

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 27 May 2014

**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 "Prosecution's Urgent 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**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

Ms Natacha Schauder

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

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 "Prosecution's Urgent Further Request for Disclosure of Evidence in a Related Article 70 Proceeding" ("Decision").

## I. Background and Submissions

1. On 12 March 2014, the Chamber issued its "Decision on 'Prosecution Request for a Variance of Protective Measures of Trial Witnesses to Allow Access to Transcripts of Evidence in a Related Article 70 Proceeding'" ("Decision 3014"),<sup>1</sup> in which it decided on a request by the Office of the Prosecutor ("prosecution"),<sup>2</sup> originally submitted under Regulation 42(3) of the Regulations of the Court ("Regulations"),<sup>3</sup> for a variance of protective measures of *all* witnesses called by the Defence for Mr Jean-Pierre Bemba ("defence") in the *Bemba* case,<sup>4</sup> in order to, *inter alia*, comply with disclosure obligations 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").<sup>5</sup>

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<sup>1</sup> Decision on "Prosecution Request for a Variance of Protective Measures of Trial Witnesses to Allow Access to Transcripts of Evidence in a Related Article 70 Proceedings", 12 March 2014, ICC-01/05-01/08-3014.

<sup>2</sup> See Prosecution Request for a Variance of Protective Measures of Trial Witnesses to Allow Access to Transcripts of Evidence in a Related Article 70 Proceeding, 30 January 2014, ICC-01/05-01/08-2951-Conf-Exp, document reclassified as confidential pursuant the Chamber's Order of 30 January 2014, ICC-01/05-01/08-2951-Conf, and was later reclassified as public pursuant the Chamber's Order of 24 March 2014, ICC-01/05-01/08-2951.

<sup>3</sup> ICC-01/05-01/08-2951, paragraph 2.

<sup>4</sup> ICC-01/05-01/08-2951, paragraph 4.

<sup>5</sup> ICC-01/05-01/08-2951, paragraph 10. See *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, ICC-01/05-01/13.

2. In ruling on the prosecution's request, the Chamber found that disclosure of the identity of *all* witnesses called by the defence in the *Bemba* case to the accused in case ICC-01/05-01/13 would, as submitted by the prosecution,<sup>6</sup> amount to a variation of protective measures under Regulation 42(3) of the Regulations,<sup>7</sup> which would have required that the Chamber seek the witnesses' consent to the requested variation pursuant to Regulation 42(4) of the Regulations.<sup>8</sup> With this in mind, prior to deciding on the requested variation of protective measures in relation to *all* witnesses called by the defence, the Chamber authorised the prosecution to disclose in case ICC-01/05-01/13, as a provisional measure, the transcripts of the testimony of witnesses called by the defence, with the redactions proposed by the defence but yet to be approved by the Chamber before its release to the public.<sup>9</sup>
  
3. On 22 April 2013, the prosecution filed its "Prosecution's Urgent Further Request for Disclosure of Evidence in a Related Article 70 Proceeding" ("Prosecution Request"),<sup>10</sup> in which it requests the Chamber, to permit the disclosure in case ICC-01/05-01/13 of: (i) 44 confidential transcripts of the testimony of 14 witnesses called by the defence in the *Bemba* case;<sup>11</sup> (ii) five

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<sup>6</sup> ICC-01/05-01/08-2951, paragraph 13.

<sup>7</sup> ICC-01/05-01/08-3014, paragraph 13.

<sup>8</sup> ICC-01/05-01/08-3014, paragraphs 18 and 19.

<sup>9</sup> ICC-01/05-01/08-3014, paragraphs 14 and 15.

<sup>10</sup> Prosecution's Urgent Further Request for Disclosure of Evidence in a Related Article 70 Proceeding, 22 April 2014, ICC-01/05-01/08-3052-Conf.

