

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **19 April 2018**

TRIAL CHAMBER III

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Chang-ho Chung
Judge Kimberly Prost

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
*THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO***

Public

**Prosecution's response to Bemba's article 70 Defence's request for access to filings
in ICC-01/05-01/08**

Source: 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

Ms Fatou Bensouda, Prosecutor

Mr James Stewart

Ms Helen Brady

Counsel for the Defence

Mr Peter Haynes

Ms Kate Gibson

Legal Representatives of the Victims

Ms Marie-Edith Douzima-Lawson

**Counsel for the Defence of Mr Bemba
in ICC-01/05-01/13**

Ms Melinda Taylor

Ms Mylène Dimitri

Unpresented Victims

Unrepresented Applicants

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

Trial Chamber VII

Introduction

1. On 9 April 2018, Jean-Pierre Bemba Gombo, represented by his *Bemba et al.* Defence team, sought access to all confidential and confidential *ex parte* filings in ICC-01/05-01/08 (“Main Case”).¹ Bemba seeks access to information concerning his “assets/financial status” recorded in documents available either only to the Registry (Category 1) or to the Registry and the Prosecution (Category 2) or to the *Bemba* Main Case Defence (Category 3).² Bemba’s Request is overly broad and fails to demonstrate a proper forensic purpose to justify such access.

2. To the extent that information in Categories 1 and 2 are necessarily *ex parte* from Bemba and unknown to him,³ the Prosecution takes the view that Bemba should not have access to the material in Category 1 (subject to the Registry’s views) and opposes Bemba’s access to the information in Category 2. However, to the extent that information in Category 3 is already available to the *Bemba* Main Case Defence—and thus to Bemba—,⁴ the Prosecution does not oppose such access to Bemba’s Defence team in the *Bemba et al.* sentence remand proceedings.

3. There is good reason not to grant Bemba access to information currently *ex parte* and unavailable to him (Categories 1 and 2). Highly sensitive financial investigations into the status of Bemba’s assets to recover his substantial dues owed to the Court or which may still need to be assessed are ongoing. Given Bemba’s demonstrated non-cooperation with these investigations,⁵ their purpose would likely be defeated by

¹ ICC-01/05-01/08-3622 (“Request” or “Bemba’s Request”) with confidential *ex parte* annexes A and C and confidential annex B. *See also* 12 April 2018 Email from Trial Chamber III inviting the Registry, the Prosecution and the Main Case Defence team to file their views, if any, by 19 April 2018.

² Request, para. 8.

³ Request, paras. 9-31.

⁴ Request, paras. 32-36 (noting also that Bemba has consented to his article 70 Defence accessing information available to the *Bemba* Main Case Defence).

⁵ *See e.g.*, ICC-01/05-01/08-3486-Red2 A3 (“Prosecution Response to Sentence Appeal”), para. 126 (citing ICC-01/05-01/08-1596 (“Fourth Registry Report”), p. 4 noting that “the Defence failed to comply with the Decision to report to the Registry on a monthly basis as to the steps taken to free up funds; in addition, Mr Bemba

giving him access to such information. Moreover, the Registry's updated solvency report filed on 13 April 2018 in the *Bemba et al.* proceedings⁶ appropriately informed Bemba of the financial details pertinent to his sentencing submissions in that case. No greater access is required for the purposes of the forthcoming *Bemba et al.* sentence proceedings. Nor does Bemba show otherwise. Indeed, his claim for additional access is fundamentally defective: *first*, in claiming that Bemba must timely pay the fine imposed by Trial Chamber VII,⁷ he misinterprets the holding of the *Bemba et al.* Sentencing Appeal Judgment;⁸ and *second*, he misunderstands the scope of the sentencing submissions that Trial Chamber VII has ordered.⁹ Moreover, Bemba's arguments—notwithstanding that the Appeals Chamber has already dismissed many of his similarly unsubstantiated,¹⁰ inaccurate¹¹ and procedurally improper¹² submissions on appeal—remain unfounded and misstate the record.

4. For all these reasons, Bemba's request for access to information falling under Categories 1 and 2 should be dismissed.

persistently failed to cooperate actively with the Registry and to provide sufficient and meaningful information in response to the Registry's various enquiries").

⁶ ICC-01/05-01/13-2278 ("Registry's 13 April 2018 Updated Solvency Report").

⁷ Request, paras. 18, 31.

