

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 29 June 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 Redacted Version of "Decision on 'Urgent Defence Request for
Authorisation to Contact P-15'", ICC-01/05-01/08-3356 of 7 April 2016**

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 III (“Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on “Urgent Defence Request for Authorisation to Contact P-15” (“Decision”).

I. Background

1. On 26 May 2014, the Chamber issued its “Decision on the timetable and on the sentencing procedure”,¹ in which it, *inter alia*, (i) decided that it would “issue separate decisions pursuant to Article 74 and, in the event of a conviction, Article 76 of the Statute;”² and (ii) ordered “the parties and the legal representative, in the event of a conviction, to file written requests to submit further evidence or to call witnesses, including any requests for protective measures [(“Sentencing Requests”)], within two weeks of the issuance of the judgment on the merits.”³
2. On 21 March 2016, the Chamber issued its “Judgment pursuant to Article 74 of the Statute”, finding Mr Jean-Pierre Bemba Gombo guilty, under Article 28(a) of the Rome Statute (“Statute”), as a person effectively acting as a military commander, of the crimes of murder as a crime against humanity under Article 7(1)(a) of the Statute; murder as a war crime under Article 8(2)(c)(i) of the Statute; rape as a crime against humanity under Article 7(1)(g) of the Statute; rape as a war crime under Article 8(2)(e)(vi) of the Statute; and pillaging as a war crime under Article 8(2)(e)(v) of the Statute.⁴

¹ Decision on the timetable and on the sentencing procedure, 26 May 2014, ICC-01/05-01/08-3071.

² ICC-01/05-01/08-3071, para. 18(vi).

³ ICC-01/05-01/08-3071, para. 18(vii).

⁴ Judgment pursuant to Article 74 of the Statute, 21 March 2016, ICC-01/05-01/08-3343.

3. On the same day, the Chamber issued its “Decision on ‘Defence Request for clarification of the Decision on the timetable and on the sentencing procedure’ and related issues” (“Decision 3344”), in which it, *inter alia*, set a schedule for the filing of the Sentencing Requests.⁵
4. Also on 21 March 2016, the Defence for Mr Jean-Pierre Bemba Gombo (“Defence”) filed its “Urgent Defence Request for Authorisation to Contact P-15” (“Request”),⁶ in which it requests that the Chamber:⁷

ORDER the Prosecution to disclose Witness P-15’s [(“P-15”)] contact details to the Defence;

ORDER the VWU to facilitate the contact between the Defence and Witness P-15; and

ORDER an abridgment of time for the filing of any response to the Defence Request.

5. In support of its Request, the Defence submits that (i) “P-15’s testimony in February 2012 demonstrates his relevance to the Trial Chamber’s deliberation on sentence”;⁸ and (ii) “[REDACTED] it appears likely that he would be amenable to a meeting with the Defence”.⁹
6. On 4 April 2016, in line with the time limit set by the Chamber,¹⁰ the legal representative of victims (“Legal Representative”)¹¹ and the Office of the Prosecutor (“Prosecution”)¹² filed their responses to the Request, and the

⁵ Decision on “Defence Request for clarification of the Decision on the timetable and on the sentencing procedure” and related issues, 21 March 2016, ICC-01/05-01/08-3344, para. 11.

⁶ Urgent Defence Request for Authorisation to Contact P-15, 21 March 2016, ICC-01/05-01/08-3345-Conf.

⁷ ICC-01/05-01/08-3345-Conf, para. 23.

⁸ ICC-01/05-01/08-3345-Conf, para. 12.

⁹ ICC-01/05-01/08-3345-Conf, para. 15.

¹⁰ Email sent by the Chamber to the parties and participants on 23 March 2016, at 12.11.

¹¹ Réponse de la Représentante légale des victimes à l’« Urgent Defence Request for Autorisation to Contact P-15 », 4 April 2016, ICC-01/05-01/08-3347-Conf.

¹² Prosecution’s Response to “Urgent Defence Request for Authorisation to Contact P-15”, 4 April 2015, ICC-01/05-01/08-3350-Conf.

Victims and Witnesses Unit (“VWU”)¹³ submitted observations pursuant to Regulation 24*bis* of the Regulations of the Court (“Regulations”).

