

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: **ICC-01/05-01/13**
Date: **18 October 2016**

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, AIMÉ KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA
WANDU AND NARCISSE ARIDO

Public Redacted Document
with
Confidential Annexes A and B

**Public redacted version of “Prosecution’s Notification of Disclosure under Rule 77
of the Rules of Procedure and Evidence”, 11 October 2016,
ICC-01/05-01/13-1983-Conf**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

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Mr James Stewart
Mr Kweku Vanderpuye

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Counsel for Aimé Kilolo Musamba

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The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

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Mr Herman von Hebel

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Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section

Other

I. Introduction

1. The Office of the Prosecutor (“Prosecution”) notifies Trial Chamber VII (“Chamber”) and the Defence of its disclosure of the summary of the Prosecution’s interview of [REDACTED]¹ conducted on 4 October 2016, pursuant to rule 77 of the Rules of Procedure and Evidence (“Rules”).² The audio recording and corresponding transcript of the interview are being prepared for disclosure and will be disclosed as soon as possible. The summary of the interview, however, is being disclosed now given: (i) the potential immediate importance of the interview to the article 74 decision and any potential sentence to be rendered; and (ii) the short time left before the rendering of the Chamber’s article 74 decision.

II. Confidentiality

2. This notification and its corresponding annexes are designated “*Confidential*” because they contain information that should not be publicly revealed. A “*Public Redacted*” version will be filed.

III. Statement of Facts

3. The relevant sequence of events preceding the interview are as follows:

- On 11 December 2015, the Arido Defence identified [REDACTED] as a Defence witness to be called in Arido’s case.³
- On 31 December 2015, the Prosecution informed all Defence teams of its intention to meet with the Defence witnesses, including [REDACTED], and

¹ [REDACTED] was listed as D-0004 in the case ICC-01/05-01/08 (“the Main Case”), D24-P-0003/DEF-A3 in Arido’s list of witnesses in this case, and P-0256 by the Prosecution in this case.

² See generally Annex A.

³ ICC-01/05-01/13-1521; ICC-01/05-01/13-1521-Conf-AnxA. The filing was provided after the Arido Defence initially filed its provisional list of witnesses without providing their identity. See ICC-01/05-01/13-1510-Conf-AnxB; ICC-01/05-01/13-1518, para. 19.

requested the Defence teams to inquire as to the witnesses' willingness to meet with the Prosecution, and to forward their contact information as appropriate.⁴ Due to the Defence's failure to respond, the Prosecution repeated its request on 7 January 2016.⁵

- On 8 January 2016, the Arido Defence informed the Prosecution that [REDACTED] had consented to meet with the Prosecution.⁶
- On 13 January 2016, the Prosecution contacted the Arido Defence to make arrangements to meet with [REDACTED].⁷
- On 21 January 2016, the Arido Defence filed its final list of witnesses, which still included [REDACTED] as witness DEF-A3.
- Between 22 January and 9 February 2016, the Prosecution and the Arido Defence exchanged several emails concerning the scheduling and logistics of meeting Arido's witnesses, including [REDACTED], and the Prosecution's intention to conduct [REDACTED] interview pursuant to article 55(2) and rule 112, as he was a suspect in the case.⁸
- On 10 February 2016, the Prosecution filed a motion to obtain the contact information of certain witnesses, including [REDACTED], after the Arido Defence's ostensible failure to facilitate any further contact with the witnesses, despite their agreement to meet with the Prosecution.⁹ That motion was granted by the Chamber on 19 February 2016.¹⁰

⁴ ICC-01/05-01/13-1619-Conf-Exp-AnxA.1; ICC-01/05-01/13-1619-Conf-AnxB.

⁵ ICC-01/05-01/13-1619-Conf-Exp-AnxA.1; ICC-01/05-01/13-1619-Conf-AnxB.

⁶ ICC-01/05-01/13-1619-Conf-Exp-AnxA.1; ICC-01/05-01/13-1619-Conf-AnxB.

⁷ ICC-01/05-01/13-1619-Conf-Exp-AnxA.1; ICC-01/05-01/13-1619-Conf-AnxB.

