

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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

Corrigendum to Decision on requests for transmission of documents

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

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**Other
Trial Chamber VII**

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”), issues the following Decision on requests for transmission of documents (“Decision”).

I. Background

1. Between 14 and 22 January 2016, the Chamber received three requests from three defence teams in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido* (“case ICC-01/05-01/13”) for access to documents classified as confidential or confidential *ex parte* in the record of the *Bemba* case.¹ These requests are addressed jointly in the present Decision, in line with the Chamber’s previous approach in relation to similar requests and in light of the responses filed by the participants in the *Bemba* case and the recommendations provided by the Victims and Witnesses Unit (“VWU”).

II. Applicable law

2. For the purpose of the present Decision the Chamber has considered Articles 64(2), (6)(c), and (e), 67(1), and 68(1) of the Rome Statute (“Statute”), Rule 15(1) of the Rules of Procedure and Evidence (“Rules”), and Regulations 20, 23bis, and 42 of the Regulations of the Court (“Regulations”).

¹ While two of the requests and related submissions are currently classified as confidential, the present Decision is classified as public. To the extent that it makes reference to documents that are classified as confidential or confidential *ex parte*, the Chamber considers that the information concerned does not warrant confidential or *ex parte* treatment at this time.

3. The Chamber recalls that for previous requests by defence teams in case ICC-01/05-01/13 for access to confidential material in the *Bemba* case, it has imposed the requirement that the requesting party “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 case ICC-01/05-01/13 and provide a substantiated justification for any specific request”.²
4. The Chamber further reiterates that “confidential information from the *Bemba* case may be transmitted to the parties in case ICC-01/05-01/13, and that such transmission, in principle, does not amount to a variance of protective measures as long as the same restrictions are applied *mutatis mutandis* to the recipients thereof.”³
5. Lastly, the Chamber notes that when seized with a request for transmission of documents that are classified as confidential or *ex parte*, it remains under a duty, pursuant to Article 68(1) of the Statute, “to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”.

² Decision on “Transmission of a submission from Mr Nick Kaufman dated 22 January 2014”, 13 February 2014, ICC-01/05-01/08-2972, para. 11; Decision on “Registry Transmission of a Submission received from the Defence for Mr Narcisse Arido dated 18 August 2014”, 5 September 2014, ICC-01/05-01/08-3134-Conf, paras 9 and 12; Decision on “Registry Transmission of a Joint Request received from the Defence teams in the Bemba *et al.* case (ICC-01/05-01/13)”, 18 September 2015, ICC-01/05-01/13-3298, para. 20; and Decision on “Registry transmission of a document submitted by the Defence for Mr. Jean Jacques Kabongo Mangenda on 12 November 2015”, 8 January 2016, ICC-01/05-01/08-3312, para. 7.

³ ICC-01/05-01/08-3298, para. 19.

III. Submissions and analysis

Mr Babala's defence Request

Submissions

6. On 14 January 2016, the Registry transmitted⁴ a request from the Defence for Mr Fidèle Babala Wandu ("Mr Babala's defence"), entitled "Requête de la Défense de M. Fidèle Babala Wandu, dans l'affaire ICC-01/05-01/13, en vue de pouvoir avoir accès à un document confidentiel relatif à l'affaire (ICC-01/05-01/08-2441-Conf-Exp-Anx1-Red)" ("Mr Babala's defence Request").⁵
7. Mr Babala's defence requests access to (a) Annex 1 to the "Registry's Observations relating to the 'Decision requesting the Registry's observations on the prosecution's request relating to Article 70 investigations'" (respectively "Document ICC-01/05-01/08-2441-Conf-Anx1-Red2" and "Document ICC-01/05-01/08-2441"), after having given the VWU and the Defence for Mr Bemba in the *Bemba* case ("Defence") an opportunity to propose redactions to protect the identities of Defence witnesses other than the 14 relevant to the charges in case ICC-01/05-01/13 ("14 Witnesses"); or, in the alternative, (b) the information relevant to the witnesses referred to in paragraph 5 of Document ICC-01/05-01/08-2441.⁶

⁴ Registry transmission of "Requête de la Défense de M. Fidèle Babala Wandu, dans l'affaire ICC-01/05-01/13, en vue de pouvoir avoir accès à un document confidentiel relatif à l'affaire (ICC-01/05-01/08-2441-Conf-Exp-Anx1-Red)", 14 January 2014, ICC-01/05-01/08-3314-Conf.

⁵ Requête de la Défense de M. Fidèle Babala Wandu, dans l'affaire ICC-01/05-01/13, en vue de pouvoir avoir accès à un document confidentiel relatif à l'affaire (ICC-01/05-01/08-2441-Conf-Exp-Anx1-Red)", 14 January 2014, ICC-01/05-01/08-3314-Conf-Anx.

⁶ ICC-01/05-01/08-3314-Conf-Anx, page 7. The Chamber notes that the title of the Request refers to document "ICC-01/05-01/08-2441-Conf-Exp-Anx1-Red", the operative part to ICC-01/05-01/08-2441-Conf-Exp-Anx1-Red2 (a document number that does not exist in the record of the *Bemba* case) and