<sup>11</sup> Referring to witnesses: (i) D04-64, i.e. transcript of hearing of 22 October 2012, ICC-01/05-01/08-T-259-CONF-ENG and transcript of hearing of 23 October 2012, ICC-01/05-01/08-T-260-CONF-ENG; (ii) D04-57, i.e. transcript of hearing of 17 October 2012, ICC-01/05-01/08-T-256-CONF-ENG, transcript of hearing of 18 October 2012, ICC-01/05-01/08-T-257-CONF-ENG and transcript of hearing of 19 October 2012, ICC-01/05-01/08-T-258-CONF-ENG; (iii) D04-55, i.e. transcript of hearing of 29 October 2012, ICC-01/05-01/08-T-264-CONF-ENG, transcript of hearing of 30 October 2012, ICC-01/05-01/08-T-265-CONF-ENG and transcript of hearing of 31 October 2012, ICC-01/05-01/08-T-266-CONF-ENG; (iv) D04-54, i.e. transcript of hearing of 30 October 2013, ICC-01/05-01/08-T-347-CONF-ENG, transcript of hearing of 31 October 2013, ICC-01/05-01/08-T-348-CONF-ENG and transcript of hearing of 1 November

confidential transcripts of the testimony of Witness CHM-01;<sup>12</sup> (iii) two confidential filings of the legal representatives of victims containing lines of questioning for Witness D04-15;<sup>13</sup> (iv) the confidential defence list of evidence for trial;<sup>14</sup> (v) the confidential summary of the proposed

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2013, ICC-01/05-01/08-T-349-CONF-ENG; (v) D04-45, i.e. transcript of hearing of 13 March 2013, ICC-01/05-01/08-T-293-CONF-ENG, transcript of hearing of 14 March 2013, ICC-01/05-01/08-T-294-CONF-ENG, transcript of hearing of 15 March 2013, ICC-01/05-01/08-T-295-CONF-ENG, transcript of hearing of 18 March 2013, ICC-01/05-01/08-T-296-CONF-ENG, transcript of hearing of 19 March 2013, ICC-01/05-01/08-T-297-CONF-ENG, transcript of hearing of 20 March 2013, ICC-01/05-01/08-T-298-CONF-ENG, transcript of hearing of 21 March 2013, ICC-01/05-01/08-T-299-CONF-ENG and transcript of hearing of 22 March 2013, ICC-01/05-01/08-T-300-CONF-ENG; (vi) D04-29, i.e. transcript of hearing of 28 August 2013, ICC-01/05-01/08-T-338-CONF-ENG and transcript of hearing of 29 August 2013, ICC-01/05-01/08-T-339-CONF-ENG; (vii) D04-26, i.e. relevant part of transcript of hearing of 20 August 2013, ICC-01/05-01/08-T-332-CONF-ENG, relevant part of transcript of hearing of 21 August 2013, ICC-01/05-01/08-T-333-CONF-ENG, relevant part of transcript of hearing of 22 August 2013, ICC-01/05-01/08-T-334-CONF-ENG and transcript of hearing of 23 August 2013, ICC-01/05-01/08-T-335-CONF-ENG; (viii) D04-25, i.e. transcript of hearing of 26 August 2013, ICC-01/05-01/08-T-336-CONF-ENG and transcript of hearing of 27 August 2013, ICC-01/05-01/08-T-337-CONF-ENG; (ix) D04-23, i.e. relevant part of transcript of hearing of 20 August 2013, ICC-01/05-01/08-T-332-CONF-ENG, relevant part of transcript of hearing of 21 August 2013, ICC-01/05-01/08-T-333-CONF-ENG and relevant part of transcript of hearing of 22 August 2013, ICC-01/05-01/08-T-334-CONF-ENG; (x) D04-15, i.e. transcript of hearing of 11 September 2013, ICC-01/05-01/08-T-343-CONF-ENG, transcript of hearing of 12 September 2013, ICC-01/05-01/08-T-344-CONF-ENG and transcript of hearing of 13 September 2013, ICC-01/05-01/08-T-345-CONF-ENG; (xi) D04-7, i.e. transcript of hearing of 19 September 2012, ICC-01/05-01/08-T-248-CONF-ENG, transcript of hearing of 20 September 2012, ICC-01/05-01/08-T-249-CONF-ENG, transcript of hearing of 21 September 2012, ICC-01/05-01/08-T-250-CONF-ENG and transcript of hearing of 24 September 2012, ICC-01/05-01/08-T-251-CONF-ENG; (xii) D04-4, transcript of hearing of 18 June 2013, afternoon session, ICC-01/05-01/08-T-325bis-CONF-ENG, relevant part of transcript of hearing of 19 June 2013, ICC-01/05-01/08-T-326-CONF-ENG, transcript of hearing of 19 June 2013, afternoon session, ICC-01/05-01/08-T-326bis-CONF-ENG, transcript of hearing of 20 June 2013, ICC-01/05-01/08-T-327-CONF-ENG, transcript of hearing of 20 June 2013, afternoon session, ICC-01/05-01/08-T-327bis-CONF-ENG; (xiii) D04-3, i.e. transcript of hearing of 18 June 2013, ICC-01/05-01/08-T-325-CONF-ENG, relevant part of transcript of hearing of 19 June 2013, ICC-01/05-01/08-T-326-CONF-ENG and transcript of hearing of 25 June 2013, ICC-01/05-01/08-T-330-CONF-ENG; and (xiv) D04-2, i.e. transcript of hearing of 12 June 2013, ICC-01/05-01/08-T-321-CONF-ENG, transcript of hearing of 12 June 2013, afternoon session, ICC-01/05-01/08-T-321bis-CONF-ENG and transcript of hearing of 13 June 2013, ICC-01/05-01/08-T-322-CONF-ENG.