7. The Legal Representative submits that (i) the circumstances of the Defence’s request to contact P-15 could affect the credibility of P-15’s testimony during the sentencing hearing;¹⁴ (ii) P-15’s alleged willingness to enter into contact with the Defence is speculative and does not constitute a “good reason” for authorising the Defence to contact P-15;¹⁵ and (iii) the expected testimony of P-15 is neither pertinent nor appropriate for sentencing purposes.¹⁶
8. The Prosecution requests that the Chamber reject the Request. In the event the Request is granted, the Prosecution requests that it “be permitted to obtain P-15’s consent first before sharing his contact details with the Defence”.¹⁷ The Prosecution contends that the Defence “has not shown good cause as to why P-15 should be recalled or contacted at this stage of the proceedings”.¹⁸
9. The VWU submits that P-15 is not under the care of the Unit and has not been admitted into the ICC Protection Programme.¹⁹ Absent any information that P-15 may have had security concerns, the VWU considers that the matter can be handled *inter partes*.²⁰ However, the VWU “emphasises the need for the parties and participant to seek the witness’

¹³ Victims and Witnesses Unit’s observations pursuant to regulation 24*bis* of the Regulations of the Court concerning the “Urgent Defence Request for Authorisation to Contact P-15”, ICC-01/05-01/08-3345-Conf, 4 April 2016 (notified on 5 April 2016), ICC-01/05-01/08-3351-Conf.

¹⁴ ICC-01/05-01/08-3347-Conf, para. 8.

¹⁵ ICC-01/05-01/08-3347-Conf, paras 9 to 10.

¹⁶ ICC-01/05-01/08-3347-Conf, paras 11 to 13.

¹⁷ ICC-01/05-01/08-3350-Conf, para. 10.

¹⁸ ICC-01/05-01/08-3350-Conf, paras 5 to 8.

¹⁹ ICC-01/05-01/08-3351-Conf, para. 7.

²⁰ ICC-01/05-01/08-3351-Conf, para. 8.

consent to the said contact and to follow the good practices in their arrangement of contact with witnesses.”²¹ In this regard, the VWU further indicates that it is available and willing to assist the parties as necessary and appropriate, in particular, if security concerns arise.²²

10. On 6 April 2016, the Defence filed its “Defence Request for Leave to Reply to the Prosecution and Legal Representative of Victims’ Responses to the ‘Urgent Defence Request for Authorisation to Contact P-15’” (“Request for Leave to Reply”), in which it “seeks leave to file a short reply on whether the Prosecution or LRV present any valid ground for stifling Defence investigations or speaking with someone of undoubted relevance to the accused and the case”.²³

II. Analysis and Conclusions

11. 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(1)(b) and (2), and 68(1) of the Statute.
12. At the outset, the Chamber notes that the Request is limited to seeking the Chamber’s authorisation to contact P-15 in order “to explore whether he would be in a position to assist the Trial Chamber in its deliberations in this next phase of the case”.²⁴ Accordingly, the submissions of the Prosecution and Legal Representative on the relevance and appropriateness of any testimony that could be expected from P-15 may

²¹ ICC-01/05-01/08-3351-Conf, para. 9 (internal citations omitted), *referring to* ICC-01/05-01/08-813, paras 66 to 68; and ICC-01/05-01/08-2293, paras 10 to 13.

²² ICC-01/05-01/08-3351-Conf, paras 9 to 10.

²³ Defence Request for Leave to Reply to the Prosecution and Legal Representative of Victims’ Responses to the “Urgent Defence Request for Authorisation to Contact P-15”, 6 April 2016, ICC-01/05-01/08-3354-Conf, paras 5 and 7.

²⁴ ICC-01/05-01/08-3345-Conf, para. 3.

be relevant to the Chamber's decision on any future requests to call witnesses at the sentencing stage, but are not relevant for purposes of the present Decision. For the same reason, the Chamber considers that there is no benefit to hearing the Defence's views on the Prosecution's and Legal Representative's submissions to that effect, and therefore rejects the Request for Leave to Reply.