8. In support of its Request, Mr Babala's defence submits that (i) the defence was already provided with information on payments provided by the VWU to witnesses; (ii) the prosecution in case ICC-01/05-01/13 cites payments to witnesses other than the 14 Witnesses, without providing any evidence that such payments are illegal; and (iii) the prosecution recently submitted that "[t]he Confirmation Decision thus, at least in part, establishes the relevance of evidence beyond the witnesses concerning the charged incidents to the Accused's alleged involvement in the Overall Strategy. These extraneous witnesses, and indeed other such evidence, may clearly be of relevance to establishing the existence of the common plan as charged and found by the Pre-Trial Chamber."⁷
9. The Office of the Prosecutor ("Prosecution"), informed the Chamber that it does not oppose Mr Babala's defence Request⁸ and neither the Prosecution nor the Defence filed a response to Mr Babala's defence Request.⁹
10. On 27 January 2016, on the Chamber's order,¹⁰ the VWU filed its "Victims and Witnesses Unit's observations on the 'Registry transmission of 'Requête de la Défense de M. Fidèle Babala Wandu, dans l'affaire ICC-01/05-01/13, en vue de pouvoir avoir accès à un

paragraph 6 to the confidential redacted version of the annex. For the purpose of the present Decision, the Chamber understands the request to refer to the confidential redacted version of the annex, Document ICC-01/05-01/08-2441-Conf-Anx1-Red2. The Chamber further notes that in the alternative, Mr Babala's defence requests access to "paragraph 5 of said annex" (in the French original: "paragraphe 5 de ladite annexe". For the purpose of the present Decision, the Chamber understands the alternate request to refer to the information relating to the witnesses listed in paragraph 5, footnotes 3 and 5 of Document ICC-01/05-01/08-2441.

⁷ ICC-01/05-01/08-3314-Conf-Anx, para. 12, referring to ICC-01/05-01/13-1520-Conf, para. 5.

⁸ Email from the Prosecution to the Chamber of 27 January 2016.

⁹ The Legal Representative was not notified of Mr Babala's defence Request. As the personal interests of victims are not affected, the Chamber did not order reclassification or seek the Legal Representative's views on the request.

¹⁰ Email from the Chamber to the parties and the VWU of 20 January 2016.

document confidentiel relatif à l'affaire (ICC-01/05-01/08-2441-Conf-Anx1-Red)”, ICC-01/05-01/08-3314-Conf”.¹¹ The VWU stresses that Mr Babala’s defence “inconsistently requested access to two different versions” of Annex 1 of Document ICC-01/05-01/08-2441, i.e. ICC-01/05-01/08-2441-Conf-Exp-Anx1-Red¹² and ICC-01/05-01/08-2441-Conf-Anx1-Red2¹³.¹⁴ The VWU further notes that the Defence in the *Bemba* case has already been provided access to Document ICC-01/05-01/08-2441-Conf-Anx1-Red2 and therefore “does not see any issue” for Mr Babala’s defence to have access to that document.¹⁵ Regarding ICC-01/05-01/08-2441-Conf-Exp-Anx1-Red, the VWU underlines that it “contains information related to strictly confidential witness protection matters, and therefore should not be shared further” to Mr Babala’s defence.¹⁶

Analysis

11. Mr Babala’s defence requests access to Document ICC-01/05-01/08-2441-Conf-Anx1-Red2, and thus, despite an inconsistency regarding the exact document number, satisfies the requirement of identifying “the specific document[...] consider[ed] to be necessary for the effective representation of [Mr Babala] in case ICC-01/05-01/13”.

12. Mr Babala’s defence further explained that the document may be of relevance to establishing the existence of the common plan as charged

¹¹ Victims and Witnesses Unit’s observations on the “Registry transmission of ‘Requête de la Défense de M. Fidèle Babala Wandu, dans l’affaire ICC-01/05-01/13, en vue de pouvoir avoir accès à un document confidentiel relatif à l’affaire (ICC-01/05-01/08-2441-Conf-Anx1-Red)”, ICC-01/05-01/08-3314-Conf, 27 January 2016, ICC-01/05-01/08-3323-Conf.

¹² ICC-01/05-01/08-3314-Conf-Anx, para. 2.

¹³ ICC-01/05-01/08-3314-Conf-Anx, page 7.

¹⁴ ICC-01/05-01/08-3323-Conf, para. 4 (emphasis omitted).

¹⁵ ICC-01/05-01/08-3323-Conf, para. 7.

¹⁶ ICC-01/05-01/08-3323-Conf, para 8 (emphasis omitted).

and found by the Pre-Trial Chamber and thus provided a substantiated justification for its request.

13. Finally, the Chamber notes that neither the parties nor the VWU oppose the transmission of the document to Mr Babala's defence. The Chamber therefore grants Mr Babala's defence request for access to ICC-01/05-01/08-2441-Conf-Anx1-Red2.

Mr Bemba's case ICC-01/05-01/13 defence Request

Submissions

14. On 20 January 2016, the Registry transmitted¹⁷ a request from the Defence for Mr Bemba in case ICC-01/05-01/13 ("Mr Bemba's case ICC-01/05-01/13 defence"), entitled "Urgent Defence Request for Reclassification",¹⁸ requesting that the Chamber authorise the transmission of 57 documents to the parties in case ICC-01/05-01/13.¹⁹

15. Mr Bemba's case ICC-01/05-01/13 defence submits that in line with the Chamber's criteria for the transmission of documents to the parties in case ICC-01/05-01/13, it has listed specific filings to which access is sought, and provided an explanation as to the relevance of these filings to the issues in case ICC-01/05-01/13.²⁰ According to Mr Bemba's case ICC-01/05-01/13 defence, the filings "largely center on matters, which either specifically concern the Defence team itself (i.e. funding) or the

¹⁷ Registry transmission of "Urgent Defence Request for Reclassification", 20 January 2016 (notified on 21 January 2016), ICC-01/05-01/08-3317.

¹⁸ Urgent Defence Request for Reclassification, 19 January 2016, ICC-01/05-01/08-3317-Anx1 and confidential redacted and confidential *ex parte* Annex A.

¹⁹ ICC-01/05-01/08-3317-Anx1, para. 21. The documents are listed in ICC-01/05-01/08-3317-Conf-Exp-AnxA and ICC-01/05-01/08-3317-Conf-AnxA-Red.

