

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **22 December 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

**Decision on "Defence Request for Leave to Reply to the 'Prosecution's Response to
"Defence request for disclosure of further material'"**

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 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 "Defence Request for Leave to Reply to the 'Prosecution's Response to 'Defence request for disclosure of further material'" ("Decision").

1. On 20 November 2015, the Defence for Mr Jean-Pierre Bemba Gombo ("Defence") filed the "Defence Request for Disclosure of Further Material" ("Disclosure Request"),¹ in which it requests that the Chamber order the Office of the Prosecutor ("Prosecution") to disclose: (i) certain material it identifies that were previously disclosed in the *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"); (ii) an un-redacted version of CAR-OTP-0089-1332-R01; (iii) any other material relating to the Prosecution's contact with D-55; and (iv) all Requests for Assistance concerning witnesses called by the Defence.² Additionally, the Defence requests that the Chamber "remain seized" of the issue should further requests for relief be made to overcome the prejudice of the Prosecution's alleged non-disclosure.³
2. On 14 December 2015, the Prosecution filed its "Prosecution's Response to 'Defence Request for disclosure of further material'" ("Prosecution Response") along with a confidential, *ex parte* annex containing an unredacted version of CAR-OTP-0089-1332.⁴ The Prosecution requests that the Chamber reject the Disclosure Request in its entirety, assess CAR-OTP-0089-1332, and declare the

¹ Defence Request for Disclosure of Further Material, 20 November 2015, ICC-01/05-01/08-3305-Conf.

² ICC-01/05-01/08-3305-Conf, para. 47.

³ ICC-01/05-01/08-3305-Conf, para. 47.

⁴ Prosecution's Response to "Defence Request for disclosure of further material", 14 December 2015, ICC-01/5-01/08-3307-Conf, with confidential *ex parte* annex A. On 17 December 2014, the Prosecution filed a public redacted version of the request. See ICC-01/05-01/08-3307-Red.

unredacted document as not material to the Defence's preparation in the *Bemba* case.⁵ The Prosecution argues that the Defence has failed to establish the requested materials' *prima facie* materiality to its preparation.⁶ Further, the Prosecution argues that the Disclosure Request is "vague, general and unsubstantiated" and an attempt to re-litigate previously rejected requests.⁷

3. On 18 December 2015, the Defence filed its "Defence Request for Leave to Reply to the 'Prosecution's Response to "Defence request for disclosure of further material'" ("Request for Leave to Reply").⁸ Specifically, the Defence requests leave to reply to (i) whether the Prosecution erred in asserting that the Defence is entitled to rely on documents in the *Bemba* case without formal disclosure; (ii) whether the Prosecution erred in asserting it previously disclosed relevant materials from D-55; (iii) whether the Prosecution erred in asserting that the Defence request for disclosure of an unredacted version of CAR-OTP-0089-1332 is an attempt to circumvent witness protective measures; (iv) the Prosecution's alleged misrepresentation of Defence arguments; (v) the Prosecution's alleged use of financial records in the *Bemba* case; and (vi) whether the Prosecution elected to prioritise its investigations in case ICC-01/05-01/13 over compliance with its disclosure obligations in the *Bemba* case.⁹

4. The Chamber is of the view that it may benefit from the Defence's views on certain issues set out in its Request for Leave to Reply. The Chamber reminds the

⁵ ICC-01/05-01/08-3307-Conf, para. 39.

⁶ ICC-01/05-01/08-3307-Conf, para. 2.

⁷ ICC-01/05-01/08-3307-Conf, para. 3.

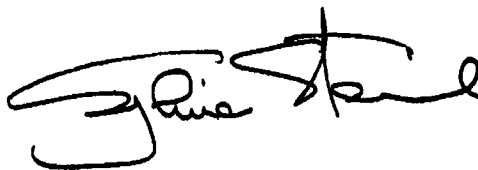
⁸ Defence Request for Leave to Reply to the 'Prosecution's Response to "Defence request for disclosure of further material"', 18 December 2015, ICC-01/05-01/08-3308-Conf.

⁹ ICC-01/05-01/08-3308-Conf, para. 9.

Defence that its reply must be narrowly tailored to only address new issues raised in the Prosecution Response.

5. Additionally, in light of the fact that the Prosecution Response is comprised of fourteen pages and noting the specific issues on which the defence seeks leave to reply, the Chamber considers, pursuant to Regulation 37(1) of the Regulations, that it is appropriate that the defence reply be limited to no more than seven pages.
6. In view of the above, the Chamber hereby:
 - a. GRANTS the Request for Leave to Reply, pursuant to Regulation 24(5) of the Regulations;
 - b. ORDERS that the Defence's reply be filed no later than 4 January 2016; and
 - c. ORDERS that the Defence's reply not exceed seven pages, pursuant to Regulation 37(1) of the Regulations.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 22 December 2015

At The Hague, the Netherlands