<sup>12</sup> That includes: transcript of hearing of 18 November 2013, ICC-01/05-01/08-T-353-CONF-ENG, transcript of hearing of 19 November 2013, ICC-01/05-01/08-T-354-CONF-ENG, transcript of hearing of 20 November 2013, ICC-01/05-01/08-T-355-CONF-ENG, transcript of hearing of 21 November 2013, ICC-01/05-01/08-T-356-CONF-ENG and transcript of hearing of 22 November 2013, ICC-01/05-01/08-T-357-CONF-ENG.

<sup>13</sup> Referring to "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.

<sup>14</sup> Referring to the Annex B to the "Defence Disclosure of its List of Witnesses and the Factual and Legal Elements of its Case", 13 July 2012, ICC-01/05-01/08-2243-Conf-AnxB.

testimony of the witnesses to be called by the defence;<sup>15</sup> and (vi) a confidential Registry filing (collectively hereafter "Items").<sup>16</sup>

4. The prosecution requests authorisation to disclose the Items under Regulation 42(2) of the Regulations which, it argues, governs the request as "*lex specialis* regarding the Prosecution's disclosure of material subject to protective measures in subsequent proceedings absent any need for a variation".<sup>17</sup> In the view of the prosecution, under Regulation 42(2) of the Regulations, the disclosure of the items requires only that the defence teams in case ICC-01/05-01/13 be informed of the protective measures in place, and Regulation 42(1) of the Regulations ensures that such measures continue in subsequent proceedings with full force and effect.<sup>18</sup>
  
5. Further, the prosecution argues that, although Regulation 42(2) of the Regulations foresees a change in the scope of access to protected items in subsequent proceedings, it imposes no obligation to vary the existing protective measures because "the disclosed materials remain entirely within the context of proceedings before, and fully regulated and controlled by, the Court".<sup>19</sup> As such, the prosecution submits, in the present circumstances the existing protective measures will continue to apply *mutatis mutandis*, and therefore, the requested disclosure does not

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<sup>15</sup> Referring to Annex A to the "Submissions on Defence Evidence", 28 May 2012, ICC-01/05-01/08-2222-Conf-AnxA.

<sup>16</sup> Referring to the Confidential redacted version of "Report of the Registrar on the events experienced by staff member of the Victims and Witnesses Unit in [Redacted]", 23 August 2012, ICC-01/05-01/08-2261-Conf-Red.

<sup>17</sup> ICC-01/05-01/08-3052-Conf, paragraph 7.

<sup>18</sup> ICC-01/05-01/08-3052-Conf, paragraph 10.

<sup>19</sup> ICC-01/05-01/08-3052-Conf, paragraph 11.

amount to a variation of protective measures under Regulation 42(3) of the Regulations.<sup>20</sup>

6. Alternatively, should the Chamber determine that Regulation 42(3) of the Regulations applies, the prosecution submits that the protective measures should be varied as the items are evidence material to case ICC-01/05-01/13 and the prosecution should be permitted to comply with its disclosure obligations.<sup>21</sup> The prosecution submits that the proposals for redactions authorised to be disclosed by the Chamber's Decision 3014 omit information crucial to prosecuting case ICC-01/05-01/13 and prevent the prosecution from fully discharging its disclosure obligations.<sup>22</sup> In particular, the prosecution argues that the omission of witnesses' names is problematic since, without this information, the prosecution cannot attribute evidence of alleged corrupt influence to a given witness in the *Bemba* case.<sup>23</sup> As such, the prosecution submits, reliance on the redacted transcripts undermines the prosecution's ability to prove the corrupt influencing of witnesses and their provision of false testimony under Article 70 of the Rome Statute ("Statute").<sup>24</sup>

7. The prosecution further observes that the link between the testimonies and case ICC-01/05-01/13 is direct as "witnesses in one case allegedly testified falsely, their testimony therefore comprises material evidence of the crimes charged in the Article 70 case".<sup>25</sup> The prosecution submits that

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<sup>20</sup> ICC-01/05-01/08-3052-Conf, paragraph 12.