²⁰ ICC-01/05-01/08-3317-Anx1, paras 6 to 8.

[14 Witnesses], who are the subject of the incidents set out in the Article 70 charges”,²¹ but also include some filings which “concern general structural matters, or [...] shed light on the overall context in which the charged incidents took place”.²² According to Mr Bemba’s case ICC-01/05-01/13 defence, access to these documents is necessary in order to be “in a position to explain, clarify and contextualize the manner in which the Defence case was presented in the [*Bemba*] case”.²³ It further submits that the “breadth” of its request is consistent with (i) “the position of the Appeals Chamber that contextual information and evidence regarding patterns of conduct by persons in the same area or situation can assist Defence preparation, as can information concerning violations committed by other persons in the same area”;²⁴ and (ii) the practice at the International Criminal Tribunal for the former Yugoslavia which found that the “existence of a geographical, temporal or material overlap” constituted sufficient indicia of relevance to justify the transmission of filings and evidence from one case to another.²⁵

16. Finally, “as concerns the issue of witness protection and security”, Mr Bemba’s case ICC-01/05-01/13 defence submits that (i) the parties in case ICC-01/05-01/13 “have already been granted access to a range of information concerning the identity of defence witnesses” in the *Bemba* case and that the requested documents do not include any further

²¹ ICC-01/05-01/08-3317-Anx1, para. 9.

²² ICC-01/05-01/08-3317-Anx1, para. 10.

²³ ICC-01/05-01/08-3317-Anx1, para. 16.

²⁴ ICC-01/05-01/08-3317-Anx1, para. 17. Mr Bemba’s case ICC-01/05-01/13 defence refers Judgment on the appeal of Mr Abdallah Banda Abakaer Nourain and Mr Saleh Mohammed Jerbo Jamus against the decision of Trial Chamber IV of 23 January 2013 entitled “Decision on the Defence’s Request for Disclosure of Documents in the Possession of the Office of the Prosecutor”, 28 August 2013, ICC-02/05-03/09-501, para. 38.

²⁵ ICC-01/05-01/08-3317-Anx1, para. 17 (internal footnotes omitted).

details on these points;²⁶ (ii) for those documents that are still classified as confidential *ex parte*, the reason for maintaining this status has expired or been rendered moot;²⁷ and (iii) “if discrete redactions remain necessary, the Defence for Mr Bemba in the [*Bemba* case] can also propose such redactions prior to the transmission of Confidential *ex parte* (Registry, Defence only) filings to the Prosecution and the Defence in [case ICC-01/05-01/13].”²⁸

17. On 27 January 2016, in line with the Chamber’s order,²⁹ the Prosecution,³⁰ the Legal Representative,³¹ and the VWU³² filed their submissions in relation to Mr Bemba’s case ICC-01/05-01/13 defence request.

18. The Prosecution (i) requests that the Chamber reject Mr Bemba’s case ICC-01/05-01/13 defence Request as regards item number 36 listed in Annex A (“Item 36”); and (ii) “[d]efers to the Chamber’s decision as to the remaining part” of Mr Bemba’s case ICC-01/05-01/13 defence Request.³³ In support of its objection regarding Item 36, the Prosecution stresses that it inconsistently refers to the Prosecution’s Closing Brief³⁴ and the Prosecution’s Response to the Defence Closing Brief,³⁵ and, as

²⁶ ICC-01/05-01/08-3317-Anx1, para. 18.

²⁷ ICC-01/05-01/08-3317-Anx1, para. 19.

²⁸ ICC-01/05-01/08-3317-Anx1, para. 20.

²⁹ Emails from the Chamber to the parties, the legal representative and the VWU of 21 and 27 January 2016.

³⁰ Prosecution’s Response to ‘Urgent Defence Request for Reclassification, 27 January 2016, ICC-01/05-01/08-3321.

³¹ Réponse de la Représentante légale des victimes à l’« Urgent Request for Classification » de la Défense de M. Jean-Pierre Bemba Gombo (ICC-01/05-01/13), 27 January 2016, ICC-01/05-01-3322-Conf.

³² Victims and Witnesses Unit’s observations on the Urgent Defence Request for Reclassification (ICC-01/05-01/08-3317-Anx1), 27 January 2016, ICC-01/05-01/08-3326-Conf.

³³ ICC-01/05-01/08-3321, para. 6.

³⁴ Corrected version of “PROSECUTION’S CLOSING BRIEF”, 2 June 2014, ICC-01/05-01/08-3079-Conf, 20 June 2014, ICC-01/05-01/08-3079-Conf-Corr.

³⁵ Prosecution’s Response to the Defence Closing Brief, 15 September 2014, ICC-01/05-01/08-3141-Conf.

such, the request fails the requirement to “identify the specific documents, considered to be necessary for the effective representation of an accused in [case ICC-01/05-01/13] and provide a substantiated justification” and “prevents the Prosecution from providing any meaningful observation on the materiality of the information sought and assessing whether witness protection and security issues require redactions”.³⁶

19. The Legal Representative requests that the Chamber (i) reject Mr Bemba’s case ICC-01/05-01/13 defence request for transmission of Documents ICC-01/05-01/08-1478-Conf,³⁷ ICC-01/05-01/08-1593-Conf,³⁸ and ICC-01/05-01/08-978-Conf-Red^{39,40} (ii) order the maintenance of protective measures granted to the relevant witnesses and the level of confidentiality of the documents referred to in her response with regard to the parties in case ICC-01/05-01/13;⁴¹ (iii) order the application of redactions to Documents ICC-01/05-01/08-3200-Conf,⁴² ICC-01/05-01/08-3203-Conf-AnxIX,⁴³ and ICC-01/05-01/08-T-361-CONF-ENG ET^{44,45} and (iv) order Mr Bemba’s case ICC-01/05-01/13 defence to

³⁶ ICC-01/05-01/08-3321, paras 2 to 4.

