosed all exculpatory evidence ('Request').¹
2. On 8 March 2016, the Prosecution filed its response, submitting that the request be summarily dismissed as untimely and, alternatively, be rejected ('Response').²
3. The Arido Defence informs the Chamber that the Prosecution conducted two interviews, with P-260 and P-245, on 5 November 2014 which were only disclosed to the defence on 5 June 2015 ('5 November Interviews').³ It submits that the Prosecution violated its prosecutorial duties by not pursuing certain topics during the questioning of the two witnesses.⁴ Further, it argues that the fact that the Prosecution did not disclose the 5 November Interviews 'during the

¹ Narcisse Arido's Request for an Order on the Prosecution's Disclosure Violation Regarding P-245 and P-260's Witness Interviews, pursuant to Articles 67(2) and 54(1)(a) of the Rome Statute, ICC-01/05-01/13-1668-Conf.

² Prosecution's Response to "Narcisse Arido's Request for an Order on the prosecution's Disclosure Violation Regarding P-0245's and P-0260's Witness Interviews, pursuant to Articles 67(2) and 54(1)(a) of the Rome Statute", ICC-01/05-01/13-1706-Conf.

³ Request, ICC-01/05-01/13-1668-Conf, para. 1.

⁴ Request, ICC-01/05-01/13-1668-Conf, paras 13-22.

critical period of trial preparation objectively suggests that the Prosecution recognised that certain parts [...] may discredit the Prosecution's evidence'.⁵ The Arido Defence avers that, due to its exculpatory character, the Prosecution was under the obligation to disclose the 5 November Interviews as soon as practicable, which it failed to do.⁶ Further, it submits that the Prosecution should have made the material available to the Pre-Trial Chamber for the latter to consider in its decision on the confirmation of the charges.⁷ Accordingly, the Arido Defence claims that the Prosecution violated Mr Arido's right to a fair trial and its obligations under Article 67(2) and 54(1)(a) of the Statute.⁸

4. The Prosecution submits that the Request is untimely, that the Chamber had previously warned that the untimely requests for disclosure remedies may be summarily dismissed and that this result is warranted for the Request under consideration.⁹ In the alternative, it submits that the Request should be rejected, arguing that it fails to substantiate any specific disclosure violation¹⁰ or demonstrate any prejudice.¹¹

II. Analysis

5. As a preliminary matter, the Single Judge notes that both parties have agreed that their submissions can be reclassified as 'public'¹² and instructs the Registry to proceed accordingly.
6. As to the timeliness of the Request and the Prosecution's submission that it should be dismissed on these grounds alone, the Single Judge notes that the decision cited in support of this argument specifically made reference to the

⁵ Request, ICC-01/05-01/13-1668-Conf, para. 21.

⁶ Request, ICC-01/05-01/13-1668-Conf, paras 23-30.

⁷ Request, ICC-01/05-01/13-1668-Conf, para. 15.

⁸ Request, ICC-01/05-01/13-1668-Conf, paras 22, 30.

⁹ Response, ICC-01/05-01/13-1706-Conf, paras 3-9.

¹⁰ Response, ICC-01/05-01/13-1706-Conf, paras 11-13.

¹¹ Response, ICC-01/05-01/13-1706-Conf, paras 14-15.

¹² Request, ICC-01/05-01/13-1668-Conf, para. 4 and Response, ICC-01/05-01/13-1706-Conf, para. 2.

trial schedule and a deadline imposed with regard to matters requiring resolution before the start of trial.¹³ The current Request does not arise under similar circumstances. Consequently, the Single Judge is not of the view that it should be dismissed on account of its timing alone.

7. In respect of the argument that the Prosecution had an obligation to disclose the 5 November Interviews to the defence and communicate them to the Pre-Trial Chamber so that they could be considered for the decision on the confirmation of the charges, the Single Judge notes that the Pre-Trial Chamber had set a deadline on 30 June 2014 for the Prosecution to submit its incriminating evidence.¹⁴ Accordingly, the Prosecution was not permitted to communicate further material to the Pre-Trial Chamber as incriminating evidence.
8. Further, the Arido Defence fails to substantiate its assertion that the material was of an exculpatory nature within the meaning of Article 67(2) of the Statute that would have had an impact on the confirmation of charges decision. The Arido Defence presents mere speculations as to the exculpatory nature of the evidence relating to the credibility of a prosecution witness and the Prosecution's duty to further investigate.¹⁵ Equally, its assertion that the timing of the disclosure suggests that the Prosecution assessed the 5 November Interviews as potentially exonerating is void of any basis in the fact. In any event, the details provided by witnesses P-245 and P-260 in the 5 November 2014 Interviews are before this Chamber for its consideration under Article 74(2) of the Statute.
9. Additionally, the Single Judge notes that the Arido Defence did not raise these concerns before the testimony of the witnesses in question, despite filing a

¹³ Decision on Arido Defence Requests for Disclosure and to Delay the testimony of Witnesses P-245 and P-260, 28 September 2015, ICC-01/05-01/13-1309, para. 7.

¹⁴ Decision amending the calendar for the confirmation of the charges, 28 Mai 2014, ICC-01/05-01/13-443.

¹⁵ Request, ICC-01/05-01/13-1668-Conf, paras 17- 21.

specific request on disclosure of material related to P-245 and P-260 and requesting to delay their testimony.¹⁶ Also, it did not suggest that it was unable to conduct its examination of the witnesses during its questioning of P-260 and P-245 in October 2015. Accordingly, the Single Judge finds that the Arido Defence did not suffer any prejudice from the timing of the disclosure of the 5 November Interviews.

10. Considering the above, the Single Judge finds that Mr Arido's right to a fair trial has not been violated and that the Prosecution did not breach its obligations under Articles 54(1)(a) or 67(2) of the Statute. Accordingly, the Single Judge rejects the Request.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

ORDERS the Registry to reclassify ICC-01/05-01/13-1668-Conf and ICC-01/05-01/13-1706-Conf as public; and

REJECTS the Request.

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



Judge Bertram Schmitt, Single Judge

Dated 21 March 2016

At The Hague, The Netherlands

¹⁶ Narcisse Arido's Omnibus Motion for a Delay of the Testimony of Witnesses P-260 and P-245 until Material Crucial to Their Credibility is Disclosed and/or Obtained, 17 September 2015, ICC-01/05-01/13-1261-Conf.