

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 5 June 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***

Public

**Decision on “Prosecution’s Third Further Request for Disclosure of Evidence
in a Related Article 70 Proceeding”**

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

Ms Melinda Taylor

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

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

**Other
Trial Chamber VII**

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’s Third Further Request for Disclosure of Evidence in a Related Article 70 Proceeding” (“Decision”).

I. Background and Submissions

1. On 27 May 2014, the Chamber issued its “Decision on ‘Prosecution’s Urgent Further Request for Disclosure of Evidence in a Related Article 70 Proceeding’” (“Decision 3074”),¹ in which it authorised the Office of the Prosecutor (“prosecution”) to disclose unredacted transcripts and filings from the *Bemba* case to the defence in *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido* (“case ICC-01/05-01/13”).²
2. On 26 June 2014, the Chamber issued its “Decision on ‘Prosecution’s Second Further Request for Disclosure of Evidence in a Related Article 70 Proceeding’”,³ in which it authorised the prosecution to disclose the unredacted transcripts of two additional defence witnesses.⁴
3. On 29 May 2015, the prosecution filed its “Prosecution’s Third Further Request for Disclosure of Evidence in a Related Article 70 Proceeding”

¹ Decision on “Prosecution’s Urgent Further Request for Disclosure of Evidence in a Related Article 70 Proceeding”, 27 May 2014, ICC-01/05-01/08-3074.

² ICC-01/05-01/08-3074, paragraph 20.

³ Decision on “Prosecution’s Second Further Request for Disclosure of Evidence in a Related Article 70 Proceeding”, 26 June 2014, ICC-01/05-01/08-3098-Conf. A public redacted version was filed simultaneously: Redacted Version of “Decision on ‘Prosecution’s Urgent Further Request for Disclosure of Evidence in a Related Article 70 Proceeding’”, 26 June 2014, ICC-01/05-01/08-3098-Red.

⁴ ICC-01/05-01/08-3098-Red, paragraphs 19 and 21.

("Third Request"),⁵ in which it requests that the Chamber authorise disclosure by the prosecution of documents ICC-01/05-01/08-2817-Conf⁶ and ICC-01/05-01/08-2819-Conf⁷ ("Filings") to the defence in case ICC-01/05-01/13.⁸ The Filings contain the questions which the legal representatives of victims intended to ask during their examination of Witness D54.⁹

4. The prosecution (i) makes submissions as to the Filings' relevance to case ICC-01/05-01/13,¹⁰ (ii) incorporates its submissions from a similar prior request by reference,¹¹ (iii) recalls the Chamber's previous decision on a similar request,¹² (iv) submits that its Third Request does not give rise to any security risk to Witness D54,¹³ and (v) submits that disclosure of the Filings is in the interests of justice and would cause no prejudice to the defence.¹⁴ In addition, the prosecution states that "[s]hould the Chamber grant [the Third Request], the Prosecution will inform the Defence in the Article 70 case of the confidentiality level of the Filings, in accordance with [Decision 3074] and regulation 42(2)".¹⁵

⁵ Prosecution's Third Further Request for Disclosure of Evidence in a Related Article 70 Proceeding, 29 May 2015, ICC-01/05-01/08-3250-Conf. A public redacted version of the Prosecution's Third Further Request for Disclosure of Evidence in a Related Article 70 Proceeding was filed and notified on 1 June 2015, ICC-01/05-01/08-3250-Red.

⁶ Requête de la Représentante légale de victimes afin d'être autorisée à interroger le témoin 54, 17 September 2013, ICC-01/05-01/08-2817-Conf.

⁷ Requête du Représentant légal de victimes afin d'être autorisée à interroger le témoin 54, 20 September 2013, ICC-01/05-01/08-2819-Conf..

⁸ ICC-01/05-01/08-3250-Red, paragraph 11.

⁹ Insofar as the Decision refers to confidential filings, the Chamber considers that the reference to these filings does not require confidential treatment at this time.

¹⁰ ICC-01/05-01/08-3250-Red, paragraph 5.

¹¹ ICC-01/05-01/08-3250-Red, paragraph 6.

¹² ICC-01/05-01/08-3250-Red, paragraph 7.

¹³ ICC-01/05-01/08-3250-Red, paragraph 8.

¹⁴ ICC-01/05-01/08-3250-Red, paragraph 10.

¹⁵ ICC-01/05-01/08-3250-Red, paragraph 9.

5. On 3 June 2015, the defence filed its “Defence Response to Prosecution’s Urgent Further Request for Disclosure of Evidence in a related Article 70 Proceeding”,¹⁶ in which it requests that the Chamber reject the Third Request.¹⁷ The defence submits that in Decision 3074 the Chamber only held that the prosecution *could* share such information with the parties in other proceedings before the Court, and submits that the Third Request “provides no justification as to why the Chamber **should** grant the Prosecution’s [Third Request]”.¹⁸ It argues that the prosecution fails to explain *why* it needs to rely on the Filings in case ICC-01/05-01/13 and submits that “reasoned submissions to which the Defence can respond, and upon which the present Trial Chamber can base a decision” are required.¹⁹
6. In addition, the defence makes submissions based upon the timing of the Third Request, which the defence argues is “extremely late in the day”,²⁰ and asserts that “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”.²¹
7. Lastly, the defence submits that the “Prosecution’s assertion as to the lack of prejudice to the Defence is unfounded”.²²

¹⁶ Defence Response to Prosecution’s Urgent Further Request for Disclosure of Evidence in a Related Article 70 Proceeding, 3 June 2015, ICC-01/05-01/08-3251-Conf.

¹⁷ ICC-01/05-01/08-3251-Conf, paragraph 12.