³⁷ Report on issues concerning intermediaries’ involvement in completion of applications for participation, 3 June 2011, ICC-01/05-01/08-1478-Conf (Document number 1 in the Annex to Mr Bemba’s case ICC-01/05-01/13 defence Request).

³⁸ Decision on the Registry’s “Report on issues concerning intermediaries’ involvement in completion of applications for participation”, 11 July 2011, ICC-01/05-01/08-1593-Conf (Document number 2 in the Annex to Mr Bemba’s case ICC-01/05-01/13 defence Request).

³⁹ Observations on the Registry’s Report drawing to the Chamber’s attention an issue regarding an application for participation in the proceedings, 8 November 2012, ICC-01/05-01/08-978-Conf-Red (Document number 7 in the Annex to Mr Bemba’s case ICC-01/05-01/13 defence Request).

⁴⁰ ICC-01/05-01/08-3322-Conf, page 11.

⁴¹ ICC-01/05-01/08-3322-Conf, page 11.

⁴² Defence Supplemental Submissions arising from the further testimony of P-169, 7 November 2014, ICC-01/05-01/08-3200-Conf (Document number 34 in the Annex to Mr Bemba’s case ICC-01/05-01/13 defence Request).

⁴³ Confidential Annex IX to Defence Request for Relief for Abuse of Process, 11 November 2014, 3203-Conf-AnxIX (Document number 35 in the Annex to Mr Bemba’s case ICC-01/05-01/13 defence Request).

⁴⁴ Transcript of hearing of 22 October 2014, ICC-01/05-01/08-T-361-CONF-ENG (Document number 33 in the Annex to Mr Bemba’s case ICC-01/05-01/13 defence Request).

clarify whether with regard to Item 36, it requests access to the Prosecution's Closing Brief or the Prosecution's Response to the Defence Closing Brief and the scope of the transmission sought, and, in case the transmission of the document(s) is granted in its entirety, grant the Legal Representative additional time to propose redactions.⁴⁶

20. The VWU submits that while some documents could be transmitted to the parties in case ICC-01/05-01/13 without redactions, some of the information contained in the documents in the Annex to Mr Bemba's case ICC-01/05-01/13 defence Request should not be shared with the parties in case ICC-01/05-01/13 and therefore proposes redactions to some of the documents.⁴⁷

21. The VWU recommends that a number of documents emanating from the Registry, as well as a number of transcripts, should be redacted prior to their transmission to the parties in case ICC-01/05-01/13. Specifically, the VWU recommends redacting information relating to agreements concluded with foreign countries or International Organisations, which is "part of the confidential *modus operandi* of the VWU to facilitate the appearance of witnesses".⁴⁸ The VWU further recommends redactions of information related to its internal procedures which "should not be made available to any parties and participants in another proceeding without a specific justification in that regard".⁴⁹ Finally, the VWU submits that identifying information of former witnesses in the *Bemba* case should be redacted "as the VWU is not in a position to assess the impact further dissemination of

⁴⁵ ICC-01/05-01/08-3322-Conf, page 11.

⁴⁶ ICC-01/05-01/08-3322-Conf, pages 11 to 12.

⁴⁷ ICC-01/05-01/08-3326-Conf, para. 6.

⁴⁸ ICC-01/05-01/08-3326-Conf, para. 7.

⁴⁹ ICC-01/05-01/08-3326-Conf, para. 8.

identifying information would have on the security of the individuals concerned”.⁵⁰

22. On 28 January 2016,⁵¹ the Defence filed its “Defence’s Response to ‘Urgent Defence Request for Reclassification’, ICC-01/05-01/08-3317-Anx1”,⁵² in which it requests that the Chamber grant Mr Bemba’s case ICC-01/05-01/13 defence Request, “subject to the observations contained in the present filing and its *ex parte* annexes”.⁵³ The Defence lists a number of documents that can be transmitted to the parties, “subject to a minimal number of redactions”,⁵⁴ proposed in four confidential or *ex parte* annexes.

Analysis

23. Mr Bemba’s case ICC-01/05-01/13 defence requests the transmission of 57 documents to the parties in case ICC-01/05-01/13, which, with the exception of Item 36, are clearly identified by their document number and listed in a table appended as Annex A to its request. The Chamber therefore finds that, with the exception of Item 36, the request satisfies the requirement to specifically identify the requested documents. For Item 36, the Chamber rejects Mr Bemba’s case ICC-01/05-01/13 defence request for failure to specifically identify the requested document.

⁵⁰ ICC-01/05-01/08-3326-Conf, para. 8.

⁵¹ On 27 January 2016, the Defence informed the Chamber that it does not oppose the transmission of the Documents but requested an extension of 1 day to provide a complete list of proposed redactions: Email from the Defence to the Chamber of 27 January 2016. The Chamber granted the request for an extension of time: Email from the Chamber to the parties, the legal representative, and the VWU of 27 January 2016.

⁵² Defence’s Response to “Urgent Defence Request for Reclassification”, ICC-01/05-01/08-3317-Anx1, 28 January 2016, ICC-01/05-01/08-3328-Conf and Confidential Annex A, Confidential *Ex Parte* (Defence and VWU only) Annex B, Confidential *Ex Parte* Annex C (Defence only) and Confidential *Ex Parte* Annex D (Prosecution and Defence only).

⁵³ ICC-01/05-01/08-3328-Conf, para. 9.

⁵⁴ ICC-01/05-01/08-3328-Conf, para. 5.

