

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08

Date: 29 June 2016

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
v. JEAN-PIERRE BEMBA GOMBO**

**Public Redacted Version of “Decision on ‘Narcisse Arido’s Request for a
Variation of protective measures and Access to Ex-Parte Filings’”,
ICC-01/05-01/08-3137 of 9 September 2014**

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes
Ms Kate Gibson
Ms Melinda Taylor

Legal Representatives of the Victims

Ms Marie-Edith Douzima Lawson

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber III (“Chamber” or “Trial Chamber”) of the International Criminal Court (“Court” or “ICC”) in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”) issues the following Decision on “Narcisse Arido’s Request for a Variation of protective measures and Access to Ex-Parte Filings” (“Decision”).

I. Background and submissions

1. On 19 August 2014, the Registry filed its “Registry Transmission of a submission received from the Defence of Mr Narcisse Arido dated 18 August 2014”,¹ in which it transmitted a submission entitled “Narcisse Arido’s Request for a Variation of protective measures and Access to Ex-Parte Filings” (“Request”), from the defence for Mr Narcisse Arido (“Mr Arido’s defence”) in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu and Narcisse Arido* (“case ICC-01/05-01/13”).
2. Mr Arido’s defence requests that the Chamber grant it access to the following documents:²
 - i. A new redacted version of the Victims and Witnesses Unit (“VWU”) “Report of the Registrar on the events experienced by staff member of the Victims and Witnesses Unit [REDACTED]”, ICC-01/05-01/08-2261-Conf-Red (“10 August 2012 VWU Report”), where the name of the Victims and Witnesses Unit member is not redacted and where paragraph 29 is also not redacted (“Document 1”);³
 - ii. Annex 2 to the 10 August 2012 VWU Report (email sent by the VWU

¹ Registry Transmission of a submission from the Defence of Mr. Mr Narcisse Arido dated 18 August 2014, 19 August 2014, ICC-01/05-01/08-3117-Conf-Exp Victims and Witnesses Unit only, with confidential *ex parte* Registry and VWU only Annex, which consists of the “Narcisse Arido’s Request for a Variation of protective measures and Access to Ex-Parte Filings”, 19 August 2014, ICC-01/05-01/08-3117-Conf-Exp-Anx.

² ICC-01/05-01/08-3117-Conf-Exp-Anx, paragraphs 21 and 26.

³ Report of the Registrar on the events experienced by staff member of the Victims and Witnesses Unit [REDACTED], 10 August 2012, ICC-01/05-01/08-2261-Conf-Exp.

- to a defence witness dated 26 July 2012) (“Document 2”);⁴
- iii. Annex 4 to the 10 August 2012 VWU Report (letter sent by Mr Arido to the VWU dated 26 July 2012) (“Document 3”);⁵
- iv. Annex A to the defence “Provision of information pursuant to the trial Chamber’s Request of 25 July 2012”, ICC-01/05-01/08-2250-Conf-Exp-AnxA, referred to in footnote 10 of the 10 August 2012 VWU Report (“Document 4”);⁶
- v. Annex B to the defence “Provision of information pursuant to the trial Chamber’s Request of 25 July 2012”, ICC-01/05-01/08-2250-Conf-Exp-AnxB, referred to in paragraph 18 and footnote 15 of the 10 August 2012 VWU Report (“Document 5”);⁷ and
- vi. The security vetting undertaken by the VWU for [REDACTED] as referred to in paragraph 31 of the 10 August 2012 VWU Report (“Document 6”).

3. Mr Arido submits that the above documents filed in the *Bemba* case are material to the preparation of his defence in case ICC-01/05-01/13.⁸
4. On 26 August 2014, upon the Chamber’s instruction,⁹ the VWU filed its observations on the Request (“Observations”)¹⁰, in which it states that Mr Arido’s defence can be granted access to Document 1 by way of a confidential lesser redacted version as well as to Document 3.

⁴ ICC-01/05-01/08-2261-Conf-Exp-Anx2.

⁵ ICC-01/05-01/08-2261-Conf-Exp-Anx4.

⁶ Confidential *ex parte* Annex A to the defence “Provision of information pursuant to the trial Chamber’s Request of 25 July 2012”, ICC-01/05-01/08-2250-Conf-Exp-AnxA, 30 July 2012.

⁷ Confidential *ex parte* Annex B to the defence “Provision of information pursuant to the trial Chamber’s Request of 25 July 2012”, ICC-01/05-01/08-2250-Conf-Exp-AnxA, 30 July 2012.

⁸ ICC-01/05-01/08-3117-Conf-Exp-Anx, paragraphs 20 and 22 to 25.

⁹ Email communications from the Chamber to the VWU on 19 and 20 August 2014 at 15.41 and 16.28, respectively.

¹⁰ Victims and Witnesses Unit’s Observations on Narcisse Arido’s Request for a Variation of Protective Measures and Access to Ex-Parte Filings (ICC-01/05-01/08-3117-Conf-Exp-Anx), 26, August 2014, ICC-01/05-01/08-3124-Conf-Exp. The filing was notified to the Chamber, the parties and participant on 27 August 2014.

