

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/08
Date: 27 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 Document

Prosecution's Response to "Urgent Defence Request for Reclassification"

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

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I. Introduction

1. On 19 January 2016, the Defence of Jean-Pierre Bemba Gombo filed an urgent application (“Defence Request”)¹ requesting Trial Chamber III (“Chamber”) to authorise the transmission of 57 Filings listed in an annex (“Annex A”)² from Case No. ICC-01/05-01/08 (“Bemba Case”) to the parties in Case No. ICC-01/05-01/13 (“Article 70 Case”).

2. The Office of the Prosecutor (“Prosecution”) opposes the Defence Request as regards item n. 36 listed in Annex A.³ The Defence has labelled the filing in question - ICC-01/05-01/08-3141-Conf - as “Prosecution Final Trial Brief”. The filing number indicated by the Defence yet identifies the “Prosecution’s Response to the Defence Closing Brief”. Moreover, the justification provided by the Defence is confusing and misleading, as it refers to paragraphs of both Prosecution’s briefs.⁴

3. The Trial Chamber III (“Chamber”) held that requests from Defence teams in the Article 70 Case for access to confidential material in the Bemba Case should identify the specific documents, considered to be necessary for the effective representation of an accused in the Article 70 Case, and provide a substantiated justification.⁵

4. The Defence Request fails to meet these requirements and should be rejected. The document to which access is sought is not properly identified; the justification

¹ ICC-01/05-01/08-3317-Anx1, Urgent Defence Request for Reclassification, 19 January 2016.

² ICC-01/05-01/08-3317-Conf-AnxA-Red.

³ *Ibid.*, at p. 6.

⁴ The Defence justification reads as follows: “At paras. 96, 98, 100 and 109 the Prosecution sets out its position regarding the factual threshold for collusion, coaching and corruption.” The paragraphs quoted by the Defence can be found in the “Prosecution’s Response to the Defence Closing Brief” (ICC-01/05-01/08-3141-Conf). The Defence justification continues as follows: “The Prosecution also relied on the testimony of D6 (paras. 11, 17, 127), D26 (para.3), D13 (paras. 10, 18, 127, 130, 151), as witnesses of truth.” The paragraphs quoted by the Defence can be found in the “Prosecution’s Closing Brief” (ICC-01/05-01/08-3079-Conf).

⁵ ICC-01/05-01/08-3298, 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, para. 20.

supporting the request, far from being substantiated, is unclear and confusing. As such, the Defence Request prevents the Prosecution from providing any meaningful observation on the materiality of the information sought and assessing whether witness protection and security issues require redactions.

5. The Prosecution does not oppose the remaining part of the Defence Request.

II. Relief sought

6. In light of the above, the Prosecution:

- a) Requests that the Chamber reject the Defence Request as regards item n. 36 listed in Annex A;
- b) Defers to the Chamber's decision as to the remaining part of the Defence Request.



Fatou Bensouda, Prosecutor

Dated this 27th Day of January 2016
At The Hague, The Netherlands