

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: **English**

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

Date: **25 June 2015**

**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**

**Narcisse Arido's Observations on 'Requête de la défense de monsieur Aimé Kilolo  
Musamba aux fins de divulgation d'informations relatives au témoin de l'Accusation  
169' (ICC-01/05-01/13-1023)**

**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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**Unrepresented Victims**

**Unrepresented Applicants**

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## **I. CONFIDENTIALITY**

1. 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 confidential as it refers to another filing of the same classification. The Arido Defence does not object to this filing being reclassified public should the Trial Chamber VII ('Trial Chamber') consider it appropriate.

## **II. SUBMISSIONS**

2. On 22 June 2015, the Kilolo Defence requested the Trial Chamber to order the Prosecution to provide it with information relating to the existence of transfers of money between the Prosecution and Witness P-169 in the context of the Bemba Main case<sup>1</sup> ('Kilolo Request'). Through an email communication on 25 June 2015, the Trial Chamber shortened the deadline for response stating that it had "decided that any responses to ICC-01/05-01/13-1023-Conf [...] must be filed by the filing deadline on 25 June 2015"<sup>2</sup>.

3. The Arido Defence respectfully notes that its capacity to respond to this filing is limited. Through public filings and transcripts the Arido Defence is able to gain some appreciation of why the Kilolo Defence may be concerned by the Prosecution's actions with regards to Witness P-169 and other witnesses.

4. To the extent that the publicly available information suggests that the Prosecution may have paid sums of money to a Witness or witnesses to secure their testimony in the Bemba Main case<sup>3</sup>, the Arido Defence notes that if true, it clearly raises the spectre of whether the Prosecution's actions with regards to subsequently pursuing Article 70 proceedings against the Defence – on the basis of allegations with a similar flavour – show consistency in light of the Prosecution's prior conduct. On the other hand, it may be that the Prosecution was entirely blameless and Witness P-169 or other mentioned protected witnesses were opportunistic and manipulative, which while it is certainly a concern for the fairness of the case against Mr. Bemba, may not directly concern the Article 70 case. However, in fact, in either scenario, the Arido Defence is at a disadvantage with regards to its capacity to respond.

5. The Arido Defence emphasises that there exists a significant inequality of arms with regards to this issue. For the purposes of providing an effective defence, colloquially speaking,

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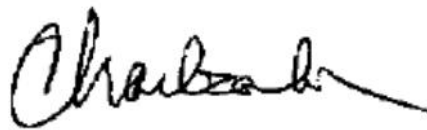
<sup>1</sup> ICC-01/05-01/13-1023-Conf, paras 16-17 and p. 12.

<sup>2</sup> Email decision, subject line "Responses to ICC-01/05-01/13-1023-Conf", sent 24 June 2015.

<sup>3</sup> ICC-01/05-01/08-3154-Red, paras 1 and 2.

the Arido Defence is in the dark on this issue. The Prosecution, as well as the other Defence parties, save the Babala Defence, have either access to several years of confidential filings and material or at least information that is likely relevant to understanding the legal and factual issues at stake with regards to Witness P-169. The shortened period of response also adds to this concern, since the Prosecution does appear to allege some connection between the Witness P-169 affair and the *Bemba et al.* case.<sup>4</sup>

6. In light of both the Kilolo Defence's assertion of the relevance of material related to P-169<sup>5</sup> and the connection made by the Prosecution in the Main case to the present proceedings<sup>6</sup>, the Arido Defence submits that the unredacted filings, transcripts, and other material related to P-169 and P-178 qualifies as being material to the preparation of the Arido Defence under Rule 77 of the Rules of Procedure and Evidence. It therefore respectfully requests the Trial Chamber to order the Prosecution to disclose these materials to the Arido Defence.



Chief Charles Achaleke Taku, Counsel for Mr. Arido

Dated this 25 Day of June 2015

The Hague, The Netherlands

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<sup>4</sup> ICC-01/05-01/08-3154-Red, para. 6, footnote 16.

<sup>5</sup> ICC-01/05-01/13-1023-Conf.

<sup>6</sup> ICC-01/05-01/08-3154-Red, para. 6, footnote 16.