24. Column 5 of the table explains the relevance of each of the requested documents. The Chamber finds that, in conjunction with the general submissions made in the request, these explanations satisfy the requirement to provide a substantiated justification. In this regard, the Chamber rejects the Legal Representative's submission that, in relation to Documents ICC-01/05-01/08-1478-Conf, ICC-01/05-01/08-1593-Conf, and ICC-01/05-01/08-978-Conf-Red, Mr Bemba's case ICC-01/05-01/13 defence fails to explain why these documents relate to questions in case ICC-01/05-01/13 and to provide a substantiated justification.

25. In the absence of any requests for redactions, the Chamber finds that the following documents may be transmitted to the parties in case ICC-01/05-01/13 without redactions: ICC-01/05-01/08-1478-Conf, ICC-01/05-01/08-1593-Conf, ICC-01/05-01/08-2250-Conf-Exp, ICC-01/05-01/08-2365-Conf, ICC-01/05-01/08-978-Conf-Red, ICC-01/05-01/08-2489-Conf, ICC-01/05-01/08-2513-Conf, ICC-01/05-01/08-2548-Conf-AnxA, ICC-01/05-01/08-2605-Conf, ICC-01/05-01/08-2606-Conf, ICC-01/05-01/08-2634-Conf, ICC-01/05-01/08-2903-Conf, ICC-01/05-01/08-2867-Conf, ICC-01/05-01/08-2897-Conf, ICC-01/05-01/08-3182-Conf, ICC-01/05-01/08-987-tENG, ICC-01/05-01/08-852-Conf, ICC-01/05-01/08-852-Conf-tENG, ICC-01/05-01/08-2175-Conf-Exp, ICC-01/05-01/08-2152-Conf-Exp, ICC-01/05-01/08-2212-Conf-Exp, ICC-01/05-01/08-2214-Conf-Exp, and ICC-01/05-01/08-T-241-CONF-EXP-ENG.

26. Noting the VWU's recommendations for redactions, the Chamber finds that the following documents may be transmitted after the application of redactions by the VWU or the Registry: ICC-01/05-01/08-2498-Conf-Exp, ICC-01/05-01/08-2840-Conf, ICC-01/05-01/08-T-271-CONF-ENG; ICC-01/05-01/08-2239-Conf-Exp, ICC-01/05-01/08-2446-Conf-Exp, ICC-

01/05-01/08-2664-Conf-Exp, ICC-01/05-01/08-T-282-CONF-EXP-ENG,
ICC-01/05-01/08-T-253-CONF-EXP-ENG, ICC-01/05-01/08-T-226-
CONF-EXP-ENG.

27. The Chamber also notes the Legal Representative's submission that certain documents contain confidential information in relation to dual status individuals she represents,⁵⁵ and her request for the application of redactions.⁵⁶ Noting the VWU's recommendation to redact the identities of former witnesses,⁵⁷ the Chamber agrees with the Legal Representative's submissions and finds that Documents ICC-01/05-01/08-3182-Conf-Corr, 01/05-01/08-3203-Conf-AnxIX,⁵⁸ the requested portion of ICC-01/05-01/08-T-361-CONF (page 32, lines 22 to 23 and page 55, lines 15 to 16), and ICC-01/05-01/08-3200-Conf require redactions prior to their transmission to the parties in case ICC-01/05-01/13.

28. The Chamber also approves the redactions proposed by the Defence in relation to Documents ICC-01/05-01/08-2244-Conf, ICC-01/05-01/08-2250-Conf-Exp-AnxA, ICC-01/05-01/08-2250-Conf-Exp-AnxB, ICC-01/05-01/08-2862-Conf, ICC-01/05-01/08-2733-Conf, ICC-01/05-01/08-1893-Conf, ICC-01/05-01/08-2451-Conf-Exp, ICC-01/05-01/08-963-Conf-tENG, and ICC-01/05-01/08-2238-Conf-Exp and finds that these documents may be transmitted after the application of redactions by the Defence.⁵⁹

⁵⁵ ICC-01/05-01/08-3322-Conf, para. 21 and footnote 22.

⁵⁶ ICC-01/05-01/08-3322-Conf, page 11.

⁵⁷ ICC-01/05-01/08-3326-Conf, para. 7.

⁵⁸ In this regard, the Chamber notes and agrees with Mr Bemba's case ICC-01/05-01/13 defence suggestion that the names of witnesses in the third column [of the document] be redacted: ICC-01/05-01/08-3317-AnxA, para. 38.

⁵⁹ Defence's Response to "Urgent Defence Request for Reclassification", ICC-01/05-01/08-3317-Anx1, 28 January 2016, ICC-01/05-01/08-3328-Conf and Confidential Annex A, Confidential *Ex Parte*

29. For Document ICC-01/05-01/08-T-307-CONF-EXP-ENG, the Chamber notes that both the VWU⁶⁰ and the Defence propose redactions.⁶¹ The Chamber therefore orders the VWU and Defence to liaise on the application of redactions.

30. Further, the Chamber notes that Mr Bemba's case ICC-01/05-01/13 defence Request includes a number of decisions of the Chamber on requests for protective measures.⁶² Although these decisions relate to witnesses whose identity has already been transmitted to the parties in case ICC-01/05-01/13,⁶³ they include references to security and psychological assessments provided by the VWU. Noting the VWU's reservations regarding the transmission of information relating to its internal procedures,⁶⁴ the Chamber finds that prior to the transmission of these documents, the VWU should be provided with an opportunity to advise the Chamber on any necessary redactions.

31. Similarly, the Chamber notes that Documents ICC-01/05-01/08-2466-Conf-Exp, ICC-01/05-01/08-2479-Conf, and ICC-01/05-01/08-2485-Conf-Exp-Anx3 refer to issues of cooperation. Noting the VWU's reservations as to the transmission of such information,⁶⁵ the Chamber

(Defence and VWU only) Annex B, and Confidential *Ex Parte* Annex D (Prosecution and Defence only).

