

**Cour
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**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 Redacted Document

Public redacted version of “Prosecution’s Third Request for Access to Evidence for a Related Article 70 Proceeding”, 17 December 2014, ICC-01/05-01/08-3218-Conf

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

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I. Introduction

1. The Office of the Prosecutor ("Prosecution") requests the Trial Chamber III ("Trial Chamber") to grant the parties in *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba et al.* ("Article 70 case") access to the confidential video recordings of trial hearings of 17 witnesses called by the Defence and the Trial Chamber in this case ("Request").

2. The requested access to confidential video recordings is limited to the 17 witnesses for whom the Trial Chamber has already granted disclosure of their unredacted transcripts. The video recordings complete the transcripts' partial representation of court proceedings – e.g., by showing the witnesses' demeanour. The confirmed charges in the Article 70 case are tied to the falsity of witness evidence, and demeanour evidence is directly relevant to any assessment of the credibility of the witnesses' prior testimony.

3. The Request is supported by good cause, will not result in any prejudice to the Defence, and is in the interests of justice.

II. Confidentiality

4. This application is filed confidentially because it reveals confidential details of witnesses' evidence.

III. Submissions

A. The video recordings are relevant to the prosecution of the Article 70 case

5. In its decisions on two Prosecution requests for the disclosure of evidence in the Article 70 case,¹ the Trial Chamber authorised the disclosure of the unredacted trial transcripts of 16 Defence witnesses and one Court witness: D-64, D-57, D-55, D-54, D-45, D-29, D-26, D-25, D-23, D-15, D-13, D-7, D-6, D-4, D-3, D-2, and CHM-1.² The Prosecution now requests access for the parties in the Article 70 case to the corresponding confidential video recordings, without protective measures, of the trial hearings in which these 17 witnesses testified.³

6. The video recordings provide pivotal additional evidence to the Article 70 case beyond the transcripts and bear directly on the truthfulness of the witnesses' prior evidence. They show the witnesses' demeanour and body language during the course of their testimony. This information is highly relevant to a determination of the credibility of the witnesses' evidence, which is a material issue in the recently-confirmed Article 70 case.

7. The following example is illustrative of the importance of this evidence. During the course of his testimony, the Prosecution asked D-23 in private session [REDACTED], to which D-23 responded:

“[REDACTED]”.⁴

This passage hints at the witness' distress while answering the question. Clearly the Chamber in the Article 70 case would be better able to determine the allegations of false testimony with the assistance of the corresponding video recording than without it.

¹ ICC-01/05-01/08-3074 (“First Decision”); ICC-01/05-01/08-3098-Red (“Second Decision”).

² 15 witnesses are the subject of the First Decision (D-64, D-57, D-55, D-54, D-45, D-29, D-26, D-25, D-23, D-15, D-7, D-4, D-3, D-2, CHM-1); Two witnesses are the subject of the Second Decision (D-13, D-6).

³ See the transcripts of D-64, D-57, D-55, D-54, D-45, D-29, D-26, D-25, D-23, D-15, D-7, D-4, D-3, D-2, and CHM-1at First Decision, fns 11, 12; see the transcripts of D-6 and D-13 at Second Decision, fns 6, 7.

⁴ ICC-01/05-01/08-T-334-CONF-ENG ET, 22 August 2013, p. 15, ln. 16-p. 16, ln. 3 (emphasis added).

8. It is necessary for the Prosecution to obtain access to the confidential versions of the video recordings, because all 17 witnesses testified with protective measures⁵ and thus their face and voice are distorted in the public versions of the video recordings. Further, discussions relevant to the prosecution of the Article 70 case take place in private or closed session, which means that the video is either disseminated without audio to the public, or not at all.

9. There are no additional security concerns for the witnesses associated with granting the parties access to the confidential video recordings. The Accused Kilolo, Mangenda, and Bemba are familiar already with the witnesses' voice and appearance from their participation in this case. The Accused Arido and Babala are "bound to respect the confidentiality of such information",⁶ as they are vis-à-vis the unredacted trial transcripts, which contain the witnesses' identities. As the Trial Chamber noted in its First Decision:

[P]ursuant to Rule 87(3) of the Rules, protective measures are directed at "prevent[ing] the release to the *public* or *press* and *information agencies*, of the identity or the location of a victim, a witness or other person at risk on account of testimony given by a witness". Therefore, as long as the protective measures ordered by the Chamber remain unchanged and the information protected by such measures is not released to the public, press and information agencies, the Chamber is satisfied that such information could be shared with a Chamber, parties or participants in different proceedings before the Court.⁷

⁵ See ICC-01/05-01/08-T-259-CONF-ENG, pp. 1-4 (D-64); ICC-01/05-01/08-T-256-CONF-ENG, pp. 2-4 (D-57); ICC-01/05-01/08-T-264-CONF-ENG, pp. 2-5 (D-55); ICC-01/05-01/08-2852-Conf, para. 18 (D-54); ICC-01/05-01/08-2532-Conf, para. 14 (D-45); ICC-01/05-01/08-2770-Conf, para. 13 (D-29); ICC-01/05-01/08-2746-Conf, para. 16 (D-26, D-25, D-23); ICC-01/05-01/08-2741-Conf, para. 12 (D-15); ICC-01/05-01/08-2873-Conf, para. 22 (D-13); ICC-01/05-01/08-T-248-CONF-ENG, pp. 1-4 (D-7); ICC-01/05-01/08-2701-Conf, para. 14 (D-6); ICC-01/05-01/08-2694-Conf, para. 16 (D-4, D-3); ICC-01/05-01/08-2663-Conf, para. 14 (D-2); ICC-01/05-01/08-2900-Conf-Corr, para. 11 (CHM-1).

⁶ First Decision, para. 17.

⁷ First Decision, para. 17 (original emphasis).

B. Granting access to the video recordings of 17 witnesses' testimony will not result in any prejudice to the Defence and is in the interests of justice

10. The Prosecution incorporates by reference the submissions in its first request for disclosure – including the legal basis for the requested access,⁸ the Prosecution's disclosure obligations,⁹ and there being no additional risk to witnesses.¹⁰

11. Should the Trial Chamber grant the Request, the Prosecution will inform the Defence in the Article 70 case of the confidentiality level of the video recordings, in accordance with the Trial Chamber's First and Second Decisions and Regulation 42(2) of the Regulations of the Court.¹¹

12. Granting the Request causes no prejudice to the Defence, whose interests are unaffected by this request. It is also manifestly in the interest of justice, preserving the integrity of proceedings before the Court by permitting access to evidence vital to the prosecution of the Article 70 case.

13. Finally, the Prosecution notes that its trial preparation may require additional "tailored request[s], relating to a specific number of transcripts and filings of the Bemba case",¹² as trial transcripts and other materials from this case become relevant to the prosecution of the Article 70 case.

⁸ ICC-01/05-01/08-3052-Red, paras 7-12.

⁹ ICC-01/05-01/08-3052-Red, paras 13-18.

¹⁰ ICC-01/05-01/08-3052-Red, para. 21.

¹¹ See First Decision, para. 20; Second Decision, para. 20.

¹² First Decision, para. 16.

IV. Requested Relief

14. The Prosecution requests the Trial Chamber to grant the parties in the Article 70 case access to the confidential video recordings of trial hearings of 17 witnesses, as detailed in paragraph five of this filing.



Fatou Bensouda, Prosecutor

Dated this 29th Day of January 2015
At The Hague, The Netherlands