

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 March 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 "Defence Motion for the lifting of redactions of the 9 April 2013
status conference transcript"**

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

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 Keita

States Representatives

Amicus Curiae

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

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 "Defence Motion for the lifting of redactions of the 9 April 2013 status conference transcript" ("Decision").

I. Background and submissions

1. On 6 December 2013, the Chamber issued its Order on the reclassification of documents,¹ in which it, *inter alia*, ordered the Registry to submit a proposed confidential redacted version of ICC-01/05-01/08-T-303-CONF-EXP-ENG ET ("Transcript T-303-CONF") – the transcript of a 9 April 2013 confidential *ex-parte*, prosecution and Registry only, status conference – for the Chamber's approval.² The Chamber ordered the Registry to coordinate with the Office of the Prosecutor ("prosecution") on the proposed redactions to ensure consistency.³
2. On 22 January 2014, upon receipt and review of the Registry's proposals for redaction, the Chamber issued its Second Order on the reclassification of documents related to Decision ICC-01/05-01/08-2606-Conf ("Second Order"),⁴ in which it, *inter alia*, ordered the Registry to prepare and file a confidential redacted version of Transcript T-303-CONF, in accordance

¹ Order on the reclassification of documents, 6 December 2013, ICC-01/05-01/08-2920-Conf.

² ICC-01/05-01/08-2920-Conf, paragraphs 2 and 6.

³ ICC-01/05-01/08-2920-Conf, paragraph 6.

⁴ Second Order on the reclassification of documents related to Decision ICC-01/05-01/08-2606-Conf, 22 January 2014, ICC-01/05-01/08-2943-Conf with Confidential *ex parte* Annex.

with directions provided in the confidential *ex parte* annex to the Second Order.⁵

3. On 11 February 2014, the defence for Mr Jean-Pierre Bemba ("defence") filed its "Defence Motion for the lifting of redactions of the 9 April 2013 status conference transcript",⁶ in which it requests that the Chamber order the Registry to provide the defence with an unredacted version of Transcript T-303-CONF.⁷ In support of its request, the defence submits that the redactions made to Transcript T-303-CONF – provided to the defence pursuant to the Second Order – are not limited to submissions from the prosecution or the Registry and that interventions by two members of the bench have also been withheld.⁸ The defence submits that while the Registry was "permitted to make 'necessary redactions,'" Mr Bemba did not receive any justification as to why certain parts of Transcript T-303-CONF were redacted.⁹
4. Further, the defence notes the Chamber's statement that it has "not been previously involved in an Article 70 investigation and prosecution"¹⁰ and argues that consequently, "the 9 April Transcript must address matters peripheral to the Prosecution's investigations, and as such no prejudice can arise if this same information is provided to the Defence."¹¹ The defence alleges that even if the redacted sections of Transcript T-303-

⁵ ICC-01/05-01/08-2943-Conf, paragraph 4(c).

⁶ Defence Motion for the lifting of redactions of the 9 April 2013 status conference transcript, 11 February 2014, ICC-01/05-01/08-2967-Conf.

⁷ ICC-01/05-01/08-2967-Conf, paragraph 22.

⁸ ICC-01/05-01/08-2967-Conf, paragraph 15.

⁹ ICC-01/05-01/08-2967-Conf, paragraph 16.

¹⁰ ICC-01/05-01/08-2967-Conf, paragraph 17, quoting the Chamber in ICC-01/05-01/08-2920-Conf, paragraph 20.

¹¹ ICC-01/05-01/08-2967-Conf, paragraphs 17 to 18.

CONF were related to the prosecution's Article 70 investigations as of April 2013, these investigations are now effectively concluded.¹²

5. The defence also submits that in light of the Chamber's jurisprudence in relation to the prosecution's disclosure obligation under Rule 77 of the Rules of Procedure and Evidence ("Rules"), "all information concerning allegations of suborning perjury of Defence witnesses, and the credibility of Defence witnesses generally, is material to the Defence's preparation and should therefore be provided to the accused".¹³ Lastly, the defence submits that "maintaining redactions of matters which go to the heart of the Defence case – namely the credibility of witnesses" requires an "assessment of whether it is possible to have a fair trial in the absence of full disclosure".¹⁴
6. On 19 February 2014, the prosecution filed its "Prosecution's Response to 'Defence Motion for the lifting of redactions of the 9 April 2013 status conference transcript'" ("Prosecution Response"),¹⁵ in which it states that a lesser redacted version of Transcript T-303-CONF can be provided to the defence and the participants.¹⁶ The prosecution provides its proposal for a lesser redacted transcript as a confidential *ex-parte*, prosecution and Registry only, annex ("Annex A") to the Prosecution Response. The prosecution notes the developments of the proceedings in case ICC-01/05-01/13 as well as information available to the defence in the *Bemba* case, the

¹² ICC-01/05-01/08-2967-Conf, paragraph 18.