⁸ ICC-01/05-01/13-1619-Conf-Exp-AnxA.1; ICC-01/05-01/13-1619-Conf-AnxB.

⁹ ICC-01/05-01/13-1619.

¹⁰ ICC-01/05-01/13-1638.

- Between 20 and 23 February 2016, Prosecution investigators were deployed to [REDACTED] and interviewed [REDACTED] with assigned counsel from the Registry pursuant to article 55(2) and rule 112. At some point during its course, [REDACTED] terminated the interview but promised to contact the Prosecution at a later stage citing concerns for his and his family's safety.¹¹ The audio recording of that interview¹² and corresponding transcript were disclosed to the Defence on 4 and 18 March 2016, respectively.¹³
- On 7 March 2016, the Arido Defence withdrew the vast majority of its witnesses, including [REDACTED].¹⁴
- On 7 May 2016, [REDACTED] contacted an OTP investigator and expressed that he wished to discuss "what really happened" concerning his role as a Defence witness in the Main Case.¹⁵ An OTP investigator explained that his request would need to be discussed internally before any further interactions could be had.¹⁶
- On 22 August 2016, [REDACTED] contacted an OTP investigator and expressed that he was "begging" to be called back and wanted to fully cooperate with the OTP.¹⁷
- On 23 August 2016, an OTP investigator contacted [REDACTED]. It was suggested and agreed that the OTP would put [REDACTED] in contact with a duty counsel assigned by the Registry to advise him and represent him as concerns any communications or prospective contact with the OTP, and that the OTP would only communicate with his duty counsel. On the same day,

¹¹ Annex B, p. 1.

¹² CAR-OTP-0093-0150.

¹³ CAR-OTP-0093-0586; CAR-OTP-0093-0597; CAR-OTP-0093-0608; CAR-OTP-0093-0621; CAR-OTP-0093-0628.

¹⁴ ICC-01/05-01/13-1705-Conf; ICC-01/05-01/13-1705-Conf-AnxA.

¹⁵ See Annex B, p. 1.

¹⁶ See Annex B, p. 1.

¹⁷ See Annex B, pp. 1-2.

the OTR Counsel Support Section appointed [REDACTED] duty counsel. It was also agreed that the duty counsel would first speak with [REDACTED] privately as to what he wished to discuss with the OTP, at his discretion, and then to revert to the OTP. The OTP would then assess whether there was any need to meet with [REDACTED].¹⁸

- On 12 September 2016, duty counsel contacted the OTP after managing to speak with [REDACTED]. Counsel informed the OTP that [REDACTED] wished to provide the following information: (i) that [REDACTED].¹⁹
- On 4 October 2016, the Prosecution met and interviewed [REDACTED] in the presence of his duty counsel.

IV. Submission

4. The Prosecution proceeded in the above-mentioned manner in light of its duties and powers under article 54, namely “to establish the truth,” “extend the investigation to cover all [relevant] facts and evidence”, and investigate possible incriminating and exonerating circumstances. Indeed, once contacted by the Witness and furnished with information stemming from him that was on its face clearly relevant to the events of this case, the Prosecution had no choice but to proceed to the interview. In doing so, the Prosecution took all steps to ensure that [REDACTED] rights and that of the Accused’s under the Statute and Rules are protected.

5. As reflected in the disclosed summary, during his interview [REDACTED] confirmed: [REDACTED].²⁰

¹⁸ See Annex B, p. 2.

¹⁹ See Annex B, pp. 2-3.

²⁰ See generally Annex A.

6. Given the late stage of the proceedings, the Prosecution does not intend to seek the re-opening of its case to offer [REDACTED] statement into evidence as it relates to the merits of Arido's responsibility. It does, however, disclose the statement to the Chamber and the Parties as it may be deemed necessary to the establishment of the truth, the fair evaluation of the evidence, and any potential sentence to be imposed.



Fatou Bensouda, Prosecutor

Dated 18th Day of October 2016
At The Hague, The Netherlands