5. Regarding Document 2, the VWU notes that contrary to the contention of Mr Arido's defence, the document is not an email sent by the VWU to Mr. Arido but rather a communication from the VWU to another witness who testified in the *Bemba* case.¹¹ The VWU submits that correspondence between it and a witness of a party in a case should not in principle be disclosed to a defence team in another case.¹² However, should the Chamber wish to grant Mr Arido's defence access to the document, and should the defence for Mr Jean-Pierre Bemba Gombo ("defence") agree to such a transmission, the VWU recommends that the witness's name be redacted.¹³
6. As to Documents 4 and 5, the VWU submits that should the defence agree to the transmission of these documents, the VWU recommends protecting the identity of the two defence witnesses referenced therein.¹⁴ Finally, the VWU recommends that Document 6 not be transmitted to Mr Arido's defence since the security vetting for [REDACTED] consists of an internal Court document containing personal information relating to his employment at the Court and therefore should not be disclosed.¹⁵
7. On 29 August 2014, the Chamber consulted with the defence, by way of an email,¹⁶ as to whether it opposes the communication of Documents 2, 4 and 5 to Mr Arido's Defence.
8. On 2 September 2014, the defence responded on the possible communication to Mr Arido's Defence of Documents 2, 4 and 5 and submits that it "does not

¹¹ ICC-01/05-01/08-3124-Conf-Exp, paragraph 2.

¹² ICC-01/05-01/08-3124-Conf-Exp, paragraph 2.

¹³ ICC-01/05-01/08-3124-Conf-Exp, paragraph 2.

¹⁴ ICC-01/05-01/08-3124-Conf-Exp, paragraph 4.

¹⁵ ICC-01/05-01/08-3124-Conf-Exp, paragraph 5.

¹⁶ Email communication from the Chamber to the Registry on 29 August 2014 at 16.53. In order to facilitate the defence's submissions in relation to document ICC-01/05-01/08-2261-Conf-Exp-Anx2 and pursuant to Regulation 23bis(3) of the Regulations of the Court ("Regulations"), the Chamber ordered the Registry to reclassify the document as "confidential ex parte", available to the VWU and the defence for Mr Bemba only.

oppose [the documents'] transmission to the Defence team of Mr Arido on a[n] strictly *ex parte* basis, without redactions".¹⁷ The defence adds "[e]vidently, Mr. Arido would need to contact the Bemba Defence Team should he wish to disclose or rely upon these documents in any manner in ICC-01/05-01/13".¹⁸ The defence further submits that it opposes "the transmission of the documents in question to the record in case ICC-01/05-01/13" and "their reclassification as confidential in the Bemba case".¹⁹

II. Analysis and conclusions

9. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber has considered Articles 64(6)(c) and (e) and 68 of the Statute and Regulations 23*bis*(3) of the Regulations.
10. As to Document 1, the Chamber notes that the VWU recommends that Mr Arido's Defence can be granted access to this document as it appears that information contained therein has already been disclosed to Mr Arido's defence in case ICC-01/05-01/13. Whilst the Chamber cannot verify this information as it refers to confidential *ex parte* documents before Pre-Trial Chamber II, the Chamber relies on the VWU's assessment. As [REDACTED] was a VWU staff member at the time of the incident, the unit is the best placed to know whether the document can be accessed by Mr Arido. Therefore, the Chamber grants the Request for access to a less redacted version of the 10 August 2012 VWU Report, lifting the redactions to the VWU staff member's name and paragraph 29 of this report.
11. As to Documents 2, 4 and 5, the Chamber notes that the defence does not

¹⁷ Confidential *ex parte* Annex to the present Decision available to VWU and defence only: Email communication from the defence to the Chamber on 2 September 2014 at 15.29.

¹⁸ Email communication from the defence to the Chamber on 2 September 2014 at 15.29.

¹⁹ Email communication from the defence to the Chamber on 2 September 2014 at 15.29.

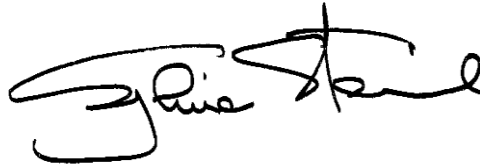
oppose the transmission of these documents to Mr Arido's defence but essentially argues that the Chamber should only grant access to Mr Arido's defence. The Chamber further notes the VWU's recommendation that if the documents are communicated to Mr Arido's defence, the identities of the defence witnesses mentioned in the documents should be redacted. On the basis of the defence's response and the VWU's recommendation, and pursuant to Articles 68 and 64(6)(c) of the Statute, the Chamber considers that these documents can be communicated to Mr Arido's defence under the condition that redactions be applied to the identities of the protected defence witnesses referred to therein.

12. As to Document 3, since this is a letter sent by Mr Arido himself to the VWU, the Chamber agrees with the VWU's assessment that Mr Arido's defence may access it. Finally, the Chamber finds, as stated by the VWU, that Document 6 relates to the employment of a Court staff member and consists of an internal document. Therefore, Mr Arido's defence should not be granted access to it.

13. In light of the above, the Chamber hereby:

- (a) GRANTS Mr Arido's Defence access to confidential *ex parte* redacted versions of Documents 1, 2, 4 and 5;
- (b) ORDERS the VWU to prepare a lesser redacted version of Document 1 as set out in paragraph 10 above;
- (c) ORDERS the VWU to prepare a redacted version of Documents 2, 4 and 5 as set out in paragraph 11 above;
- (d) GRANTS Mr Arido's Defence access to Document 3;
- (e) DENIES Mr Arido's Defence access to Document 6; and
- (f) ORDERS the Registry to reclassify the VWU's Observations as "confidential *ex parte*" only available to the VWU and the defence, Document ICC-01/05-01/08-3124-Conf-Exp.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 29 June 2016

At The Hague, the Netherlands