<sup>21</sup> ICC-01/05-01/08-3052-Conf, paragraph 3.

<sup>22</sup> ICC-01/05-01/08-3052-Conf, paragraph 1.

<sup>23</sup> ICC-01/05-01/08-3052-Conf, paragraph 15.

<sup>24</sup> ICC-01/05-01/08-3052-Conf, paragraph 16.

<sup>25</sup> ICC-01/05-01/08-3052-Conf, paragraph 17.

its disclosure obligation arises from the fact that the Items at issue form the basis of the charges in case ICC-01/05-01/13 and the prosecution intends to rely on them for the purposes of the confirmation proceedings and at trial.<sup>26</sup> The prosecution further notes that non-disclosure of the witnesses' identity could jeopardise the overall fairness of the proceedings in case ICC-01/05-01/13, since the identities of the witnesses forming the basis of the crimes charged would be unknown to two of the five accused in the case.<sup>27</sup>

8. In addition, the prosecution submits that, to the extent that the Chamber may find that Regulation 42(4) of the Regulation applies, the provision affords the Chamber discretion and, in this case, the witnesses' failure to consent cannot be a dispositive impediment to disclosure.<sup>28</sup> To this end, the prosecution argues that "it is not 'possible' to obtain the views of witnesses in this situation, where witnesses who were allegedly corruptly influenced are unlikely to consent to disclosure, given their alleged involvement in the charged Article 70 offences".<sup>29</sup> As such, the prosecution suggests that the Chamber "should exercise its discretion to avoid creating a situation where witnesses (and suspects) implicated in perpetrating Article 70 offences effectively control access to or use of evidence material to proving their alleged wrongdoing".<sup>30</sup>

9. Further, the prosecution submits that, as confirmed by the Victims and Witnesses Unit ("VWU"), disclosure of the unredacted transcripts of

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<sup>26</sup> ICC-01/05-01/08-3052-Conf, paragraph 10 and 18.

<sup>27</sup> ICC-01/05-01/08-3052-Conf, paragraph 16.

<sup>28</sup> ICC-01/05-01/08-3052-Conf, paragraph 19.

<sup>29</sup> ICC-01/05-01/08-3052-Conf, paragraph 20.

<sup>30</sup> ICC-01/05-01/08-3052-Conf, paragraph 20.



evidence to the suspects in case ICC-01/05-01/13 would not have a negative impact on the security of witnesses.<sup>31</sup> In addition, the prosecution submits that, regardless of the manner in which the Chamber resolves the Prosecution Request, the defence teams in case ICC-01/05-01/13 are bound to respect their confidentiality obligations.<sup>32</sup>

10. Lastly, should the Chamber grant the Prosecution Request, the prosecution proposes that disclosure should be implemented *via* TRIM by the Registry.<sup>33</sup>

11. On 2 May 2014, the defence filed its "Defence Response to the 'Prosecution's Urgent Further Request for Disclosure of Evidence in a Related Article 70 Proceeding'" ("Defence Response"),<sup>34</sup> in which, repeating and relying on its previous response,<sup>35</sup> it submits that (i) the Prosecution Request prioritises establishing its case against the accused in case ICC-01/05-01/13 over the security of witnesses in the *Bemba* case,<sup>36</sup> and (ii) the prosecution has failed to advance any additional arguments to warrant what is, in fact, a request for reconsideration of the Chamber's

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<sup>31</sup> ICC-01/05-01/08-3052-Conf, paragraph 21, referring to Victims and Witnesses Unit's Observations on document ICC-01/05-01/08-2951-Conf, 5 February 2014, ICC-01/05-01/08-2960-Conf, reclassified as public on 24 March 2014, ICC-01/05-01/08-2960, paragraph 1.

<sup>32</sup> ICC-01/05-01/08-3052-Conf, paragraph 22.

<sup>33</sup> ICC-01/05-01/08-3052-Conf, paragraph 23.