⁸ ICC-01/05-01/13-2276-Red A6 A7 A8 A9 ("*Bemba et al.* SAJ").

⁹ ICC-01/05-01/13-2277 ("Sentencing Submissions Order").

¹⁰ See e.g., ICC-01/05-01/13-2275-Red A A2 A3 A4 A5 ("*Bemba et al.* AJ"), paras. 56 ("It appears, however, that Mr Bemba at no point indicated that their disclosure could be material to the preparation of his defence. Rather, he waited until the appeal stage of the case—and even after the filing of his appeal brief—to request the disclosure of this material, the existence of which was known to him for more than three years."); 57 ("In addition, he does not explain how disclosure of the actual content of these records would relate to any of his grounds of appeal [...]"); 61 ("The Appeals Chamber observes that Mr Bemba provides no explanation as to why he waited until after the commencement of appellate proceedings—even after the filing of his appeal brief—to inquire with the Registry as to what steps it had taken [...]"); 849 ("Mr Bemba's argument [...] is obscure [...]").

¹¹ See e.g., *Bemba et al.* AJ, paras. 512 ("The Appeals Chamber considers that [Bemba's argument] rests on speculation which is not supported by a plain reading of the proposed additional evidence."); 513 ("The Appeals Chamber considers that [Bemba's argument] is also based on a misrepresentation of the material at issue."). See also paras. 811 ("Mr Bemba does not explain why [...] and his account of the Trial Chamber's findings [...] is selective."); 878 ("[The] Appeals Chamber notes that Mr Bemba tends to challenge the Trial Chamber's assessment of specific items of evidence in a piecemeal manner [...]"); 886 ("Mr Bemba's contention [...] is purely speculative."); 1026 ("The Appeals Chamber considers Mr Bemba's argument in this respect to be based on a selective reading of the Conviction Decision and, therefore, misleading. [...] Mr Bemba's arguments ignore much of this evidentiary analysis [...]").

¹² See e.g., *Bemba et al.* AJ, paras. 72 ("The Appeals Chamber notes that Mr Bemba has not availed himself of these procedural avenues [...]"); 79 ("The Appeals Chamber finds Mr Bemba's presentation of these new submissions [to complement his appeal] to be in any case procedurally improper and contrary to the regime governing appellate proceedings before this Court.").

Submissions

A. Bemba should not be allowed access to information in Categories 1 and 2

5. Bemba’s request to access information in Categories 1 and 2 should fail. He claims indiscriminate access to all “filings”—defined broadly¹³—whether they pertain to the legal aid litigation, indigence assessments, the freezing of assets or reparations.¹⁴ The Request is insufficiently specific: Bemba merely sets out three generic categories, identified only by the party/participant he says such material is available to (*i.e.*, Registry, Registry/Prosecution, Main Case Defence)—without any further specificity.¹⁵ Nor does he provide a “substantiated justification” for access, tailored to each category of material.¹⁶ This Trial Chamber has previously rejected such requests.

6. In particular, Bemba’s reasons for why he requires such access are based on an incorrect reading of the relevant decisions and are thus flawed.

7. *First*, Bemba’s submissions incorrectly assume that he is still bound by Trial Chamber VII’s order to pay a fine, as part of his sentence.¹⁷ Although Trial Chamber

¹³ Request, fn. 1 (“The term ‘filings’ should be consider[ed] to comprise all motions, requests, responses, replies, annexes, decisions, orders, transcripts and reports filed in the court record [...]”).

¹⁴ Request, fn. 1.

¹⁵ Request, para. 8.

¹⁶ See ICC-01/05-01/08-3298 (“*Bemba Access Decision*”), rejecting the *Bemba et al.* Defence teams’ requests for access. See paras. 20 (recalling that “in relation to previous requests made by parties in case ICC-01/05-01/13 for access to confidential material 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.”); 23 (“In support of their Request, the Defence teams provide a general justification, including some examples, rather than specific justifications tailored to each category of material. In the view of the Chamber, the submissions made are not sufficiently substantiated to justify access to the broad range of material, including identifying information in relation to all witnesses who testified in the *Bemba* case.”)