⁶⁰ ICC-01/05-01/08-3326-Conf, para. 7.

⁶¹ ICC-01/05-01/08-3317-Conf-Exp-AnxC.

⁶² Decision on the duty counsel's "Demande de mesures de protection en faveur du témoin D04-49 (Règle 87-1 du Règlement de procédure et de preuve)", 23 November 2012, ICC-01/05-01/08-2436-Conf; Decision on in-court protective measures for Witness D04-02, 10 June 2013, ICC-01/05-01/08-2663-Conf; Decision on in-court protective measures for Witnesses D04-03 and D04-04, 17 June 2013, ICC-01/05-01/08-2694-Conf; Decision on in-court protective measures for Witness D04-06, 19 June 2013, ICC-01/05-01/08-2701-Conf; Decision on in-court protective measures for Witnesses D04-23, D04-26 and D04-25, 19 August 2013, ICC-01/05-01/08-2746-Conf; Decision on in-court protective measures for Witness D04-54, 29 October 2013, ICC-01/05-01/08-2852-Conf; and Decision on in-court protective measures for Witness D04-13, 11 November 2013, ICC-01/05-01/08-2873-Conf.

⁶³ See Decisions ICC-01/05-01/08-3074 and ICC-01/05-01/08-3098-Red.

⁶⁴ See ICC-01/05-01/08-3326-Conf, para. 8.

⁶⁵ ICC-01/05-01/08-3326-Conf, para. 7.

finds that prior to the transmission of these documents, the VWU should be provided with an opportunity to advise the Chamber on any necessary redactions.

32. Lastly, the Chamber notes that Documents ICC-01/05-01/08-868, ICC-01/05-01/08-460 and annexes 1 to 5, and ICC-01/05-01/08-452 are already classified as public and therefore rejects Mr Bemba's ICC-01/05-01/13 defence request for access to these documents as moot.

33. Similarly, the Chamber notes that there exist public redacted versions of the annexes to Document ICC-01/05-01/08-452 and Document ICC-01/05-01/08-2482-Conf-Exp. Absent any justification why access to the confidential or *ex parte* versions of these documents is necessary, the Chamber rejects Mr Bemba's case ICC-01/05-01/13 defence request in relation to these documents.

Mr Arido's defence Request

Submissions

34. On 22 January 2016, the Registry transmitted⁶⁶ a request from the Defence for Mr Narcisse Arido in case ICC-01/05-01/13 (Mr Arido's defence), entitled "Narcisse Arido's request for reclassification of certain materials related to Witness P-169",⁶⁷ and requesting access to (i) the Chamber's "Decision on 'Prosecution's Information to Trial Chamber III on issues involving witness CAR-OTP-PPPP-0169' (ICC-01/05-01/08-3138-Conf-Red) and 'Defence Urgent Submissions on the 5

⁶⁶ Registry transmission of "Narcisse Arido's request for reclassification of certain materials related to Witness P-169", 22 January 2016, ICC-01/05-01/08-3319-Conf.

⁶⁷ Narcisse Arido's request for reclassification of certain materials related to Witness P-169, 21 January 2016, ICC-01/05-01/08-3319-Conf-AnxA.

August Letter (ICC-01/05-01/08-3139-Conf)’’ (“Decision ICC-01/05-01/08-3154-Conf’’) ^{68,69} (ii) the confidential redacted version of the “Prosecution’s Information to Trial Chamber III on issues involving witness CAR-OTP-PPPP-0169’’ (“Document ICC-01/05-01/08-3138-Conf-Red’’) ^{70,71} and (iii) the Annex to Document ICC-01/05-01/08-3138-Conf-Red (“Document ICC-01/05-01/08-3138-Conf-AnxA’’) ^{72,73}

35. Mr Arido’s defence submits that information from the public redacted version of Decision 3154-Conf shows that (i) “the investigation related to [case ICC-01/05-01/13] has caused the Prosecution to see the existence of a link between this case and witness P-169”; and (ii) “the prosecution has grounded and substantiated its findings as regards P-169 with evidence or reasons, and that these grounds are redacted in the publically available version”. ⁷⁴

36. Mr Arido’s defence submits that its request fulfils the relevant criteria established by the Chamber as (i) the materials in question are clearly indicated; ⁷⁵ (ii) “the simple fact that the materials explicitly refer to the Article 70 case investigation should be sufficient to justify that these materials should have been disclosed to the Defence teams and why

⁶⁸ Decision on “Prosecution’s Information to Trial Chamber III on issues involving witness CAR-OTP-PPPP-0169’’ (ICC-01/05-01/08-3138-Conf-Red) and “Defence Urgent Submissions on the 5 August Letter’’ (ICC-01/05-01/08-3139-Conf), 2 October 2014, ICC-01/05-01/08-3154-Conf.

⁶⁹ ICC-01/05-01/08-3319-Conf-AnxA, para. 20. The Chamber notes that Mr Arido’s defence requests the “confidential version” of three documents, yet lists the confidential, *ex parte* version of ICC-01/05-01/08-3138. For the purpose of the present Decision, the Chamber understands the request to refer to the confidential redacted version of the document, i.e. ICC-01/05-01/08-3138-Conf-Red.

⁷⁰ Confidential Redacted version of “Prosecution’s Information to Trial Chamber III on issues involving witness CAR-OTP-PPPP-0169, 11 September 2014, ICC-01/05-01/08-3138-Conf-Exp, 12 September 2014, ICC-01/05-01/08-3138-Conf-Red.

⁷¹ ICC-01/05-01/08-3319-Conf-AnxA, para. 20.

⁷² Annex A to Prosecution’s Information to Trial Chamber III on issues involving witness CAR-OTP-PPPP-0169, 11 September 2014, ICC-01/05-01/08-3138-Conf-AnxA.

