

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **17 March 2016**

Date of public redacted version: **06 January 2017**

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 redacted version of

Decision on Arido Defence Request for Protective Measures for D24-1

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

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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

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber VII ('Single Judge' and 'Chamber', respectively) of the International Criminal Court ('ICC'), 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 68 of the Rome Statute ('Statute') and Rule 87 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on Arido Defence Request for Protective Measures for D24-1'.

1. On 13 March 2016, the defence for Mr Arido ('Arido Defence') requested certain protective measures for upcoming witness D24-1 ('Request').¹ The requested measures are to: (i) expunge from the public record the location of (or information that could be used to locate) D24-1 and D24-1's children; (ii) prevent the Office of the Prosecutor ('Prosecution') from disclosing D24-1's identity to third parties; (iii) apply voice and image distortion to D24-1's testimony; (iv) maintain the use of the pseudonym D24-1 in place of the witness's name and (v) hold part of the proceedings *in camera* so as to protect the dignity of the witness.²
2. On 15 March 2016,³ the Prosecution responded to the Request, submitting that it be rejected or, alternatively, that any determination of it be 'considerate of the independent assessment of the Victims and Witnesses Unit' ('VWU').⁴
3. The Single Judge recalls the applicable law for protective measures set out in the past.⁵ The Single Judge also clarifies that the rulings herein are based on the

¹ Narcisse Arido's Request for Protective Measures for Witness CAR-D24-P-0001, ICC-01/05-01/13-1716-Conf (with two annexes; filing notified 14 March 2016).

² Request, ICC-01/05-01/13-1716-Conf, para. 3.

³ Responses were due by this date. Email from Trial Chamber VII Communications to the parties, 14 March 2016 at 14:31.

⁴ Prosecution's Response to Arido's Request for Protective Measures for Witness CAR-D24-P-0001, ICC-01/05-01/13-1723-Conf.

⁵ Decision on Prosecution Request for In-Court Protective Measures, 28 September 2015, ICC-01/05-01/13-1306, para. 3.

information put forward by the Arido Defence, and that additional protective measures may be added if deemed necessary by the VWU.

4. As to the request to expunge information relating to D24-1's whereabouts from the public record,⁶ the Arido Defence fails to indicate any part of the case record publicly referencing this information. The Single Judge will not make a ruling to expunge such information in the abstract, and will not consider this part of the Request further.
5. As to the request that 'the Prosecution be prevented from disclosing [D24-1's] identity to third parties',⁷ the Arido Defence provides information that the Prosecution's investigation has 'put more focus on D24-1' and that this 'exposes' the witness and the witness's children.⁸
6. The Single Judge considers that the Prosecution is duty-bound to use caution in how it investigates D24-1 and other defence witnesses, particularly in view of its obligations pursuant to Articles 54(1)(b) and 68(1) of the Statute and the Chamber's protocol on the handling of confidential information in the course of investigations.⁹ However, there is no apparent reason why the Prosecution cannot question third parties using D24-1's name, so long as this is done in a manner which does not reveal the status of this person as an ICC witness.¹⁰ The Single Judge considers that such questioning would not risk revealing the 'identity or the location of a victim, a witness, or other person at risk on account

⁶ See Rule 87(3)(a) of the Rules.

⁷ See Rule 87(3)(b) of the Rules.

⁸ Request, ICC-01/05-01/13-1716-Conf, para. 3; ICC-01/05-01/13-1716-Conf-AnxB.

⁹ Annex: Decision adopting a Protocol on the Handling of Confidential Information during Investigations and Contact Between a Party and Witnesses of the Other Parties, 20 July 2015, ICC-01/05-01/13-1093-Anx, para. 22 (citations removed: 'The investigating party shall use the names of witnesses of the other parties with caution and only when directly and specifically necessary for the purposes of its investigation and/or preparation of its case').

¹⁰ *In this regard, see* ICC-01/05-01/13-1093-Anx, para. 23 (citations removed: 'If the investigating party finds it directly and specifically necessary for the preparation and presentation of its case to disclose to a member of the public the name or identifying information of a witness, the party shall under no circumstances reveal (i) that the person is involved, directly or indirectly, with the activities of the Court; or (ii) the nature of such involvement. In case of any doubt as to the necessity of the disclosure, the Chamber shall decide').

of testimony given by a witness' within the meaning of Rule 87(3) of the Rules. The Single Judge rejects this part of the Request on grounds that the requested measure would impose unnecessary and unreasonable restrictions on the Prosecution's investigative activities.

7. As to the remainder of the Request, the Single Judge is persuaded that the requested measures are warranted in view of the information that [REDACTED].¹¹ Although the Prosecution is correct that this information is not 'novel',¹² this information is sufficiently recent as to constitute an objectively justifiable risk to the security and well-being of D24-1. The Single Judge accordingly grants the requested image and voice distortion, the continued use of a pseudonym and private session, where necessary, to protect the D24-1's identity and current location.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

PARTIALLY GRANTS the relief sought in the Request as set out in paragraph 7 above; and

REJECTS the remainder of the Request.

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



Judge Bertram Schmitt, Single Judge

Dated 17 March 2016

At The Hague, The Netherlands

¹¹ Annex A of the Request, ICC-01/05-01/13-1716-Conf-AnxA. *See also* Request, ICC-01/05-01/13-1716-Conf, para. 5.

¹² ICC-01/05-01/13-1723-Conf, para. 6.