¹⁷ Request, paras. 11 (“The Article 70 Defence consequently lacks the means to assess the reliability and accuracy of the Registry’s calculations, or to otherwise conduct meaningful consultations with the defendant and his family in relation to *which assets can be easily and expeditiously disposed of in order to fulfil judicial orders issued in the Article 70 case.*”); 18 (“[...] the manner in which the defendant can best assist with *the timely payment of the fine imposed by Trial Chamber VII.*”); 31 (“*Since Mr Bemba intends to pay the fine through the funds in this account [...]*”). Emphasis added.

VII had initially imposed a fine of € 300,000 on Bemba when sentencing him,¹⁸ as a result of the Appeals Judgment rendered on 8 March 2018—that order no longer stands. Rather, since the Appeals Chamber, upholding the Prosecution’s appeal, found that the Trial Chamber had erred in the sentences imposed on Bemba, Kilolo and Mangenda, it reversed their sentences.¹⁹ In these circumstances, and in the Appeals Chamber’s words, “it [has become] necessary to impose a new sentence on Mr Bemba [...]”.²⁰ Upon remand, Trial Chamber VII is tasked with determining the new sentences.²¹ Since Trial Chamber VII has yet to decide on Bemba’s new sentence (and in particular, whether such sentence will include a fine or not), Bemba’s claim that he requires additional information on his assets and financial status is, at the very least, premature.²² In this context, Bemba’s claim that he needed to meet with the Registry to discuss aspects related to the payment of the fine would appear unjustified.²³

8. *Second*, Bemba’s submissions misstate Trial Chamber VII’s order outlining the scope of the intended sentencing submissions on remand.²⁴ Contrary to Bemba’s argument,²⁵ the Trial Chamber only required that the Parties’ prospective sentencing submissions address the “amounts required to satisfy the financial needs of the convicted persons and their dependents” —*strictly in terms of rule 166(3)*.²⁶ Put simply, the Trial Chamber must ensure that any fine it may consider imposing on Mr Bemba would not exceed 50 percent of his identifiable assets, after having deducted an

¹⁸ ICC-01/05-01/13-2123-Corr (“*Bemba et al.* SJ”), p. 99. *See also* para. 263 (noting that “the combined sentence” of Bemba includes one additional year of imprisonment and the fine). *See also* with respect to Kilolo para. 198 (noting that the “fine is a suitable part of the sentence”).

¹⁹ *Bemba et al.* SAJ, para. 359.

²⁰ *Bemba et al.* SAJ, para. 359.

²¹ *Bemba et al.* SAJ, paras. 361-362. *See also* Sentencing Submissions Order, para. 2 (noting that “The Appeals Chamber remanded the matter to this Chamber for it to determine *new sentences*”). *Emphasis added*.

²² Request, para. 18.

²³ Request, para. 18. *See also* Request, Annex C.

²⁴ Sentencing Submissions Order, paras. 4-5.

²⁵ Request, paras. 4-5.

²⁶ Sentencing Submissions Order, fn. 3. *See* rule 166(3): Each offence may be separately fined and those fines may be cumulative. Under no circumstances may the total amount exceed 50 per cent of the value of the convicted person’s identifiable assets, liquid or realizable, and property, after deduction of an appropriate amount that would satisfy the financial needs of the convicted person and his or her dependants.

appropriate amount for the financial needs of himself and his dependents.²⁷ Apart from this, as the Appeals Chamber has confirmed, the Trial Chamber—and consequently, the Parties—need not specify the percentage or value of the convicted person’s assets that is imposed as a fine.²⁸ Therefore, the detailed information that Bemba now seeks for an “accurate picture” of the status of his assets is redundant:²⁹ Bemba has not been asked to present complex financial calculations relating to his assets in his sentencing submissions. Moreover, not all financial information is material or even necessarily related to the sentencing proceedings.³⁰ And Bemba’s request falls short of making this showing. His Request is unfounded.

9. Further, strong countervailing considerations exist which should preclude Bemba’s access to such *ex parte* information regarding the financial investigations. As mentioned in several Registry filings, Bemba has not cooperated with the investigations.³¹ In these circumstances, allowing Bemba access to the underlying information concerning these investigations could be to their detriment. Indeed, Trial Chamber III is obliged to ensure that Bemba’s assets are preserved and remain available for reparations, and therefore the relevant information is classified as *ex parte*.³² And the practice at this Court recognises that information may be withheld from the accused, if its disclosure would prejudice further or ongoing investigations.³³ Bemba provides no reason to change this classification.

