

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 11 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

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

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes

Ms Kate Gibson

Legal Representatives of the Victims

Ms Marie-Edith Douzima Lawson

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

**Victims Participation and Reparations Other
Section**

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

1. On 30 January 2014, the Office of the Prosecutor ("prosecution") filed its "Prosecution Request for a Variance of Protective Measures of Trial Witnesses to Allow Access to Transcripts of Evidence in a Related Article 70 Proceeding" ("Prosecution Request"),¹ in which, pursuant to Regulation 42 of the Regulations of the Court ("Regulations"), it requests a "variance of the protective measures ordered by the Chamber" in relation to the transcripts of hearings of *all* witnesses called by the defence in the *Bemba* case who testified between 14 August 2012 and 14 November 2013.² The request is aimed at allowing the disclosure of relevant confidential portions of transcripts to the defence in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu and Narcisse Arido*.³

2. On 5 February 2014, the defence filed its observations on the Prosecution Request ("Defence Observations"), requesting that the Chamber reject the Prosecution Request.⁴

3. On 10 February 2014, the prosecution sought leave to reply to the Defence Observations, pursuant to Regulation 24(5) of the Regulations. For that purpose, the prosecution contends that "a limited reply clarifying the

¹ Prosecution Request for a Variance of Protective Measures of Trial Witnesses to Allow Access to Transcripts of Evidence in a Related Article 70 Proceeding, 30 January 2014, ICC-01/05-01/08-2951-Conf and confidential Annex A. The Prosecution Request was initially classified as "confidential ex parte – only available to Prosecution and Registry". The prosecution subsequently requested the reclassification as confidential of the document and its Annex, which was granted by the Chamber (email from the prosecution to the Chamber of 30 January 2014 at 15.52).

² ICC-01-05-01/08-2951-Conf, paragraph 4 and 13.

³ ICC-01/05-01/08-2951-Conf, paragraphs 12 and 13.

⁴ Defence Observations on the "Prosecution Request for a Variance of Protective Measures of Trial Witnesses to Allow Access to Transcripts of Evidence in a Related Article 70 Proceeding", 5 February 2014, ICC-01/05-01/08-2959-Conf, paragraph 14.

law and correcting mischaracterisations of the Request concerning these issues 'may benefit' the Chamber, and is in the interests of justice.⁵ Specifically, the prosecution seeks to reply to the following 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;
- 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.

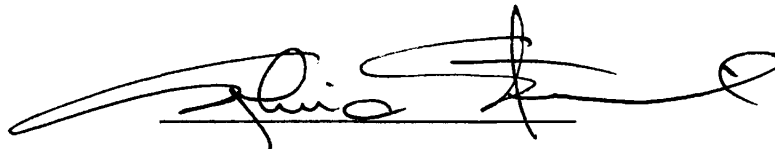
4. The Chamber considers that it may benefit from hearing the views of the prosecution on these issues and finds that the request is well-founded. Leave to reply will therefore be granted.

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

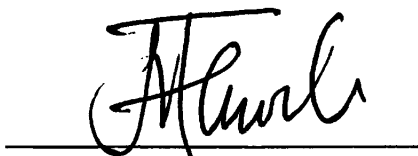
- a. GRANTS the prosecution's request for leave to reply, pursuant to Regulation 24(5) of the Regulations; and
- b. ORDERS that the prosecution's reply be filed no later than 16.00 on Monday, 17 February 2014, pursuant to Regulation 34(c) of the Regulations.

⁵ Prosecution Request for leave to reply to Defence Observations on the Prosecution Request for a Variance of Protective Measures, 10 February 2014, ICC-01/05-01/08-2966-Conf, paragraph 5 (internal citations omitted).

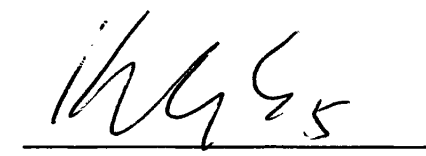
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 11 February 2014

At The Hague, The Netherlands