

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/08
Date: 10 February 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

**Prosecution Request for leave to reply to Defence Observations on the
Prosecution Request for a Variance of Protective Measures**

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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**Victims Participation and Reparations
Section Other**

I. Introduction

1. Pursuant to Regulation 24(5) of the Regulations of the Court (“RoC”), the Office of the Prosecutor (“Prosecution”) requests the Chamber’s leave to reply to the Defence’s Observations¹ on the Prosecution’s Request for Variance of Protective Measures of Trial Witnesses to Allow Access to Transcripts of Evidence in a Related Article 70 Proceeding” (“Request”).²

2. A limited and focused reply may benefit the Chamber and assist in the proper determination of the Request.

II. Confidentiality

3. This document is filed confidentially as it responds to a filing of the same designation.

III. Submissions

4. In its Observations, the Defence advances several arguments. The Prosecution seeks to reply only to two questions:

(1) Witnesses’ informed consent:

a. Whether the witnesses’ informed consent is required when:

- the Prosecution is discharging “its disclosure obligations in subsequent proceedings” under Regulation 42(2) of the RoC;

¹ ICC-01/05-01/08-2959-Conf, Defence Observations on the “Prosecution Request for Variance of Protective Measures of Trial Witnesses to Allow Access to Transcripts of Evidence in a Related Article 70 Proceeding”, 5 February 2014 (“Observations”); see, ICC-01/05-01/08-2954-Conf, Order requesting observations on prosecution document ICC-01/05-01/08-2951-Conf, 30 January 2014.

² ICC-01/05-01/08-2951-Conf-Exp, Prosecution Request for Variance of Protective Measures of Trial Witnesses to Allow Access to Transcripts of Evidence in a Related Article 70 Proceeding, 30 January 2014, which was reclassified as “Confidential” on the same date.

- the original protective measures would remain in full force in the Article 70 case; or
- the transcripts of evidence themselves form an integral part of the crime in the Article 70 case.

b. The propriety of the Defence's involvement in contacting the protected witnesses or in obtaining their consent (if applicable, considering the circumstances outlined above) concerning the use of their transcripts of evidence in the Article 70 proceedings, to which the Accused is an interested party; and

(2) Whether the witnesses' possible *viva voce* testimony in the Article 70 case is relevant to the disposition of the Request.

5. A limited reply clarifying the law and correcting mischaracterisations of the Request concerning these issues "may benefit"³ the Chamber, and is in the interests of justice.

IV. Requested Relief

6. For the foregoing reasons, the Prosecution requests that the Chamber grant it leave to reply to the Defence Observations, pursuant to Regulation 24(5) of the RoC.



Fatou Bensouda, Prosecutor

Dated this 10th Day of February 2014
At The Hague, The Netherlands

³ ICC-01/05-01/08-2014, Order granting leave to reply, 15 December 2011, para. 4; *see also* ICC-01/05-01/08-2942, Decision on "Prosecution's Request for leave to reply to Defence 'Response to the Prosecution's Application to Submit Additional Evidence'", 22 January 2014, para. 4.