²⁷ *Bemba et al.* SAJ, para. 247 (“However, the Appeals Chamber finds no error in the Trial Chamber’s approach. Rule 166(3) of the Rules does not require a trial chamber to specify the percentage or value of the convicted person’s assets that is imposed as a fine; it must only ensure that the total amount of the fine does not exceed 50 percent of the convicted person’s identifiable assets.”).

²⁸ *Bemba et al.* SAJ, para. 247.

²⁹ *Contra* Request, para. 5.

³⁰ *See by analogy* ICC-01/05-01/13-2163 A9 (“*Bemba et al.* Kilolo Fine AD”), para. 7 (noting that Kilolo’s Letter concerned the implementation mechanisms for the payment of his fine and related to the enforcement of the imposed fine, and not to the judicial proceedings on sentence unfolding before the Appeals Chamber, and rejecting the Prosecution’s request for access).

³¹ *See e.g.*, Prosecution Response to Sentence Appeal, para. 126 (citing Fourth Registry Report, p. 4).

³² ICC-01/05-01/08-3560 (*Bemba Funds AD*), para. 8 (“With respect to the classification of this and other proceedings concerning the freezing of Mr Bemba’s assets, whether or not all or some of them should be or remain confidential *ex parte* or under seal is for now a question for the Trial Chamber to consider, without prejudice to any eventual appellate jurisdiction of the Appeals Chamber. [...]”).

³³ *See by analogy* ICC-01/04-02/06-1817-Red OA4 (“*Ntaganda* Restrictions AD), para. 89. *See also* ICC-01/04-01/06-1058 (“6 December 2007 *Lubanga* Decision”), paras. 12-14; ICC-01/04-01/06-568 (“13 October 2006 *Lubanga* Decision”), paras. 66-67.

I. *Category 1: Filings concerning Mr Bemba's assets/financial status available to the Registry and/or experts appointed by it.*

10. In principle,³⁴ and assuming that Category 1 documents concern sensitive information pertaining to the financial investigations, Bemba should not have access to them.³⁵ However, the Prosecution defers to the Registry's more specific knowledge of and position on these documents.³⁶

11. Notwithstanding, in seeking access to the Category 1 documents, Bemba misstates the record in several ways.

12. *First*, the Registry is not obliged to *disclose* material/information to the Defence.³⁷ Moreover, Bemba's premise that he is barred from accessing information because it "emanate[d] from the Registry" is unfounded.³⁸ Bemba is not allowed access to *ex parte* information *not* because the Registry is the source of the information, but rather since it pertains to confidential financial investigations.

13. *Second*, Bemba's suggestion that he is entitled—as a matter of "procedural fairness"—to the information underlying the Registry's solvency report is unfounded.³⁹ The Registry has since filed, on 13 April 2018, an updated report addressing Bemba's solvency.⁴⁰ This report sufficiently informs the Parties of the status of Bemba's assets, such that they may address these issues in their sentencing submissions. Providing solvency-related information in this format is standard practice and procedurally proper, and the Defence can "meaningfully consult" with Bemba and his family on this basis.⁴¹ Moreover, if Trial Chamber VII considers it necessary, it could request the Registry to provide additional information or

³⁴ See above paras. 5-9.

³⁵ *Contra* Request, paras. 9-20.

³⁶ See Request, para. 10 (suggesting that the "under seal classification" was no longer justified).

³⁷ *Contra* Request, paras. 9, 19. *But see* para. 12.

³⁸ Request, para. 17.

³⁹ Request, paras. 9-17.

⁴⁰ Registry's 13 April 2018 Updated Solvency Report.

⁴¹ *Contra* Request, paras. 11 and 13.

explanation. Bemba fails to convincingly demonstrate why he would need additional access to the underlying information in this specific instance, and at this stage. Likewise, Bemba's reliance on the ICTY Appeals Chamber's finding in *Kvočka et al.* is inapposite.⁴² He fails to acknowledge that the Appeals Chamber in that case found that Žigić's right to be heard had not been denied.⁴³ Nor does he explain his selective reliance on a single paragraph of this decision relating to the "withdrawal of legal aid" and its relevance to the present Request.⁴⁴

14. *Third*, in claiming that Trial Chamber VII has granted similar access in previous instances, Bemba misstates the record of the *Bemba et al.* proceedings:

- Bemba's reliance on a previous decision granting the Bemba and Kilolo Defence teams access to the Independent Counsel's report on his review of privileged materials, on a confidential *ex parte* basis, is inapposite.⁴⁵ Bemba fails to acknowledge that in that instance, Bemba's and Kilolo's access was conditioned on their roles as owners and potential privilege-holders of that material—a circumstance that does not exist in the case at hand.
- Likewise, Bemba fails to note that the decision making available certain confidential *ex parte* information to Kilolo relating to the freezing of his assets did so because such assets "[had] already been released from seizure" or were "already in [Kilolo's] availability".⁴⁶ Bemba's identified assets remain seized.
- Similarly, Bemba's reliance on Trial Chamber VII's decision granting the Prosecution's request to access financial information in the Registry's

⁴² Request, para. 12.