<sup>34</sup> Defence Response to the "Prosecution's Urgent Further Request for Disclosure of Evidence in a Related Article 70 Proceeding", 2 May 2014, ICC-01/05-01/08-3060-Conf.

<sup>35</sup> ICC-01/05-01/08-3060-Conf, paragraph 1, referring to Defence Observations on the "Prosecution Request for a Variance of Protective Measures of Trial Witnesses to Allow Access to Transcripts of Evidence in a Related Article 70 Proceeding", 5 February 2014, ICC-01/05-01/08-2959-Conf, with public redacted version filed on the same date ICC-01/05-01/08-2959-Red, a corrigendum of the public redacted version was filed on 21 March 2014, ICC-01/05-01/08-2959-Red-Corr.

<sup>36</sup> ICC-01/05-01/08-3060-Conf, paragraph 2.

Decision 3014, or provide any information as to how the protection of the security of the witnesses involved will be ensured.<sup>37</sup>

12. In its previous response, the defence urged the Chamber to reject the request of the prosecution's request,<sup>38</sup> stressing that any variation of protective measures is subject to the requirement under Regulation 42(4) of the Regulations that the consent of the witnesses be sought.<sup>39</sup> According to the defence, this was further complicated by the "wholesale nature" of the prosecution's request, "which is in no way tailored to minimize the required variation of protective measures."<sup>40</sup> The defence further asserted that, although three of the accused in case ICC-01/05-01/13 have previously had access to the transcripts, two have not. In addition, the defence stated that "[n]o consideration has been given to the stress or confusion that may arise if defence witnesses are informed of the prosecution's intention to disclose their entire testimony to the two other accused persons and their lawyers, for its potential use in other proceedings."<sup>41</sup>

13. The defence further argued that the parties cannot "adduce testimony without the consent of the person concerned" and that "it must be presumed that the prosecution has not obtained the consent of these persons to use their transcripts as evidence" in case ICC-01/05-01/13.<sup>42</sup> Moreover, the defence highlighted a number of practical difficulties that

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<sup>37</sup> ICC-01/05-01/08-3060-Conf, paragraph 3.

<sup>38</sup> ICC-01/05-01/08-2959-Conf, paragraph 14.

<sup>39</sup> ICC-01/05-01/08-2959-Conf, paragraph 7.

<sup>40</sup> ICC-01/05-01/08-2959-Conf, paragraph 8.

<sup>41</sup> ICC-01/05-01/08-2959-Conf, paragraph 8.

<sup>42</sup> ICC-01/05-01/08-2959-Conf, paragraphs 9 to 11.

may prevent seeking the witnesses' consent.<sup>43</sup>

14. On 2 May 2014, the Registry filed its "Victims and Witnesses Unit's Observations on the Prosecution's Urgent Further Request for Disclosure of Evidence in a Related Article 70 Proceedings (ICC-01/05-01/08-3052-Conf)",<sup>44</sup> in which it submits that it does not object to the disclosure of the confidential redacted version of the Registry filing mentioned in the Prosecution Request.<sup>45</sup>

## II. Analysis and Conclusions

15. For the purpose of the present Decision and in accordance with Article 21(1) of the Statute, the Chamber has considered Articles 64(2), (6)(c) and (e), 67 and 68 of the Statute, Rules 77 and 87 of the Rules of Procedure and Evidence ("Rules"), and Regulations 23*bis*(3) and 42 of the Regulations.

16. In its Decision 3014, the Chamber ruled upon a general request for a 'variance' of the protective measures granted to *all* witnesses called by the defence in the *Bemba* case.<sup>46</sup> At that stage, the prosecution first relied on Regulation 42(3) of the Regulations,<sup>47</sup> then generally on Regulation 42 without being more specific,<sup>48</sup> and later suggested that the request was in

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<sup>43</sup> ICC-01/05-01/08-2959-Conf, paragraph 12.

<sup>44</sup> Victims and Witnesses Unit's Observations on the Prosecution's Urgent Further Request for Disclosure of Evidence in a Related Article 70 Proceedings (ICC-01/05-01/08-3052-Conf), 2 May 2014, ICC-01/05-01/08-3061-Conf.

<sup>45</sup> ICC-01/05-01/08-3061-Conf, paragraph 2.

<sup>46</sup> ICC-01/05-01/08-2951, paragraph 4.

<sup>47</sup> ICC-01/05-01/08-2951, paragraph 2.