⁷³ ICC-01/05-01/08-3319-Conf-AnxA, para. 20.

⁷⁴ ICC-01/05-01/08-3319-Conf-AnxA, para. 13.

⁷⁵ ICC-01/05-01/08-3319-Conf-AnxA, para. 15.

they are necessar[y] for the effective representation of Mr. Arido”;⁷⁶ (iii) the fact that the documents are linked to P-169, who “has long been of interest for the Defence teams in case ICC-01/05-01/13” emphasise the necessity;⁷⁷ (iv) Trial Chamber VII has adopted a practice of disclosing material which enables the defence to assess the legality of evidence;⁷⁸ and (v) as the allegations of corruption in case ICC-01/05-01/13 are associated with former witnesses in the *Bemba* case, it is “essential for the Defence to obtain any documents, information, materials and findings that had led the prosecution to draw a link between the Article 70 case and other former witness[es] in the [*Bemba* case], especially when the witnesses come from the same temporal and geographic context” and that “it is necessary for the Defence to understand how the Prosecution made this link.”⁷⁹

37. On 27 January 2016,⁸⁰ the Prosecution informed the Chamber that “a day after the Arido Defence filed its request for access to confidential documents, the prosecution disclosed in [case ICC-01/05-01/13] Documents CAR-OTP-0083-1212-R01 and CAR-OTP-0072-0508-R1, which combined together amount to a confidential redacted version of ICC-01/05-01/08-3138-Conf-Anx-A”, and that accordingly, Mr Arido’s defence request in this respect “has become moot”. As regards the other documents, the Prosecution informed the Chamber that it does not oppose the request and neither the Prosecution nor the Defence filed a response in relation to Mr Arido’s defence Request.

⁷⁶ ICC-01/05-01/08-3319-Conf-AnxA, para. 16.

⁷⁷ ICC-01/05-01/08-3319-Conf-AnxA, para. 17.

⁷⁸ ICC-01/05-01/08-3319-Conf-AnxA, para. 18.

⁷⁹ ICC-01/05-01/08-3319-Conf-AnxA, para. 19.

⁸⁰ Email from the Prosecution to the Chamber of 27 January 2016.

38. On 27 January 2016, the Legal Representative⁸¹ and the VWU⁸² filed their submissions on Mr Arido's defence Request. The Legal Representative requests that the Chamber order the application of redactions to Document ICC-01/05-01/08-3138-Conf-AnxA before it is transmitted to Mr Arido's defence.⁸³

39. The VWU submits that it "does not see any issue" with Documents ICC-01/05-01/08-3154-Conf and ICC-01/05-01/08-3138-Conf-Red being provided to Mr Arido's defence.⁸⁴ Regarding Document ICC-01/05-01/08-3138-Conf-AnxA, it stresses that it contains names and contact information of protected Prosecution witnesses and, as it is not in a position to assess the impact of any further dissemination of this document on the security of these individuals, it recommends redacting the identifying information of the individuals.⁸⁵

Analysis

40. Mr Arido's defence requests access to Documents ICC-01/05-01/08-3154-Conf, ICC-01/05-01/08-3138-Conf-Red and ICC-01/05-01/08-3138-Conf-AnxA, and thus identified "the specific documents consider[ed] to be necessary for the effective representation of [Mr Arido] in case ICC-01/05-01/13".

41. The Chamber also finds that Mr Arido's defence, by explaining, *inter alia*, that the documents are necessary to understand the link drawn by

⁸¹ Réponse de la Représentante légale des victimes à « Narcisse Arido's request for reclassification of certain materials related to Witness P-169 », 27 January 2016, ICC-01/05-01/08-3324-Conf.

⁸² Victims and Witnesses Unit's Observations on the "Registry transmission of 'Narcisse Arido's request for reclassification of certain materials related to Witness P-169'", ICC-01/05-01/08-3319-Conf, 27 January 2016, ICC-01/05-01/08-3325-Conf.

⁸³ ICC-01/05-01/08-3324-Conf, page 5.

⁸⁴ ICC-01/05-01/08-3325-Conf, para. 7.

⁸⁵ ICC-01/05-01/08-3325-Conf, paras 8 to 10.

the Prosecution between case ICC-01/05-01/13 and other former witnesses in the *Bemba* case, provided a substantiated justification for its request.

42. The Chamber further notes that neither the participants in the *Bemba* case nor the VWU object to the transmission of Documents ICC-01/05-01/08-3154-Conf and ICC-01/05-01/08-3138-Conf-Red to Mr Arido's defence. The Chamber therefore grants Mr Arido's defence request for access to these documents.

43. Regarding Document ICC-01/05-01/08-3138-Conf-AnxA, the Chamber notes that it contains the names and contact details of a number of protected witnesses and that both the Legal Representative and the VWU object to the transmission of this information. The Chamber further notes the Prosecution's submission that by virtue of its disclosure of documents in case ICC-01/05-01/13, Mr Arido's defence already has access to the relevant information. As a result, the Chamber considers the request for access to Document ICC-01/05-01/08-3138-Conf-AnxA moot.

