

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 January 2016

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 “Registry transmission of a document submitted by the
Defence for Mr. Jean Jacques Kabongo Mangenda on 12 November 2015”**

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 James Stewart

Mr Jean-Jacques Badibanga

**Counsel for Jean-Pierre Bemba Gombo
(ICC-01/05-01/08)**

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

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 the “First Request for Access to Confidential Material (Questions of the Legal Representatives of Victims)” (“Decision”).¹

I. Background and submissions

1. On 12 November 2015, the Registry transmitted² a request from the Defence for Mr Jean-Jacques Mangenda Kabongo (“Mr Mangenda’s defence”) in the case of *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”), entitled “First Request for Access to Confidential Material (Questions of the Legal Representatives of Victims)” (“Request”).³ Mr Mangenda’s defence requests access to the following documents: (i) all of the legal representatives of victims’ proposed questions that were submitted in advance of witness testimony in the *Bemba* case up to and including those pertaining to Witnesses D04-15 and D04-54 (“D15” and “D54”); (ii) “any decisions, oral rulings or other directions whatsoever describing the modalities by which the proposed questions were to be distributed to the parties”; and (iii) “any courtesy copies or email transmissions (including lists of email recipients) of such questions that were distributed throughout the [*Bemba*] [c]ase”.⁴ It submits that these documents are relevant to Mr Mangenda’s line of defence in case ICC-

¹ The Chamber notes that the present Decision is classified as public. To the extent that this Decision makes reference to confidential documents and information, the Chamber considers that the information concerned does not warrant confidential treatment at this time.

² Registry transmission of a document submitted by the Defence for Mr. Jean Jacques Kabongo Mangenda on 12 November 2015, 13 November 2015, ICC-01/05-01/08-3304-Conf.

³ First Request for Access to Confidential Material (Questions of the Legal Representatives of Victims), 12 November 2015, ICC-01/05-01/08-3304-Conf-Anx.

⁴ ICC-01/05-01/08-3304-Conf-Anx, para. 9.

01/05-01/13,⁵ and argues that there will be no negative impact on the security of any witness, as Mr Jean-Jacques Mangenda Kabongo (“Mr Mangenda”) already has knowledge of the requested information.⁶

2. On 26 November 2015, as authorised by the Chamber,⁷ the Legal Representative of Victims, Maître Marie-Edith Douzima-Lawson (“Legal Representative”), filed a response,⁸ submitting that the Request should be rejected; or, if granted she should be given the opportunity to identify and redact sensitive information relative to the victims concerned.⁹ The Legal Representative submits that the Request lacks coherence, noting its lack of clarity as to whether it refers to the legal representatives’ proposed questions in relation only to witnesses called by the Defence or all witnesses in the *Bemba* case.¹⁰ She further recalls that access to the proposed questions in relation to D15 and D54 has already been granted.¹¹ The Legal Representative also submits that the Request is too general, and lacks specificity and legal basis.¹²
3. The Legal Representative further argues that the Request is prejudicial to the personal interests of the victims concerned.¹³ She submits that certain victims were dual status individuals and subject to protective measures.¹⁴ According to the Legal Representative, the proposed

⁵ ICC-01/05-01/08-3304-Conf-Anx, paras 5 to 7.

⁶ ICC-01/05-01/08-3304-Conf-Anx, para. 8.

⁷ See email from the Chamber to the parties and the Legal Representative of 17 November 2015 at 12.28; email from the Legal Representative to the Chamber of 24 November 2015 at 10.23; and email from the Chamber to the Legal Representative, copying the parties, of 24 November 2015 at 14.50.

⁸ Réponse de la Représentante légale des victimes à la « First Request for Access to Confidential Material (Questions of the Legal Representatives of Victims)» de la Défense de M. Jean-Jacques Kabongo Mangenda, ICC-01/05-01/08-3306-Conf, 26 November 2015.

⁹ ICC-01/05-01/08-3306-Conf, page 9.

¹⁰ ICC-01/05-01/08-3306-Conf, para. 7.

¹¹ ICC-01/05-01/08-3306-Conf, para. 8.

¹² ICC-01/05-01/08-3306-Conf, paras 10 to 13.

¹³ ICC-01/05-01/08-3306-Conf, paras 14 to 18.

¹⁴ ICC-01/05-01/08-3306-Conf, para. 15.

questions may contain sensitive information on the identity of the witnesses concerned or third parties, or that may tend to reveal the identity of these persons or their locations.¹⁵

4. The Office of the Prosecutor ("Prosecution"), deferred to the Chamber's Decision,¹⁶ and the defence for Mr Jean-Pierre Bemba in the *Bemba* case ("Defence") did not file any submission in relation to the Request.