⁴³ *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003 ("[Žigić Decision](#)"), paras. 39-41 ("The Appeals Chamber does not accept that Žigić was denied his right to be heard.").

⁴⁴ Request, para. 12.

⁴⁵ *Contra* Request, para. 14 (citing ICC-01/05-01/13-893-Red, ("9 April 2015 *Bemba et al.* Decision")), para. 23).

⁴⁶ *Contra* Request, para. 14 (citing ICC-01/05-01/13-411-Red ("6 January 2017 *Bemba et al.* Decision")), pp. 3-4.

possession for sentencing purposes is unconvincing.⁴⁷ The information that the Prosecution had sought related to “the costs associated with the trial of the Main Case generally” so that it could fully present its sentencing arguments.⁴⁸ This information was not protected by court order, unlike the information that Bemba now seeks. Moreover, Bemba incorrectly suggests that his access to the confidential *ex parte* information is barred simply because it “emanates from the Registry”.⁴⁹ This is not the case.

15. *Fourth*, Bemba’s argument that he should be given financial information before the Registry “files its observations in the Article 70 case” is now moot.⁵⁰ Following Trial Chamber VII’s order, the Registry has since filed the updated solvency report.⁵¹ It will not file any further “observations”. Bemba now has ample opportunity to comment on the contents of the solvency report in his sentencing submissions, due on 30 May 2018.⁵²

16. For all these reasons, and pending the Registry’s views, Bemba should not be granted access to the information in Category 1.

II. Category 2: Filings concerning Mr Bemba’s assets/financial status that can only be accessed by the Prosecution and the Registry in this case

17. In seeking access to material falling within Category 2, Bemba incorrectly assumes that he is entitled to all *ex parte* material that may be available to the Registry and the Prosecution.⁵³ Additionally, in claiming a “low burden” to justify access, Bemba misstates previous Prosecution filings.⁵⁴ Moreover, Bemba merely seeks to re-litigate before Trial Chamber III purported disclosure-related complaints

⁴⁷ Request, para. 17 (noting ICC-01/05-01/13-2026 (“11 November 2016 *Bemba et al.* Decision”).

⁴⁸ 11 November 2016 *Bemba et al.* Decision, paras. 5, 18.

⁴⁹ Request, para. 17. *See above* para.12.

⁵⁰ Request, paras. 18-19.

⁵¹ Registry’s 13 April 2018 Updated Solvency Report.

⁵² *See* Sentencing Submissions Order, para. 4, p. 4.

⁵³ Request, paras. 21-31.

⁵⁴ Request, paras. 28-30.

that the Appeals Chamber has already broadly addressed and rejected, and those that would otherwise ordinarily fall within Trial Chamber VII's purview.⁵⁵ His arguments should be dismissed.

18. *First*, this Court's practice allows *ex parte* information to be legitimately withheld from an accused/convicted person.⁵⁶ Bemba fails to advance a founded and forensic basis justifying his access to certain *ex parte* filings.⁵⁷

19. *Second*, Bemba misstates the law on access to *ex parte* filings, and the Prosecution's filings summarising this law.⁵⁸ In claiming that he only needs to discharge a "low" burden to secure access (*i.e.*, that it is "likely" to assist the Defence), Bemba disregards the law set out and applied in previous Trial Chamber III decisions.⁵⁹ Likewise, in suggesting that the Prosecution had conceded that *ex parte* information at this Court could be accessed at a "low" threshold,⁶⁰ Bemba misreads these filings. The Prosecution did not do so. Rather, in the filing that Bemba relies on, the Prosecution had referred to the "somewhat lower level of demonstration of materiality and specificity" for "access requests" at the *ad hoc* tribunals, as compared to "disclosure requests".⁶¹ Although in the case at hand, the Prosecution deferred to Trial Chamber III's discretion in allowing the article 70 Defence access to certain *confidential inter-partes* materials in the Main Case, its submissions in no way diluted the required standard for access to *ex parte* material at

⁵⁵ Request, paras. 25-28.

