

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 30 September 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 "Registry Transmission of a submission received from the
Defence for Mr Bemba in the Bemba *et al.* case (ICC-01/05-01/13)"**

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, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”), issues the following Decision on “Registry Transmission of a submission received from the Defence for Mr Bemba in the Bemba *et al.* case (ICC-01/05-01/13)” (“Decision”).¹

I. Background

1. On 12 August 2015, the Registry transmitted a request from the Defence for Mr. Jean-Pierre Bemba Gombo in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido* (respectively “ICC-01/05-01/13 Bemba Defence” and “case ICC-01/05-01/13”), dated 29 September 2015, and entitled “Confidential Request from the Defence for Mr Bemba” (“Request”).²
2. In the Request, the ICC-01/05-01/13 Bemba Defence requests authorisation to use an email sent on behalf of the Chamber in the Bemba case on 30 August 2013 (“Email”),³ in which the Chamber authorised the Defence to contact Witness D04-15 “for the sole purpose of seeking his voluntary consent to appear before the Chamber at the earliest opportunity, by means of video technology [...]”^{4,5} The ICC-01/05-01/13 Bemba Defence submits that the Email “is relevant to the preparation of the Defence” in case ICC-01/05-01/13,⁶ in

¹ The Chamber notes that the present Decision is classified as public. To the extent that this Decision makes reference to the existence of, or, to a limited extent, the content of documents filed or communications exchanged on a confidential basis, the Chamber considers that the information concerned does not warrant confidential treatment at this time.

² Registry Transmission of a submission received from the Defence for Mr Bemba in the Bemba *et al.* case (ICC-01/05-01/13), 29 September 2015, ICC-01/05-01/08-3301-Conf and Conf-Anx1 and 2.

³ The Email is submitted as an annex to the Request: ICC-01/05-01/08-3301-Conf-Anx2.

⁴ ICC-01/05-01/08-3301-Conf-Anx2.

⁵ ICC-01/05-01/08-3301-Conf-Anx1, para. 10.

⁶ ICC-01/05-01/08-3301-Conf-Anx1, para. 6.

order to address “in a full and informed manner”⁷ issues related to (i) the Office of the Prosecutor (“Prosecution”)’s assertion in case ICC-01/05-01/13 “that the cut-off period for D-15 was 11 July 2013, and that any contacts which occurred after this date were prohibited by the Trial Chamber”;⁸ and (ii) the testimony of the first Prosecution witness in case ICC-01/05-01/13, scheduled to commence his testimony on 30 September 2015 “in relation to contacts and their frequency during the cut-off period”⁹ and who prepared a report citing “several internal emails from the [*Bemba* case] regarding the scheduling of witnesses”.¹⁰

3. No responses to the Request were submitted within the prescribed time limit.¹¹

III. Analysis and Conclusion

4. For the purpose of the present Decision and in accordance with Article 21 of the Rome Statute (“Statute”), the Chamber has considered Articles 64(2), (6), and (7), and 68 of the Statute, Rule 15(1) of the Rules of Procedure and Evidence, and Regulations 20, 23bis, and 42 of the Regulations.
5. Although the Request only seeks the Chamber’s authorisation to “use” the Email in case ICC-01/05-01/13 “on a confidential basis”,¹² the Chamber finds

⁷ ICC-01/05-01/08-3301-Conf-Anx1, para. 10

⁸ ICC-01/05-01/08-3301-Conf-Anx1, para. 7,

⁹ ICC-01/05-01/08-3301-Conf-Anx1, para. 8.

¹⁰ ICC-01/05-01/08-3301-Conf-Anx1, para. 9.

¹¹ Email from the Chamber to the Office of the Prosecutor, the Defence for Mr Jean-Pierre Bemba and the Legal Representative of Victims, sent on 29 September 2015 at 18.47.

¹² ICC-01/05-01/08-3301-Conf-Anx1, para. 10. The Chamber notes in this respect that the ICC-01/05-01/13 *Bemba* Defence, as a member of the defence for Mr Bemba in the *Bemba* case, already has access to the Email.

that its previous decisions on Regulation 42 of the Regulations, taken in relation to Prosecution requests for disclosure, and on requests by other case ICC-01/05-01/13 Defence teams for access to confidential material in the *Bemba* case, are of relevance to the present Decision.

6. In this regard, the Chamber recalls that it previously considered 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.¹³
7. Further, when ruling on requests from other Defence teams in case ICC-01/05-01/13 for access to confidential documents in the *Bemba* case, the Chamber held that such requests should “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”.¹⁴ Moreover, notwithstanding its findings on the applicability of Regulation 42 of the Regulations, the Chamber underlined that it is still bound by its duty under

¹³ Redacted Version of “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-Red, para. 14; 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, para. 17. *See also* 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-01/05-01/08-3298, para. 19

¹⁴ *See* ICC-01/05-01/08-3298, para. 20, *quoting* Decision on “Transmission of a submission from Mr. Nick Kaufman dated 22 January 2014”, 13 February 2014, ICC-01/05-01/08-2972, paragraph 11. *See also* 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 (emphasis added).

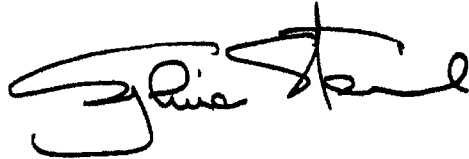
Article 68(1) of the Statute “to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”.¹⁵

8. With regard to the present Request, the Chamber considers that the ICC-01/05-01/13 *Bemba* Defence provides a sufficiently substantiated explanation as to why the Email is relevant for its preparation in case ICC-01/05-01/13. The Chamber therefore authorises the ICC-01/05-01/13 *Bemba* Defence to disclose and use the Email in case ICC-01/05-01/13 on a confidential basis.
9. In view of the above, the Chamber hereby:

- (a) GRANTS the Request, subject to the condition that the ICC-01/05-01/13 *Bemba* Defence inform the other Defence Teams in case ICC-01/05-01/13 of the level of confidentiality of the Email which must be applied *mutatis mutandis* in that case.

¹⁵ ICC-01/05-01/08- 3298, para. 21.
No. ICC-01/05-01/08

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 30 September 2015

At The Hague, the Netherlands