

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 26 April 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 Narcisse Arido's Motion for Disclosure of Un-redacted Anonymous
Emails and Corroborating Material**

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

Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Gosnell

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

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

States Representatives

Others

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Judge Bertram Schmitt, Single Judge of Trial Chamber VII ('Chamber') of the International Criminal Court ('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 Article 67(2) of the Rome Statute ('Statute') and Rule 77 of the Rules of Procedure and Evidence ('Rules'), issues the following Decision on Narcisse Arido's Motion for Disclosure of Un-redacted Anonymous Emails and Corroborating Material.

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 8 April 2016, the defence for Mr Arido ('Defence') requested the Chamber, pursuant to Article 67(2) of the Statute and Rule 77 of the Rules, to order the Office of the Prosecutor ('Prosecution') to disclose: (i) the un-redacted emails between the Prosecution and its anonymous informant ('Anonymous Informant')¹ and, (ii) the material corroborating the information the Prosecution received from the Anonymous Informant.²
2. The Defence argues that the material from the Anonymous Informant is exculpatory in nature since it makes no mention of Mr Arido. It is further argued that disclosure of the material in its un-redacted form is necessary for the Defence to present its final submissions and to rebut the Prosecution's closing arguments.³ The Defence asserts that the restriction on Mr Arido's ability to inspect the exculpatory material is prejudicial to his fair trial rights.⁴ It entreats that protective measures should neither be prejudicial to, nor inconsistent with, the rights of the accused.⁵ It argues that the Prosecution has not identified any objectively justifiable risk to the Anonymous Informant

¹ ICC-01/05-01/13-292-Conf-AnxA-Red.

² Narcisse Arido's Motion for Disclosure of Un-redacted 'Anonymous Emails', and Disclosure of the Material Corroborating the Information Received from the 'Anonymous Informant' Pursuant to Article 67(2) of the ICC Statute and Rule 77 of the Rules of Procedure and Evidence, ICC -01/05-01/13-1793-Conf, para. 39.

³ Request, ICC -01/05-01/13-1793-Conf, paras 25-26.

⁴ Request, ICC -01/05-01/13-1793-Conf, para. 27.

⁵ Request, ICC -01/05-01/13-1793-Conf, para. 31.

flowing from such disclosure.⁶ Moreover, the Defence argues that the material sought to be disclosed does not fall under the restrictions on disclosure set out in Rule 81 of the Rules.⁷

3. On 13 April 2016, the Prosecution filed its response ('Response'), wherein it urged the Chamber to reject the Request.⁸ The Prosecution argues that the Pre-Trial Chamber and this Chamber have previously ruled on the issue, permitting redactions to ensure the safety and security of the Anonymous Informant.⁹ The Prosecution claims that the Defence fails to demonstrate that further reconsideration, if permitted, is necessary to remedy a 'clear error of reasoning' or 'to prevent an injustice'.¹⁰ The Prosecution further argues that the Defence has already received the material corroborating the information received from the Anonymous Informant and the Request is therefore moot in that respect.¹¹

II. ANALYSIS

4. The Chamber has previously laid out the standard for reconsideration of its decisions, holding that: "[r]econsideration is exceptional, and should only be done if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice. New facts and arguments arising since the decision was rendered may be relevant to this assessment".¹²
5. The Single Judge recalls that the potentially identifying information contained in the material in question was redacted to protect the 'personal safety and security' of the Anonymous Informant. It was determined that the redactions do not result in any prejudice to the defence because: they do not affect the

⁶ Request, ICC -01/05-01/13-1793-Conf, paras 30-33.

⁷ Request, ICC -01/05-01/13-1793-Conf, paras 35-37.

⁸ Prosecution's Response to the Arido Defence's Motion for Disclosure (ICC-01/05-01/13-1793-Conf), ICC-01/05-01/13-1803-Conf.

⁹ Response, ICC-01/05-01/13-1803-Conf, paras 2, 6-7 and 10.

¹⁰ Response, ICC-01/05-01/13-1803-Conf, paras 2 and 9.

¹¹ Response, ICC-01/05-01/13-1803-Conf, paras 3 and 10.

¹² Decision on Kilolo Defence Request for Reconsideration, 15 July 2015, ICC-01/05-01/13-1085-Conf, para. 4.

substantive content of the information; the information would not be regarded, treated or relied upon as evidence in the context of judicial proceedings; and the Prosecution does not know the identity of the Anonymous Informant.¹³ This remains the case. The Defence has not presented any reason that would lead the Single Judge to reconsider previous decisions of the Court on this issue and vary the redactions ordered.

6. In respect of the second request concerning the material used to corroborate the information received from the Anonymous Informant, the Prosecution submits that it has already discharged its disclosure obligations in accordance with the disclosure regime.¹⁴ The Single Judge is satisfied that this aspect of the Request is therefore moot.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request.

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



Judge Bertram Schmitt, Single Judge

Dated 26 April 2016

At The Hague, The Netherlands

¹³ See Second Decision on the 'Defence request for disclosure' submitted by the Defence for Jean-Pierre Bemba on 20 February 2014 and related filings, 27 March 2014, ICC-01/05-01/13-298, page 5; Decision on the 'Defense request for a confidential investigation measure pursuant to article 57(3)(b) of the Rome Statute', 15 April 2014, ICC-01/05-01/13-337, page 4; Decision on 'Defence Request for Disclosure and Judicial Assistance', 21 August 2014, ICC-01/05-01/13-1166-Conf, paras 17 and 18; and, Decision on Defence Request for Reconsideration of or Leave to Appeal 'Decision on "Defence Request for Disclosure and Judicial Assistance"', 22 September 2015, ICC-01/05-01/13-1282, para 9.

¹⁴ Response, ICC-01/05-01/13-1803-Conf, para.10.