13. The Chamber notes the Defence's submission that P-15 would "give evidence on matters directly relevant to mitigation of sentence".²⁵ Under these circumstances, the Chamber is satisfied that the defence has demonstrated "good reason" for authorisation to contact P-15.²⁶

14. The Chamber notes the VWU's submission that P-15 is not "under the care of the Unit" and was "handed back to the calling party (the Prosecution) who is the focal point and [...] is currently under the Prosecution's management".²⁷ Under these circumstances, the Chamber agrees with the VWU that "there would be no need for the VWU to be required to facilitate the contact as this matter could be dealt with *inter partes*",²⁸ with the VWU providing assistance and information as necessary and appropriate.

15. In line with previous practice at this Court,²⁹ as reflected in the VWU's recommendation³⁰ and the Prosecution's submissions,³¹ the Chamber

²⁵ ICC-01/05-01/08-3345-Conf, para. 18.

²⁶ For an application of the "good reason" standard, see *The Situation in the Central African Republic*, Decision on the "Registry's Observations pursuant to regulation 24 *bis* of the Regulations of the Court on the implementation of the 'Decision on the Prosecutor's "Request for judicial assistance to obtain evidence for investigation under Article 70'"", 27 May 2013, ICC-01/05-50, para. 11.

²⁷ ICC-01/05-01/08-3351-Conf, para. 7.

²⁸ ICC-01/05-01/08-3351-Conf, para. 9.

²⁹ See ICC-01/05-01/08-2293, para. 13; and ICC-01/05-01/08-813, para. 68. See also *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision adopting the 'Protocol on disclosure of the identity of witnesses of other parties and of the LRV in the course of investigations, use of confidential information by the parties and the LRV in the course of investigations, inadvertent disclosure and

further finds that the Prosecution should seek P-15's consent before disclosing his contact details to the Defence. In the event that P-15 consents, the Prosecution shall disclose P-15's contact details to the Defence.³²

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

- (i) **AUTHORISES** the Defence, subject to the witness's consent, to contact P-15 for the purposes of the preparation of its Sentencing Request;
- (ii) **ORDERS** the Prosecution to contact P-15, as soon as practicable, in order to determine whether he consents to the disclosure of his contact details to the Defence;
- (iii) **ORDERS** the Prosecution, in the event P-15 consents, to disclose the contact details of P-15 to the Defence within five days of receiving such consent; and

contacts between a party and witnesses not being called by that party', 31 August 2015, ICC-02/11-01/15-200-Anx, para. 31; *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, Decision adopting a Protocol on the Handling of Confidential Information during Investigations and contact Between a Party and Witnesses of the Other Parties, 20 July 2015, ICC-01/05-01/13-1093-Anx, para. 34; and *The Prosecutor v. Bosco Ntaganda*, Decision on adoption of a 'Protocol on the Handling of Confidential Information During Investigations and Contact Between a Party or Participant and Witnesses of the Opposing Party or a Participant', 12 December 2014, ICC-01/04-02/06-412-AnxA, para. 33.

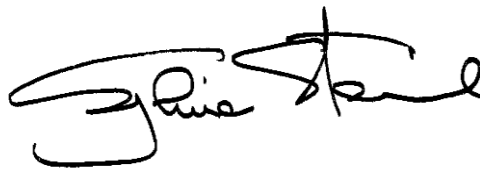
³⁰ ICC-01/05-01/08-3351-para. 9.

³¹ ICC-01/05-01/08-3350-Conf, paras 9 to 10.

³² The Chamber recalls that as a general rule in the *Bemba* case and considering the particular security situation in the places of residence of the witnesses, the addresses and contact details of witnesses is information that the Chamber has consistently considered to fall under Article 68(1) of the Statute and, as such, has not been disclosed to the parties or participants. *See, inter alia*, ICC-01/05-01/08-3070, para. 16, referring to ICC-01/05-01/08-813-Conf, paras 65 and 66; Decision on defence disclosure and related issues, 24 February 2012, ICC-01/05-01/08-2141, paras 23 and 29; Confidential redacted version of "Decision on the prosecution's 'Information on contacts of Witnesses 169 and 178 with other witnesses located [REDACTED]' (ICC-01/05-01/08-2827-Conf-Exp)" of 25 October 2013, 5 November 2013, ICC-01/05-01/08-2845-Conf-Red, para. 12; and Decision on "Defence Motion for Reclassification of documents", 1 May 2014, ICC-01/05-01/08-3057, para. 17.

(iv) **REJECTS** the Request for Leave to Reply.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 29 June 2016

At The Hague, the Netherlands