

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 5 September 2014

**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**

**Confidential**

**Decision on "Registry Transmission of a Submission received from the  
Defence for Mr Narcisse Arido dated 18 August 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**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

Pre-Trial Chamber II

Mr Göran Sluiter,  
Counsel for Mr Narcisse Arido

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 “Registry Transmission of a submission received from the Defence for Mr Narcisse Arido dated 18 August 2014” (“Decision”).

## I. Background and submissions

1. On 19 August 2014, the Registry filed its “Registry Transmission of a submission received from the Defence for Mr Narcisse Arido dated 18 August 2014”,<sup>1</sup> in which it transmitted a submission entitled “Narcisse Arido’s request for Access to Confidential Filings and Decisions related to Evidence Presented by the Bemba Defence Team” (“Request”),<sup>2</sup> 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:
  - a. The unredacted version of the Office of the Prosecutor’s (“prosecution”) “Request to Reject Admission into Evidence of Several Fraudulent Documents Disclosed by the Defence on 12 July 2012 and Submitted on 16 August 2012” (“Filing 2301”);<sup>3</sup>
  - b. The unredacted version of the Defence for Mr Jean-Pierre Bemba

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<sup>1</sup> Registry Transmission of a submission received from the Defence for Mr Narcisse Arido dated 18 August 2014, 19 August 2014, ICC-01/05-01/08-3116-Conf and confidential Annex ICC-01/05-01/08-3116-Conf-Anx.

<sup>2</sup> Narcisse Arido’s request for Access to Confidential Filings and Decisions related to Evidence Presented by the Bemba Defence Team, 18 August 2014, ICC-01/05-01/08-3116-Conf-Anx.

<sup>3</sup> Request to Reject Admission into Evidence of Several Fraudulent Documents Disclosed by the Defence on 12 July 2012 and Submitted on 16 August 2012, 6 September 2012, ICC-01/05-01/08-2301-Conf, a public redacted version was filed on 31 March 2014, ICC-01/05-01/08-2301-Red.

Gombo's ("defence") "Defence Response to the Prosecutor's Motion to Exclude CAR Documents" ("Filing 2326");<sup>4</sup>

- c. The Chamber's "Decision on the admission into evidence of items deferred in the Chamber's previous decision, items related to the testimony of Witness CHM-01 and written statements of witnesses who provided testimony before the Chamber" ("Decision 3019");<sup>5</sup>
- d. Any past or future confidential filing or decision related to documents CAR-D04-0003-0128, CAR-D04-0003-0129, CAR-D04-0003-0130, CAR-D04-0003-0131, CAR-D04-0003-0132, CAR-D04-0003-0133, CAR-D04-0003-0134, CAR-D04-0003-0135, CAR-D04-0003-0136, CAR-D04-0003-0137, CAR-D04-0003-0138, CAR-D04-0003-0139, CAR-D04-0003-0140, and CAR-D04-0003-0141 ("Contested Items"); and
- e. Any past or future confidential filing or decision related to the credibility or reliability of Witnesses CAR-D04-PPPP-0002, CAR-D04-PPPP-0003 and CAR-CHM-PPPP-0001, who are also witnesses in case ICC-01/05-01/13 ("Witnesses").<sup>6</sup>

3. Mr Arido's defence submits that, while public versions of Filings 2301 and 2326 exist, information related to the prosecution's steps to investigate the authenticity of the Contested Items, the credibility of the Witnesses, and the authenticity of the Contested Items has been redacted.<sup>7</sup> It further argues that the information contained in the documents is directly relevant to the preparation of Mr Arido's defence in case ICC-01/05-01/13, as the Chamber's decision "contradicts, or at least weakens, the Prosecution's allegations that

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<sup>4</sup> Defence Response to the Prosecutor's Motion to Exclude CAR Documents, 25 September 2012, ICC-01/05-01/08-2316-Conf. A public redacted version was filed on 31 March 2014, ICC-01/05-01/09-2326-Red.

<sup>5</sup> Decision on the admission into evidence of items deferred in the Chamber's previous decision, items related to the testimony of Witness CHM-01 and written statements of witnesses who provided testimony before the Chamber, 17 March 2014, ICC-01/05-01/08-3019-Conf. A Public Redacted version was filed on 26 August 2014, ICC-01/05-01/08-3019-Red.

<sup>6</sup> ICC-01/05-01/08-3116-Conf-Anx, paragraphs 8 and 11.

<sup>7</sup> ICC-01/05-01/08-3116-Conf-Anx, paragraph 9.

the [Contested Items] lack authenticity".<sup>8</sup>

4. In addition, Mr Arido's defence argues that it appears that the prosecution has failed to comply with its duty to disclose potentially exculpatory material in case ICC-01/05-01/13. On that basis, Mr Arido's defence requests that it be notified of any future public and confidential filings and decisions related to the Contested Items or to the credibility of the Witnesses.<sup>9</sup>
5. On 22 August 2014, the prosecution filed its "Prosecution Response to 'Narcisse Arido's Request for Access to Confidential Filings and Decisions Related to Evidence Presented by the Bemba Defence Team'" ("Prosecution Response").<sup>10</sup> The prosecution submits that it does not oppose Mr Arido being granted access to Filings 2301 and 2326, Decision 3019 or any decisions the Chamber may determine satisfy the request.<sup>11</sup> However, it asks that the Chamber bear in mind that certain information contained within the documents (a) does not relate to the Contested Items; (b) does not relate to the Witnesses; or (c) "is not already public, which may affect the security of witnesses".<sup>12</sup> In addition, the prosecution requests that the Chamber deny Mr Arido's defence's request for past or future confidential filings as insufficiently specific and overbroad.<sup>13</sup>
6. In particular, the prosecution submits that, in order not to compromise the security of witnesses, Mr Arido's defence should only be granted access to those parts of Decision 3019 and Filings 2301 and 2326 which relate to the

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<sup>8</sup> ICC-01/05-01/08-3116-Conf-Anx, paragraph 12.

