

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 30 January 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, EX PARTE, only available to Prosecution and Registry
With**

Confidential, EX PARTE, Annex A only available to Prosecution and Registry

**Prosecution Request for a Variance of Protective Measures of Trial Witnesses to
Allow Access to Transcripts of Evidence in a Related Article 70 Proceeding**

Source: The Office of the Prosecutor

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

The Office of the Prosecutor
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Counsel for the Defence of Jean-Pierre Bemba Gombo

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for the Victims

The Office of Public Counsel for the Defence

States Representatives

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REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section **Other**

I. Introduction

1. On 4 December 2013, the Single Judge of Pre-Trial Chamber II ordered the Prosecution, to disclose to the Defence in *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido* ("Article 70 Case") all material on which it intends to rely for the confirmation proceedings by 31 January 2014.¹

2. This material includes limited evidence provided by Defence witnesses who testified before Trial Chamber III ("Chamber") in *Prosecutor v. Jean-Pierre Bemba Gombo* ("*Bemba case*"), subject to protective measures. The Office of the Prosecutor ("Prosecution") thus seeks a variance of these protective measures pursuant to Regulation 42(3) of the Regulations of the Court ("RoC").

3. The requested variance is necessary to: (1) allow the Prosecution to rely on such evidence for the confirmation proceedings in the Article 70 Case; (2) enable the Prosecution to discharge its disclosure duties in accordance with the order of the Single Judge, Article 67(2) of the Rome Statute and Rule 77 of the Rules of Procedure and Evidence; and (3) provide the Defence in the Article 70 Case with full access to relevant transcripts of evidence, subject to any otherwise prevailing protective measures.

4. Because the *Bemba* case is not yet complete, and in order to avoid any suggestiveness to the Chamber by virtue of this request, the Prosecution seeks a variance as to *all* Defence witnesses who testified between 14 August 2012 and 14 November 2013² subject to protective measures, and/or those Defence witnesses not specifically protected, but whose transcripts of evidence are not fully public.

¹ See ICC-01/05-01/13-T-2-CONF-ENG ET, 4 December 2013, p. 32, line 9 to line 13 ("Order").

² ICC-01/05-01/08-T-229-CONF-ENG ET to ICC-01/05-01/08-T-352-CONF-ENG ET.

5. Without the requested variance, the Defence teams in the Article 70 Case can only receive public redacted versions of the relevant transcripts, potentially affecting their preparation.

6. For the Chamber's convenience, a list of all Defence witnesses granted protective measures as well as those whose transcripts of evidence were otherwise not fully public in the *Bemba* Case is attached at *Confidential* Annex A.

II. Classification

7. This application is filed as "*Confidential inter partes*", as it refers to information subject to protected measures and which is otherwise non-public.

III. Submissions

A. The Requested Variance of Protective Measures is Appropriate and Necessary in the Circumstances

i. There is a clear nexus between the Article 70 Case and the *Bemba* Case justifying access to the transcripts of evidence of Defence witnesses

8. The Article 70 proceeding pending before Pre-Trial Chamber II has a direct nexus to the *Bemba* Case. Specifically, the Article 70 Case arises from allegations regarding the corruption of Defence witnesses; the subornation of false testimony and the presentation of falsified or forged evidence in the *Bemba* Case.³

³ ICC-01/05-01/13-1-Red2-tENG, Public *redacted* version of the Warrant of arrest for Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, 5 December 2013.

9. In this respect, the resolution of the Article 70 Case may directly affect matters in controversy in the *Bemba* Case.⁴ Conversely, the evidence of Defence witnesses in the *Bemba* Case is highly relevant to material issues arising in the Article 70 Case.

ii. The requested variance is limited

10. As noted, the Prosecution requests a variance of the protected measures for three distinct purposes: (1) meeting the disclosure requirements ordered by the Single Judge of Pre-Trial Chamber II; (2) carrying out its obligations under the Statute and Rules; and (3) providing the Defence in the Article 70 Case sufficient access to inarguably relevant material which, to a limited extent, will be relied upon by the Prosecution for confirmation and trial.

11. Although the Prosecution's intended reliance on the evidence provided by Defence witnesses in the *Bemba* Case for confirmation is limited, such evidence, as a whole, is broadly relevant to the Article 70 Case. Thus, the requested variance is as narrowly framed as possible to achieve the three objectives indicated above. Regulation 42(2) of the RoC will further ensure the continuation of any protective measures which may otherwise remain intact.

12. As the Chamber is aware, Jean-Pierre Bemba Gombo and two members of his Defence team in the *Bemba* Case comprise three of the five suspects in the Article 70 Case. They, like the Prosecution, are already fully privy to the requested transcripts of evidence. As to them, the requested access is very nearly an academic exercise. However, the requested variance is concretely necessary to ensure that all the Defence teams in the Article 70 Case have sufficient access to the transcripts of relevant evidence in the *Bemba* Case in order to prepare adequately for the confirmation hearing and later for trial.

⁴ ICC-01/05-01/13-1-Red2-tENG, para. 8.

IV. Requested Relief

13. For the foregoing reasons, and pursuant to Regulation 42 of the RoC, the Prosecution respectfully requests a variance of the protective measures ordered by the Chamber as noted above, allowing the disclosure of and access to confidential portions of the transcripts of evidence of the Defence witnesses in the *Bemba* Case listed at *Confidential* Annex A.



Fatou Bensouda, Prosecutor

Dated this 30th Day of January 2014

At The Hague, The Netherlands