

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 29 May 2015

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 Document

**Prosecution's Third Further Request for Disclosure 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**

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

**Counsel for the Defence of Jean-Pierre
Bemba Gombo**

Mr Peter Haynes

Ms Kate Gibson

Ms Melinda Taylor

Legal Representatives of Victims

Ms Marie-Edith Douzima Lawson

Legal Representatives of Applicants**Unrepresented Victims****Unrepresented Applicants for
Participation/Reparation****The Office of Public Counsel for the
Victims**

Ms Paolina Massidda

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

Mr Xavier-Jean Keita

States Representatives**Amicus Curiae****REGISTRY**

Registrar

Mr Herman von Hebel

Counsel Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations Other
Section**

I. Introduction

1. The Office of the Prosecutor ("Prosecution") requests Trial Chamber III's ("Chamber") authorisation to disclose two confidential filings ("Filings")¹ in this case to the Defence in *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba et al.* ("Article 70 case"). These two filings contain the questions which the Legal Representatives of Victims ("Legal Representatives") intended to use in their examination of Witness D-54 at trial.

2. On 22 May 2015, Trial Chamber VII issued a scheduling order in the Article 70 case fixing 29 September for the commencement of trial and 30 June as the deadline for the Prosecution to file its list of evidence.² In view of the scheduling order, the Prosecution is conducting an assessment of its evidence and has identified the Filings as evidence on which it intends to rely at trial. The Chamber's authorisation to disclose the Filings in the Article 70 case pursuant to regulation 42(2) of the Regulations of the Court ("RoC") is necessary in order to add the Filings to the Prosecution's list of evidence.

3. The requested disclosure is consistent with a previous decision by the Chamber ("Decision"),³ will not prejudice the Defence, and is in the interests of justice.

II. Confidentiality

4. This application is filed confidentially because it refers to filings of the same designation.

¹ ICC-01/05-01/08-2817-Conf and ICC-01/05-01/08-2819-Conf.

² ICC-01/05-01/13-960, para.13.

³ ICC-01/05-01/08-3074, para.19.

III. Submissions

5. The content of the Filings is unique and cannot be obtained in any other manner. The Filings pertain to allegations of improper witness interference that are central to the Article 70 case, and necessary to prove certain of the confirmed charges under articles 70(1)(b) and 70(1)(c) of the Rome Statute.

6. The Prosecution incorporates by reference its submissions in the First Request,⁴ including the legal basis for disclosure⁵ and the Prosecution's disclosure obligations⁶ – which the Chamber previously granted.⁷

7. In respect of the Prosecution's previous request, the Chamber authorised the disclosure of many documents including similar filings containing the Legal Representatives' lines of questioning of another Defence witness.⁸ In reaching its conclusion, the Chamber considered that the requested disclosure would not lift the protective measures or the level of confidentiality, nor result in releasing the information to the public or press and information agencies in contradiction of rule 87(3) of the Rules of Procedure and Evidence. The Chamber was also satisfied that such information could be shared with a Chamber, parties or participants in different proceedings before the Court, all of whom are bound to respect its confidentiality.⁹ The same holds true for this request.

⁴ ICC-01/05-01/08-3052-Red.

⁵ ICC-01/05-01/08-3052-Red, paras.7-12.

⁶ ICC-01/05-01/08-3052-Red, paras.13-18.

⁷ ICC-01/05-01/08-3074.

⁸ ICC-01/05-01/08-3074, para.19.

⁹ ICC-01/05-01/08-3074, para.17.

8. Additionally, disclosing the Filings does not give rise to any security risk to Witness D-54 - the witness concerned - because the Chamber previously authorised the disclosure of his transcripts of testimony to the Defence in the Article 70 case.¹⁰

9. Should the Chamber grant this Request, the Prosecution will inform the Defence in the Article 70 case of the confidentiality level of the Filings, in accordance with the Decision and regulation 42(2) of the RoC.

10. Disclosure of these Filings is manifestly in the interests of justice, particularly to establish the truth and to preserve the integrity of proceedings before the Court. At the same time, it causes no prejudice to the Defence - especially given that the Defence has declined to rely on this witness's evidence.¹¹

IV. Requested Relief

11. The Prosecution requests that the Chamber authorise its disclosure of ICC-01/05-01/08-2817-Conf and ICC-01/05-01/08-2819-Conf to the Defence in the Article 70 case on an expedited basis, given the 30 June 2015 deadline imposed by Trial Chamber VII for the Prosecution to file its list of evidence in the Article 70 case.



Fatou Bensouda, Prosecutor

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

¹⁰ ICC-01/05-01/08-3074, paras.3, 23 and fn.11 (iv).

¹¹ ICC-01/05-01/08-3121-Conf, para.14.