<sup>9</sup> ICC-01/05-01/08-3116-Conf-Anx, paragraphs 13 and 14.

<sup>10</sup> Prosecution Response to 'Narcisse Arido's Request for Access to Confidential Filings and Decisions Related to Evidence Presented by the Bemba Defence Team', 22 August 2014, ICC-01/05-01/08-3120-Conf.

<sup>11</sup> ICC-01/05-01/08-3120-Conf, paragraphs 2 and 16.

<sup>12</sup> ICC-01/05-01/08-3120-Conf, paragraphs 2 and 16.

<sup>13</sup> ICC-01/05-01/08-3120-Conf, paragraphs 3 and 17.

## Contested Items and the Witnesses.<sup>14</sup>

7. On 22 and 27 August 2014, Maître Marie-Edith Douzima-Lawson and the defence respectively filed responses,<sup>15</sup> in which neither take any position on the Request and defer to the Chamber's judgment.<sup>16</sup>

## II. Analysis and conclusions

8. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber has considered Articles 64(6)(c) and (f) and 68 of the Statute.
9. The Chamber notes that in relation to similar requests to access confidential filings in the *Bemba* case it has held that the request should identify "on the basis of the material that is publicly available, the specific documents ... consider[ed] to be necessary for the effective representation of [an accused in a different case before the Court] and provide a substantiated justification for any specific request".<sup>17</sup>
10. The Chamber also notes that in Decision 3019 the Chamber admitted the Contested Items into evidence only to the extent that they have "relevance and probative value with respect to the Chamber's analysis of the testimonies of Witnesses D04-53, D04-59, and CHM-01, and its overall determination of the truth with respect to the chain of command and control of the MLC troops

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<sup>14</sup> ICC-01/05-01/08-3120-Conf, paragraph 6.

<sup>15</sup> Réponse de la Représentante légale des victimes à « Narcisse Arido's Request for Access to Confidential Filings and Decision Related to Evidence Presented by the Bemba Defence Team » (ICC-01/05-01/08-3116-Anx), 22 August 2014, ICC-01/05-01/08-3119-Conf and Defence Observations on Filing ICC-01/05-01/08-3116, 27 August 2014, ICC-01/05-01/08-3125-Conf.

<sup>16</sup> ICC-01/05-01/08-3119-Conf, paragraph 5 and ICC-01/05-01/08-3125-Conf, paragraph 2.

<sup>17</sup> See Decision on "Transmission of a submission form Mr Nick Kaufman dated 22 January 2014", 13 February 2014, ICC-01/05-01/08-2972, paragraph 11.

in the CAR during the relevant time period".<sup>18</sup> In this context, the Chamber stressed that "[i]n its final assessment of the evidence, the Chamber will consider all submissions and testimonial evidence related to the authenticity of the Contested Documents."<sup>19</sup> Therefore, and contrary to the defence's allegations, the Chamber did not rule on the authenticity of the contested documents and elected to consider all arguments and relevant testimonial evidence when making its judgment under Article 74 of the Statute.<sup>20</sup>

11. In the view of the Chamber, a collective reading of the public redacted versions of Decision 3019 and Filings 2301 and 2326 provides Mr Arido's defence with the requested information, i.e. the prosecution's steps to investigate the authenticity of the Contested Items, the credibility of the Witnesses, and the authenticity of the Contested Items.<sup>21</sup> Accordingly, the Chamber considers that Mr Arido's request for access to unredacted versions of the documents is unwarranted and unnecessary.

12. As to the request to access any past or future confidential filings or decisions related to the Contested Items or the Witnesses, the Chamber considers that the Request fails to "identify, on the basis of the material that is publicly available, the specific documents [...] necessary for [his] effective representation".<sup>22</sup>

13. In light of the above, the Chamber hereby **REJECTS** the Request.

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<sup>18</sup> ICC-01/05-01/08-3019-Red, paragraph 50 [emphasis added].

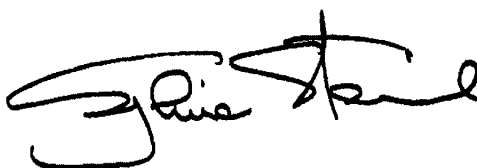
<sup>19</sup> ICC-01/05-01/08-3019-Red, paragraph 50.

<sup>20</sup> See Decision on "Transmission of a Submission from the Defence for Mr. Fidèle Babala Wandu dated 15 August 2014", 26 August 2014, ICC-01/05-01/08-3123, paragraphs 5 and 6.

<sup>21</sup> ICC-01/05-01/08-3116-Conf-Anx, paragraph 9.

<sup>22</sup> ICC-01/05-01/08-2972, paragraph 11.

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



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**Judge Sylvia Steiner**



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**Judge Joyce Aluoch**



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**Judge Kuniko Ozaki**

Dated this 5 September 2014

At The Hague, the Netherlands