¹³ ICC-01/05-01/08-2967-Conf, paragraph 19.

¹⁴ ICC-01/05-01/08-2967-Conf, paragraph 21.

¹⁵ Prosecution's Response to "Defence Motion for the lifting of redactions of the 9 April 2013 status conference transcript", 19 February 2014, ICC-01/05-01/08-2986-Conf, with Confidential *ex parte* Annex A.

¹⁶ ICC-01/05-01/08-2986-Conf, paragraph 6.

defence in case ICC-01/05-01/13, and the public in relation to the prosecution's investigation in case ICC-01/05-01/13.¹⁷ Accordingly, the prosecution proposes that all redactions to Transcript T-303-CONF "related to the on-going investigations as well as the prosecutorial strategy in the case ICC-01/05-01/13 should be lifted, with the exception of the redactions proposed at page 19 of the transcript"; according to the prosecution, these redactions are "necessary to protect the safety, physical well-being and privacy of the concerned individuals".¹⁸

7. Further, the prosecution submits that lesser redactions, related to the Registry's practices in the management of the detention centre, may be applied to Transcript T-303-CONF.¹⁹ The prosecution submits that maintaining some redactions in Transcript T-303-CONF is necessary to "protect current and future Registry's practices in its management of the detention centre."²⁰ The prosecution notes that its submissions were made after consultations with the Registry.²¹

II. Analysis and conclusion

8. For the purpose of the present Decision and in accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber has considered Articles 64(2), 67, and 68 of the Statute; Rules 77 and 81(2) of the Rules; and Regulation 90 of the Regulations of the Court ("Regulations").

¹⁷ ICC-01/05-01/08-2986-Conf, paragraphs 10 to 12.

¹⁸ ICC-01/05-01/08-2986-Conf, paragraph 13.

¹⁹ ICC-01/05-01/08-2986-Conf, paragraph 14.

²⁰ ICC-01/05-01/08-2986-Conf, paragraph 15.

²¹ ICC-01/05-01/08-2986-Conf, paragraph 15.

9. The Chamber notes that its decision to provide Transcript T-303-CONF to the defence is in line with the Chamber's duties under Article 64(2) of the Statute. However, the Chamber permitted the application of certain limited redactions, *inter alia*, in order to avoid prejudicing further or ongoing investigations in case ICC-01/05-01/13. In light of the prosecution's submissions as to the developments in case ICC-01/05-01/13 and the information already available to the defence team in the Bemba case and in case ICC-01/05-01/13, as well as to the public, the Chamber now considers it appropriate to lift those redactions to Transcript T-303-CONF previously justified by the need to avoid disclosure of information that might prejudice further or ongoing investigation.
10. In addition, the Chamber notes its duty, pursuant to Article 68 of the Statute, to "take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses". As such, the Chamber finds that the prosecution's proposed redactions on page 20 of Annex A²² are appropriate and shall be maintained.
11. The Chamber further notes that the Registrar has overall responsibility, pursuant to Regulation 90 of the Regulations, for all aspects of management of the detention centre. In light of this responsibility, the Chamber considers that the majority of the proposed lesser redactions in relation to the management of the detention centre are appropriate and shall be maintained. However, the Chamber considers that the proposed redactions contained on pages 13, 15 and 25 of Annex A recommend redaction of information of a general nature that does not reveal any

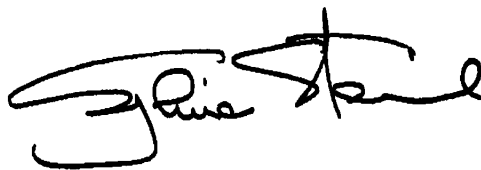
²² The Chamber notes that when it indicates a page number of Annex A, it refers to the page number affixed by Court Management Section on the top right header of the document.

confidential information relating to the Registrar's management of the detention centre; as such, these redactions shall be lifted.

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

- a. DENIES the defence's request for the provision of an unredacted version of Transcript T-303-CONF;
- b. ORDERS the Registry to prepare a confidential lesser redacted version of Transcript T-303-CONF in accordance with the prosecution's proposals in Annex A and the Chamber's instructions in paragraphs 9, 10 and 11 above and to file this document by 28 March 2014.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 21 March 2014

At The Hague, The Netherlands