

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 03/06/2015

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

**Defence Response to Prosecution's Urgent Further Request for Disclosure of
Evidence in a Related Article 70 Proceeding**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

Document to be notified in accordance with regulation 31 of the *Regulations of the*

Court to:

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart

Kweku Vanderpuye

Counsel for the Defence

Peter Haynes QC

Kate Gibson

Melinda Taylor

Legal Representatives of the Victims

Marie-Edith Douzima-Lawson

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

Applicants

(Participation/Reparation)

The Office of Public Counsel for the Victims

Paolina Massidda

The Office of Public Counsel for the Defence

Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Nigel Verrill

Detention Section

Victims Participation and Reparations Other Section

A. BACKGROUND

1. On 29 May 2015, the Prosecution filed its "Urgent Further Request for Disclosure of Evidence in a Related Article 70 Proceeding," in which it requested Trial Chamber III ("the Chamber") to authorise the disclosure of two confidential filings ("Requested Items") in *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba et al.* case ("Article 70 Case").¹

2. The Requested Items are filings in the Main Case by the two Legal Representatives of Victims, seeking authorisation from the Chamber to question Defence Witness D04-54.²

3. The same day, the Trial Chamber sent an email to the parties reducing the timeframe for a response to the Prosecution request from 21 days, to this Wednesday, 3 June 2015.³ Pursuant to that email, the Defence files the present response.

B. CONFIDENTIALITY

4. The Defence files the present document confidentiality, as it responds to a confidential Prosecution request.

C. SUBMISSIONS

5. In making its request, the Prosecution relies almost exclusively on a previous decision of the Trial Chamber on 27 May 2014, authorising Prosecution disclosure in the Article 70 Case of 44 confidential transcripts of Defence

¹ ICC-01/05-01/08-3250-Conf.

² ICC-01/05-01/08-2817-Conf; ICC-01/05-01/08-2819-Conf.

³ Email Friday 29 May, 16.16, 'Jean-Pierre Bemba Gombo Case: ICC-01/05-01/08-3250-Conf - Prosecution's Third Further Request for Disclosure of Evidence in a Related Article 70 Proceeding.

witnesses, and other associated confidential filings stemming from the present proceedings.⁴

6. In granting the Prosecution's 'Urgent Further Request'⁵ in May 2014, the Trial Chamber's reasoned as follows:⁶

... 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, all of whom are bound to respect the confidentiality of such information.

7. As such, while the Chamber has held that such information **could** be shared with the parties in other proceedings before the Court, the Prosecution's filing provides no justification as to why the Chamber **should** grant the Prosecution's Third Further Request for the Requested Items.

8. The Prosecution states that it needs to rely on the Requested Items in the Article 70 case,⁷ and asserts in a generic manner that disclosure is in the interests of justice, to "establish the truth and to preserve the integrity of proceedings before the Court."⁸ No explanation is given as to why these particular documents serve that aim, or even why the information is not already provided by the wealth of confidential evidence and information already disclosed in the Article 70 Case. The Prosecution appears to simply assume that because the Trial Chamber has granted a previous request it will do so again. The Prosecution's desire to establish its case in different proceedings, does not obviate the need for reasoned

⁴ ICC-01/05-01/08-3074-Conf.

⁵ ICC-01/05-01/08-3250-Conf.

⁶ ICC-01/05-01/08-3074-Conf, para. 17 (emphasis added).

⁷ ICC-01/05-01/08-3250-Conf, paras. 2, 5.

⁸ ICC-01/05-01/08-3250-Conf, para. 10.

submissions to which the Defence can respond, and upon which the present Trial Chamber can base a decision.

9. The timing of the present request also mitigates against disclosure being granted. The Requested Items are not new. They date from September 2013, and were certainly known to the Prosecution at the time of its previous requests for disclosure in January and April 2014,⁹ during the confirmation phase, and over the course of the last 12 months. Trial Chambers of the ICC have been consistent in finding that the Prosecution's investigations should largely be completed by the confirmation of charges hearing,¹⁰ and the Prosecution itself repeatedly publicises its "policy" to be "as close to trial ready as possible" by confirmation.¹¹ No explanation is given for disclosure of the Requested Items being sought so extremely late in the day, and within weeks of its deadline to disclose incriminating material it intends to rely upon at trial.¹²

10. Moreover, the situation has moved on significantly from that which governed the Chamber's previous decision in May 2014. On 29 May 2015, Trial Chamber VII, seized with the Article 70 proceedings, denied a Prosecution request for records of interviews of Defence witnesses in the Main Case, reminding the parties that "Prosecution investigation cannot continue indefinitely", and "[n]otwithstanding previous submissions made by the Prosecution that there is some outstanding information which the Prosecution is expecting to review, which may or may not lead to further prosecutorial action bearing on the [Article 70] Case, the Chamber already emphasised during the first status conference on 24 April 2015, that the trial 'need[s] to begin and to proceed expeditiously.'"¹³ The Prosecution is accordingly inviting the present Trial Chamber to run the risk of contributing to the very delays which Trial Chamber VII is seeking to avoid.

⁹ ICC-01/05-01/08-2951; ICC-01/05-01/08-3250-Conf.

¹⁰ ICC-02/11-01/11-432, para 25; ICC-01/09-02/11-728, para. 119.

¹¹ ICC-01/05-01/13-T-2-ENG, T. 10, l. 6-9

¹² ICC-01/05-01/13-959, para. 52 and page 19.

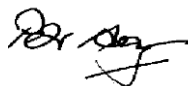
¹³ ICC-01/05-01/13-972, para. 6.

11. Nor is the Prosecution in a position to state that the disclosure of the Requested Items causes no prejudice to the Defence, “especially given that the Defence has declined to rely on this witness’s evidence.”¹⁴ The Prosecution cannot pre-empt which evidence will be relied upon by the Trial Chamber in its judgement in the present case, nor what evidence will form part of any future stages of the proceedings. As such, the Prosecution’s assertion as to the lack of prejudice to the Defence is unfounded.

C. RELIEF REQUESTED

12. Based on the above submissions, the Defence accordingly requests that the Chamber:

REJECT the Prosecution’s Urgent Further Request for Disclosure of Evidence in a Related Article 70 Proceeding



Peter Haynes

Lead Counsel of Mr. Jean-Pierre Bemba

Done at The Hague, the Netherlands

3 June 2015

¹⁴ ICC-01/05-01/08-3250-Conf, para. 10.