IV. Conclusion

44. In view of the above, the Chamber hereby:

- (i) GRANTS Mr Babala's defence request for access to Document ICC-01/05-01/08-2441-Conf-Anx1-Red2 and ORDERS the Registry to grant Mr Babala's defence access to the same;
- (ii) GRANTS Mr Bemba's case ICC-01/05-01/13 defence request for the transmission of Documents ICC-01/05-01/08-1478-Conf, ICC-

01/05-01/08-1593-Conf, ICC-01/05-01/08-2250-Conf-Exp, ICC-01/05-01/08-2365-Conf, ICC-01/05-01/08-978-Conf-Red, ICC-01/05-01/08-2489-Conf, ICC-01/05-01/08-2513-Conf, ICC-01/05-01/08-2548-Conf-AnxA, ICC-01/05-01/08-2605-Conf, ICC-01/05-01/08-2606-Conf, ICC-01/05-01/08-2634-Conf, ICC-01/05-01/08-2903-Conf, ICC-01/05-01/08-2867-Conf, ICC-01/05-01/08-2897-Conf, ICC-01/05-01/08-3182-Conf, ICC-01/05-01/08-987-tENG, ICC-01/05-01/08-852-Conf, ICC-01/05-01/08-852-Conf-tENG, ICC-01/05-01/08-2175-Conf-Exp, ICC-01/05-01/08-2152-Conf-Exp, ICC-01/05-01/08-2212-Conf-Exp, ICC-01/05-01/08-2214-Conf-Exp, and ICC-01/05-01/08-T-241-CONF-EXP-ENG, and ORDERS the Registry to grant the parties in case ICC-01/05-01/13 access to the same;

- (iii) ORDERS the Registry to prepare redacted versions of Documents ICC-01/05-01/08-2498-Conf-Exp, ICC-01/05-01/08-2840-Conf, ICC-01/05-01/08-T-271-CONF-ENG, ICC-01/05-01/08-2239-Conf-Exp, ICC-01/05-01/08-2446-Conf-Exp, ICC-01/05-01/08-2664-Conf-Exp, ICC-01/05-01/08-T-282-CONF-EXP-ENG, ICC-01/05-01/08-T-253-CONF-EXP-ENG, ICC-01/05-01/08-T-226-CONF-EXP-ENG, and the requested portion of ICC-01/05-01/08-T-361-CONF (page 32, lines 22 to 23 and page 55, lines 15 to 16) and grant the parties in case ICC-01/05-01/13 access to the same by 17 February 2016;

- (iv) ORDERS the Defence to prepare redacted versions of Documents ICC-01/05-01/08-2244-Conf, ICC-01/05-01/08-2250-Conf-Exp-AnxA, ICC-01/05-01/08-2250-Conf-Exp-AnxB, ICC-01/05-01/08-2862-Conf, ICC-01/05-01/08-2733-Conf, ICC-01/05-

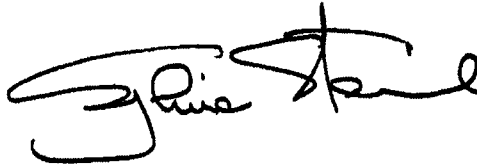
01/08-1893-Conf, ICC-01/05-01/08-2451-Conf-Exp, ICC-01/05-01/08-963-Conf-tENG, ICC-01/05-01/08-963-Conf-Exp-AnxA, ICC-01/05-01/08-2238-Conf-Exp, implementing the redactions proposed in ICC-01/05-01/08-3328-Conf-AnxA, Conf-Exp-AnxB and Conf-Exp-AnxD, and orders the Registry to grant the parties in case ICC-01/05-01/13 access to the same by 17 February 2016;

- (v) ORDERS the VWU, the Defence and the Registry to liaise on the application of redactions to Document ICC-01/05-01/08-T-307-CONF-EXP-ENG and grant the parties in case ICC-01/05-01/13 access to the redacted version of the document by 17 February 2016;
- (vi) ORDERS the Prosecution to prepare a redacted version of ICC-01/05-01/08-3182-Conf-Corr, applying redactions to identifying information in relation to dual status individuals, and ORDERS the Registry to grant the parties in case ICC-01/05-01/13 access to the same by 17 February 2016;
- (vii) ORDERS the Defence to prepare redacted versions of Document ICC-01/05-01/08-3200-Conf, redacting any identifying information in relation to dual status individuals, and ICC-01/05-01/08-3203-Conf-AnxIX, redacting the information in the third column, and ORDERS the Registry to grant the parties in case ICC-01/05-01/13 access to the same by 17 February 2016;
- (viii) ORDERS the VWU to review Documents ICC-01/05-01/08-2436-Conf, ICC-01/05-01/08-2663-Conf, ICC-01/05-01/08-2694-Conf, ICC-01/05-01/08-2701-Conf, ICC-01/05-01/08-2746-Conf, ICC-

01/05-01/08-2852-Conf, ICC-01/05-01/08-2873-Conf, ICC-01/05-01/08-2466-Conf-Exp, ICC-01/05-01/08-2479-Conf, and ICC-01/05-01/08-2485-Conf-Exp-Anx3 with a view to advising the Chamber on any necessary redactions and to report back to the Chamber by 10 February 2016;

- (ix) REJECTS Mr Bemba's case ICC-01/05-01/13 defence request for transmission of the document listed as Item 36, the annexes to Document ICC-01/05-01/08-452, and Document ICC-01/05-01/08-2482-Conf-Exp;
- (x) REJECTS Mr Bemba's case ICC-01/05-01/13 defence request for transmission of Documents ICC-01/05-01/08-868, ICC-01/05-01/08-460, annexes 1 to 5 to ICC-01/05-01/08-460 and ICC-01/05-01/08-452 as moot.
- (xi) GRANTS Mr Arido's defence request for access to Documents ICC-01/05-01/08-3154-Conf and ICC-01/05-01/08-3138-Conf-Red and ORDERS the Registry to grant Mr Arido access to the same;
- (xii) REJECTS Mr Arido's defence request for access to Document ICC-01/05-01/08-3138-Conf-AnxA; and
- (xiii) ORDERS the Defence, the Legal Representative, and the VWU to file public redacted versions of their submissions underlying the present Decision or inform the Chamber that the documents can be reclassified without redactions.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 5 February 2016

At The Hague, the Netherlands