<sup>48</sup> ICC-01/05-01/08-2951, paragraph 13.

fact governed by Regulation 42(2) of the Regulations.<sup>49</sup> The Chamber is now called upon to decide on a tailored request, relating to a specific number of transcripts and filings of the *Bemba* case. The prosecution explains that the primary relief it seeks is not a variance of protective measures under Regulation 42(3) of the Regulations but rather the disclosure of the material in case ICC-01/05-01/13 on the basis of Regulation 42(2). The prosecution also provides the Chamber with sufficient information as to the necessity for the Items' disclosure in the context of that proceeding.

17. The Chamber notes that pursuant to Rule 87(3) of the Rules, protective measures are directed at "prevent[ing] the release to the *public* or *press* and *information agencies*, of the identity or the location of a victim, a witness or other person at risk on account of testimony given by a witness". Therefore, 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.

18. As to the defence's concern of the possible stress and confusion that such disclosure may cause to the witnesses,<sup>50</sup> the Chamber is satisfied that, as

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<sup>49</sup> Reply to Defence Observations on the Prosecution Request for a Variance of Protective Measures, 17 February 2014, ICC-01/05-01/08-2979-Conf, reclassified as public on 24 March 2014, ICC-01/05-01/08-2979, paragraphs 9 to 12.

assessed by the VWU,<sup>51</sup> as long as the protective measures remain unchanged in case ICC-01/05-01/13, disclosure of the Items would not have a negative impact on the “safety, physical and psychological well-being, dignity and privacy of victims and witnesses”, pursuant to Article 68(1) of the Statute.

19. In view of the foregoing, and subject to the conditions below, the Chamber authorises the prosecution to disclose the non-redacted versions of the 49 transcripts<sup>52</sup> and the confidential versions of the 5 documents in case ICC-01/05-01/13.<sup>53</sup>

20. The Chamber underlines that the disclosure of the Items in case ICC-01/05-01/13 is authorised under the condition that all protective measures ordered in relation to the 15 witnesses concerned and the level of confidentiality imposed on the 49 transcripts and five documents from the *Bemba* case shall continue to have full force and effect until otherwise decided by this Chamber. Thus, the Chamber orders that the protective measures and level of confidentiality imposed on the Items by Trial Chamber III be applied *mutatis mutandis* before Pre-Trial Chamber II. When disclosing the Items, the prosecution must inform the defence in case ICC-01/05-01/13 of the nature of the protective measures granted to the 15 witnesses concerned and the level of confidentiality of the 49 transcripts and five documents from the *Bemba* case.

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<sup>52</sup> As listed in footnotes 11 and 12 above.

<sup>53</sup> Only confidential versions available to the prosecution (no *ex-parte* filings), i.e. ICC-01/05-01/08-2720-Conf, ICC-01/05-01/08-2725-Conf, ICC-01/05-01/08-2243-Conf-AnxB, ICC-01/05-01/08-2222-Conf-AnxA and ICC-01/05-01/08-2261-Conf-Red.

21. In addition, the Chamber notes that the Items include a confidential defence list of evidence for trial.<sup>54</sup> The Chamber finds that the prosecution may only disclose a version of the list redacting the names of any witnesses not referenced in the present Decision.

22. As to the prosecution request for the Chamber to decide on whether such disclosure should be implemented *via* TRIM by the Registry, the Chamber directs the prosecution to raise this matter before Pre-Trial Chamber II.

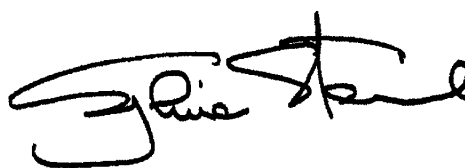
23. For the above reasons the Chamber:

- (i) GRANTS the Prosecution Request, subject to the conditions imposed in paragraphs 20 and 21 above;
- (ii) DIRECTS the prosecution to address the issue of the modality of disclosure with Pre-Trial Chamber II; and
- (iii) ORDERS the parties to file public redacted versions of their filings or to inform the Chamber that they can be reclassified as public with no redactions, within one week of the notification of the present Decision.

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<sup>54</sup> ICC-01/05-01/08-2243-Conf-AnxB

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



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**Judge Sylvia Steiner**



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**Judge Joyce Aluoch**



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**Judge Kuniko Ozaki**

Dated this 27 May 2014

At The Hague, the Netherlands