II. Analysis and conclusion

5. For the purposes of the present Decision the Chamber has considered Articles 64(2), (6)(c), and (e), 67(1), and 68(1) of the Rome Statute ("Statute"), Rule 15(1) of the Rules of Procedure and Evidence ("Rules"), and Regulations 20, 23*bis*, and 42 of the Regulations of the Court ("Regulations").
6. As a preliminary matter, the Chamber notes that Mr Mangenda's defence requests access to all of the legal representatives' proposed questions "up to and including those pertaining to D15 and D54",¹⁷ but elsewhere submits that it "requests disclosure of all prior LRV questions for the other defence witnesses".¹⁸ Despite this inconsistency,¹⁹ the Chamber understands that the submissions of Mr Mangenda's defence relate to witnesses called by the Defence. The Chamber further clarifies, as noted by the Legal Representative, that

¹⁵ ICC-01/05-01/08-3306-Conf, paras 14 to 16.

¹⁶ Email from the Prosecution to the Chamber of 20 November 2015, at 12.42.

¹⁷ ICC-01/05-01/08-3304-Conf-Anx, para. 9.

¹⁸ ICC-01/05-01/08-3304-Conf-Anx, para. 6.

¹⁹ ICC-01/05-01/08-3304-Conf-Anx, paras 6 and 9.

Mr Mangenda's defence was previously granted access to the questions for D15 and D54.²⁰

7. Turning to the merits of the Request, the Chamber recalls that in previous requests by defence teams in case ICC-01/05-01/13 for access to confidential material in the *Bemba* case, it has imposed a requirement that the requesting party must "identify, on the basis of the material that is publicly available, the specific documents consider[ed] to be necessary for the effective representation of [an accused] in case ICC-01/05-01/13 and provide a substantiated justification for any specific request".²¹
8. In its Request, in relation to the legal representatives' proposed lists of questions, Mr Mangenda's defence argues that access to the questions will facilitate the preparation of a defence to the allegations concerning Mr Mangenda's knowledge at the time he allegedly forwarded the questions in respect of D15 and D54 to Mr Aimé Kilolo Musamba by email.²² The Chamber considers that Mr Mangenda's defence requested a specific category of documents concerning an identified and limited set of Defence witnesses in the *Bemba* case, and further provided a

²⁰ In relation to D15: 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, paras 3 and 23; Requête de la Représentante légale de victimes relative à l'interrogatoire du témoin 15", 27 June 2013, ICC-01/05-01/08-2720-Conf; and "Requête du Représentant légal de victimes afin d'être autorisé à interroger le témoin D-015", 4 July 2013, ICC-01/05-01/08-2725-Conf. In relation to D54: Decision on "Prosecution's Third Further Request for Disclosure of Evidence in a Related Article 70 Proceeding", 5 June 2015, ICC-01/05-01/08-3253, paras 3 and 14; 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; and 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.

²¹ Decision on "Transmission of a submission from Mr Nick Kaufman dated 22 January 2014", 13 February 2014, ICC-01/05-01/08-2972, para. 11; Decision on "Registry Transmission of a Submission received from the Defence for Mr Narcisse Arido dated 18 August 2014", 5 September 2014, ICC-01/05-01/08-3134-Conf, paras 9 and 12; and Decision on "Registry Transmission of a Joint Request received from the Defence teams in the *Bemba et al.* case (ICC-01/05-01/13)", 18 September 2015, ICC-01/05-01/13-3298, para. 20.

²² ICC-01/05-01/08-3304-Conf-Anx, para. 6.

substantiated justification for access, namely, the potential relevance of the information to the defence of Mr Mangenda. The Chamber therefore considers that Mr Mangenda's defence's request for access to proposed questions, including "courtesy copies or email transmissions (including lists of email recipients) of such questions" is justified.

9. The Chamber notes that the aforementioned documents are currently classified as confidential and the Chamber remains under a duty, pursuant to Article 68(1) of the Statute, "to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses". The Chamber has previously held, in relation to a request for access to material pursuant to Regulation 42 of the Regulations, that "confidential information from the *Bemba* case may be transmitted to the parties in case ICC-01/05-01/13, and that such transmission, in principle, does not amount to a variance of protective measures as long as the same restrictions are applied *mutatis mutandis* to the recipients thereof."²³ In the view of the Chamber, noting that the protective measures previously ordered remain in place and given the fact that Mr Mangenda has already been privy to the documents, it is not necessary for the Legal Representative to be granted a further opportunity to identify sensitive information or propose redactions.
10. In view of the above, the Chamber grants Mr Mangenda's defence's request for access to proposed questions by the legal representatives and orders the Registry to provide Mr Mangenda's defence with the confidential documents listed in the Annex to the present Decision.

²³ ICC-01/05-01/08-3298, para. 19.

11. As for the request for “courtesy copies or email transmissions (including lists of email recipients) of such questions”, the Chamber notes that in relation to the Defence witnesses covered by the Request, the legal representatives did not submit any questions through courtesy copies or email communications. Therefore, this part of the Request is moot.