¹⁸ ICC-01/05-01/08-3251-Conf, paragraphs 5 to 7.

¹⁹ ICC-01/05-01/08-3251-Conf, paragraph 8.

²⁰ ICC-01/05-01/08-3251-Conf, paragraph 9.

²¹ ICC-01/05-01/08-3251-Conf, paragraph 10.

²² ICC-01/05-01/08-3251-Conf, paragraph 11.

8. Also on 3 June 2015, the Legal Representative of Victims (“legal representative”) filed her “Réponse de la Représentante légale des victimes à ‘Prosecution’s Third Further Request for Disclosure of Evidence in a Related Article 70 Proceeding’, ICC-01/05-01/08-3250-Conf”,²³ in which she does not oppose the Third Request.²⁴ The legal representative states that none of the information of which disclosure is sought in the Third Request is sensitive or damaging to the interests of the victims she represents and recalls the Chamber’s prior decisions on requests for disclosure in case ICC-01/05-01/13.²⁵

II. Analysis and Conclusion

9. For the purposes of the present Decision the Chamber has considered Articles 64(6)(c) and (e) and (7), 67, and 68 of the Statute and Regulations 20 and 42 of the Regulations of the Court.
10. At the outset, the Chamber notes that the prosecution has previously requested that the Chamber permit it to disclose, in case ICC-01/05-01/13, two confidential filings from the legal representatives containing proposed lines of questioning for a witness,²⁶ and that the Chamber granted the prosecution’s request.²⁷

²³ Réponse de la Représentante légale des victimes à “Prosecution’s Third Further Request for Disclosure of Evidence in a Related Article 70 Proceeding”, ICC-01/05-01/08-3250-Conf, 3 June 2015, ICC-01/05-01/08-3252-Conf.

²⁴ ICC-01/05-01/08-3252-Conf, paragraph 11.

²⁵ ICC-01/05-01/08-3252-Conf, paragraphs 8 to 10.

²⁶ Prosecution’s Urgent Further Request for Disclosure of Evidence in a Related Article 70 Proceeding, 3 June 2014, ICC-01/05-01/08-3052-Red, paragraphs 6 and 24.

²⁷ ICC-01/05-01/08-3074, paragraph 23.

11. In relation to the present request, the defence argues that the prosecution has failed to demonstrate why the requested Filings “should” be disclosed.²⁸ In this regard, the Chamber notes that the prosecution states that the Filings’ content “pertains to allegations of improper witness interference that are central to the Article 70 case” and “is unique and cannot be obtained in any other manner”.²⁹ The Chamber also notes that in its previous request to disclose such filings the prosecution provided a similar explanation,³⁰ and the Chamber, finding that it had “sufficient information as to the necessity for the Items’ disclosure”,³¹ granted the prosecution’s request.³² The Chamber sees no basis for reaching a different conclusion in the present case.

12. Moreover, the Chamber does not consider that disclosure would cause prejudice to the defence in the *Bemba* case, or impact on the security of Witness D54. Firstly, irrespective of the prosecution’s assertion that “the Defence ha[ving] declined to rely on this witness’s evidence” has a bearing on the potential for the disclosure to cause prejudice to the defence,³³ which the defence challenges,³⁴ the Chamber finds that there is no reason to believe that the requested disclosure would cause any prejudice to the defence. The two Filings are lists of questions that the legal representatives sought authorisation from the Chamber to ask a witness; the Chamber sees no basis upon which the disclosure of such

²⁸ ICC-01/05-01/08-3251-Conf, paragraphs 5 to 7.

²⁹ ICC-01/05-01/08-3250-Red, paragraph 5.

³⁰ ICC-01/05-01/08-3052-Red, paragraph 18.

³¹ ICC-01/05-01/08-3074, paragraph 16.

³² ICC-01/05-01/08-3074, paragraph 23.

³³ ICC-01/05-01/08-3250-Red, paragraph 10.

³⁴ ICC-01/05-01/08-3251-Conf, paragraph 11.

documents to the parties in another case before the Court could cause prejudice to the defence in this case. Secondly, the Chamber sees no reason to believe that disclosure will give rise to any security risk to Witness D54, given that disclosure of the unredacted versions of the transcripts of his testimony in case ICC-01/05-01/13 has already been permitted.

13. As to the defence's submissions concerning the timing of the Third Request, including arguments related to deadlines and delays in case ICC-01/05-01/13,³⁵ the Chamber finds them to be entirely unconnected to the *Bemba* case and irrelevant to the Chamber's determination.

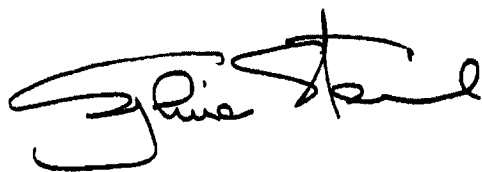
14. In view of the above, the Chamber:

- a. GRANTS the Third Request, subject to the condition that the prosecution inform the defence in case ICC-01/05-01/13 of the level of confidentiality of the Filings in the *Bemba* case which must be applied *mutatis mutandis* in that case;³⁶ and
- b. ORDERS the reclassification of documents ICC-01/05-01/08-3250-Conf, ICC-01/05-01/08-3251-Conf, and ICC-01/05-01/08-3252-Conf as public.

³⁵ ICC-01/05-01/08-3251-Conf, paragraphs 9 and 10.

³⁶ In this regard, the Chamber acknowledges the prosecution's statement that it will "inform the Defence in the Article 70 case of the confidentiality level of the Filings" should the Chamber grant the Third Request.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 5 June 2015

At The Hague, the Netherlands