⁵⁶ *See above* fn. 33.

⁵⁷ Request, paras. 21-24.

⁵⁸ Request, paras. 28-30.

⁵⁹ *See e.g.*, Bemba Access Decision, paras. 20, 23 (requiring *inter alia* "substantiated justifications" and "specific justifications tailored to each category of material").

⁶⁰ Request, para. 28.

⁶¹ *See* ICC-01/05-01/13-1162 ("19 August 2015 Bemba *et al.* Prosecution Filing"), para. 37. *See also* ICC-01/05-01/08-3291 ("2 September 2015 Bemba Prosecution Filing"), para. 12 (noting the Prosecution's understanding that the "lower threshold" required for access at the *ad hoc* tribunals must be contextualised in relation to the geographical or other material overlap between cases with similar charges for the same or related incidents, and distinguishing the situation before the Court).

this Court.⁶² The Prosecution’s submissions have, in any event, consistently rejected “overly generalised” access requests⁶³—Bemba’s present filing is one such request.

20. *Third*, Bemba impermissibly seeks to re-litigate matters in the *Bemba et al.* proceedings before a different and unrelated Trial Chamber, *i.e.*, Trial Chamber III.⁶⁴ Bemba’s reliance on the content of *inter-partes* exchanges with the Prosecution in the *Bemba et al.* proceedings is not germane to the proceedings before Trial Chamber III, and should be dismissed *in limine*. Moreover, Bemba only cursorily argues his position on “disclosure”.⁶⁵ And even if Bemba had substantiated his arguments on disclosure (which he has not), Trial Chamber VII (who is notified of these submissions), and not Trial Chamber III, would be the appropriate forum to address such issues pertaining to the merits of the *Bemba et al.* proceedings. Significantly, Bemba disregards the Appeals Judgment dismissing—sometimes summarily—all of his previous disclosure-related claims in the *Bemba et al.* appeal proceedings.⁶⁶

21. For all these reasons, the Prosecution opposes Bemba’s access to the information in Category 2.

B. The Prosecution does not object to Bemba’s access to the material in Category 3

22. The material falling within Category 3 pertains to what is already available to the *Bemba* Main Case Defence. The Prosecution does not oppose access by the *Bemba* article 70 Defence to Category 3 material, since the material appears to be already

⁶² See *e.g.*, 19 August 2015 *Bemba et al.* Prosecution Filing, para. 36 (“This Court has rejected overly generalised access requests that do not sufficiently identify what is sought, and its materiality.”).

⁶³ See *e.g.*, 2 September 2015 *Bemba* Prosecution Filing, paras. 12 (“Such requests should, at the very least, identify specific categories of information or relevant issues that are material to the Defence preparation, and also sufficiently demonstrate the legitimate forensic purpose.”); 13 (“This Chamber has previously rejected [all generalised] access requests for all confidential material”); 16-17 (“To enable the Chamber to determine if access is warranted [to *ex parte* filings], the Defence must specify and sufficiently justify the materiality of the information sought.”)

⁶⁴ Request, paras. 25-27.

⁶⁵ See *e.g.*, Request, paras. 25-27.

⁶⁶ See *e.g.*, *Bemba et al.* AJ, paras. 50-84. *Contra* Request, paras. 21-31.

known to Bemba in the Main Case and he has consented to such information being shared with his article 70 Defence team.⁶⁷

Conclusion and Relief

23. Bemba's request to be granted access to confidential *ex parte* filings in the Main Case is overly broad and unsubstantiated. It lacks a forensic purpose. The Prosecution therefore requests the Appeals Chamber to reject his Request as regards information falling within Categories 1 and 2. Since the information in Category 3 is already available to Bemba, the Prosecution does not oppose his access thereto in the article 70 proceedings.



Fatou Bensouda, Prosecutor

Dated this 19th day of April 2018⁶⁸

At The Hague, The Netherlands

⁶⁷ Request, paras. 32-36; Annex B.

⁶⁸ This submission complies with regulation 36, as amended on 6 December 2016: ICC-01/11-01/11-565 OA6 (“*Al Senussi AD*”), para. 32.