12. The Chamber now turns to the other materials that form the subject of the Request, namely “any decisions, oral rulings or other directions whatsoever describing the modalities by which the proposed questions were to be distributed to the parties”.²⁴ Mr Mangenda’s defence argues that it needs access in order to gain information about “customary practice” related to the manner in which the legal representatives’ questions were normally circulated in the case, when they were normally circulated, to whom they were normally circulated, and the general nature of such questions in relation to proceedings in court.²⁵

13. However, the Chamber notes that the modalities regarding the submission of proposed questions by the legal representatives of victims are set out in public decisions issued by this Chamber.²⁶ The Chamber further stresses that for all but two witnesses covered by the Request, the Chamber’s oral decisions on proposed questions are available in the relevant public or public redacted versions of the transcripts.²⁷ While one relevant oral decision is still redacted in the

²⁴ ICC-01/05-01/08-3304-Conf-Anx, paras 7 and 9.

²⁵ ICC-01/05-01/08-3304-Conf-Anx, paras 2 and 9.

²⁶ Decision on Directions for the Conduct of the Proceedings, ICC-01/05-01/08-1023, 19 November 2010, paras 17 to 20; and Decision (i) ruling on legal representatives’ applications to question Witness 33 and (ii) setting a schedule for the filing of submissions in relation to future applications to question witnesses, ICC-01/05-01/08-1729, 9 September 2011, paras 13 to 19.

²⁷ See **D53**: T-230, page 44, line 3 to page 45, line 19; **D59**: T-238, page 1, line 15 to page 2, line 12; **D60**: T-243, page 1, line 24 to page 4, line 2; **D65**: T-246, page 29, line 2 to page 31, line 4; **D7**: T-248, No. ICC-01/05-01/08

public redacted version of the transcript,²⁸ the Chamber recalls that Mr Mangenda's defence has access to the confidential version of the transcript by virtue of a previous decision issued by this Chamber.²⁹ Finally, the Chamber has filed a public redacted version of the written decision on the legal representatives' applications to question Witness D19. Accordingly, the Chamber considers that this part of the Request is moot.

14. As for the request for access to "other directions whatsoever", the Chamber considers that this category is broad and poorly defined, and that Mr Mangenda's defence failed to provide a specific and tailored justification.

15. In view of the above, the Chamber hereby:

- i. **GRANTS** the request for access to all of the legal representatives' proposed questions in relation to witnesses called by the Defence in the *Bemba* case and submitted in advance of their testimony prior to the testimony of D-15 and D-54, subject to the conditions set out in paragraph 9;

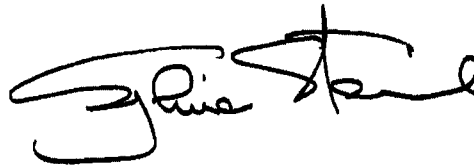
page 56, line 16 to page 57, line 8; **D50**: T-254, page 65, line 21 to page 67, line 1; **D57**: T-257, page 1, line 21 to page 2, line 13; **D64**: T-259, page 63, line 11 to page 64, line 4; **D51**: T-261, page 1, line 24 to page 2, line 14; **D55**: T-264, page 1, line 22 to page 2, line 10; **D48**: T-267, page 1, line 22 to page 2, line 16; **D49**: T-270, page 1, line 22 to page 2, line 11; **D16**: T-276, page 1, line 22 to page 2, line 9; **D66**: T-279, page 1, line 22 to page 2, line 9; **D21**: T-301, page 2, line 1 to 14; **D39**: T-308, page 2, lines 3 to 13; **D56**: T-313, page 2, line 2 to page 4, line 1; **D18**: T-317, page 1, line 20 to page 2, line 11; **D2**: T-321, page 2, lines 8 to 22; **D9**: T-322bis, page 2, line 16 to page 3, line 8; **D3**: T-325, page 2, lines 10 to 24; **D4**: T-326, page 23, line 19 to page 27, line 8; **D6**: T-328, page 2, lines 7 to 18; **D23**: T-334, page 2, lines 7 to 20; **D26**: T-335, page 2, lines 7 to 23; **D25**: T-336, page 77, line 14 to page 78, line 2; **D36**: T-337, page 73, lines 4 to 20; **D29**: T-339, page 27, line 11 to page 28, line 1; and **D30**: T-341, page 20, lines 8 to 22.

²⁸ See **D45**: T-293-Conf, page 28, line 25 to page 29, line 15.

²⁹ ICC-01/05-01/08-3074, paras 3 and 23.

- ii. **REJECTS** the remainder of the Request;
- iii. **ORDERS** the Registry to grant Mr Mangenda's defence access to the confidential documents listed in the Annex to the present Decision;
- iv. **RECLASSIFIES** documents ICC-01/05-01/08-3304-Conf and ICC-01/05-01/08-3304-Conf-Anx as public;
- v. **REQUESTS** the Legal Representative to file a public redacted version of document ICC-01/05-01/08-3306-Conf or to inform the Chamber that the document can be reclassified as public without redactions.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 8 January 2016

At The Hague, the Netherlands