



Original: **English**

No.: **ICC-01/05-01/08 OA3**

Date: **14 October 2010**

APPEALS CHAMBER

Before: Judge Anita Ušacka, Presiding Judge
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Daniel David Ntanda Nsereko

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF**

THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO

**PUBLIC
with Confidential Annex A**

**Prosecution's Response to the Appeals Chamber Order on the reasons for the
classification of documents**

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

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Unrepresented Victims

**Unrepresented Applicants for
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**The Office of Public Counsel for
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States Representatives

Competent authorities of
the Central African Republic

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REGISTRY

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Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 24 June 2010, Trial Chamber III issued the “Decision on the Admissibility and Abuse of Process Challenge” (the “Decision”).¹ In the Decision, the Chamber found the case admissible before this Court and dismissed the challenge to the admissibility of the case and the abuse of process challenge presented by the Defence for Jean-Pierre Bemba Gombo (“the Appellant”). On 28 June 2010 the Appellant appealed the Decision pursuant to Article 82(1)(a) and Rule 154(1),² and on 26 July 2010 he filed his Document in Support of Appeal.³ The Prosecution responded on 17 August 2010.⁴
2. On 11 October 2010, and pursuant to an order of the Appeals Chamber,⁵ the Prosecution indicated the classification given at trial to four documents and attached them as annexes.⁶ The Prosecution filed as Confidential Annexes A, C and D and explained that they had been awarded this level of confidentiality in the trial record of the case.⁷
3. On 13 October 2010 the Appeals Chamber issued a second order whereby it ordered the Prosecution (a) to state the factual and legal basis (if any) for which the documents attached as Annexes C and D cannot be reclassified as public; (b) to file as an annex the document CAR-OTP-0062-0203 to 0205 (indicating its confidentiality level); and (c) to the extent necessary, to file public redacted versions of the above mentioned documents.⁸
4. The Prosecution herewith complies with this Order of the Appeals Chamber and

¹ ICC-01/05-01/08-802.

² ICC-01/05-01/08-804OA3-Corr2-tENG; the Accused filed two corrigenda on 28 and 29 June 2010 respectively (ICC-01/05-01/08-804OA3-Corr and ICC-01/05-01/08-804-Corr2-tENG).

³ ICC-01/05-01/08-841-ConfOA3. The following day he filed a corrigendum: ICC-01/05-01/08-841-Corr-RedOA3 (“Appeal Brief”).

⁴ ICC-01/05-01/08-855-RedOA3 (“Prosecution's Response”).

⁵ ICC-01/05-01/08-931 OA3 (“First Order”).

⁶ ICC-01/05-01/08-944 OA3 with Public Annex B; Annex A Confidential available to Prosecution, Defense, victims and OPCV; Annexes C and D, Confidential available to Prosecution, Defense, victims, OPCV and CAR authorities.

⁷ See ICC-01/05-01/08-944 OA3, footnote 6. The Prosecution further noted that Regulation 23bis, paragraph 2 of the Regulations of the Court provides that “[u]nless otherwise ordered by a Chamber, any response, reply or other document referring to a document, decision or order marked [...] ‘confidential’ shall be filed with the same classification.”

⁸ ICC-01/05-01/08-948 OA3 (“Second Order”).

provides the required explanations for the three documents identified by the Chamber.

5. These three documents (CAR-OTP-0019-0169 to 0170;⁹ CAR-OTP-0019-0199;¹⁰ and CAR-OTP-0062-0203 to 0205) were provided by the authorities of the Central African Republic ("CAR") with no conditions attached. The Prosecution treated them as confidential on the basis that (a) they were part of the record of the CAR proceedings against the Appellant and other individuals, and to the Prosecution's knowledge, they had not been made available to the general public; and (b) it is standard practice to award restricted access to documents received from States for internal use within the Court, pursuant to the Court's Information Protection Policy, unless the documents are public or the State clarifies that they can be made public.¹¹ There are no additional reasons supporting the classification of these documents as confidential pursuant to Regulation 23*bis* of the RoC. In addition, the Prosecution notes that Trial Chamber III did not modify this classification under Regulation 23*bis* (3).
6. The Prosecution considers that the information contained in the documents does not in and of itself require maintaining the confidential status.¹² However, the Prosecution does not know whether the CAR authorities have independent reasons to oppose reclassification.¹³ Due to the short time limit set by the Appeals Chamber the Prosecution has not been able to consult with the competent CAR authorities. On the same basis, the Prosecution is not in a position to file a public redacted version of the three documents.
7. The Prosecution further notes that pursuant to the practice followed by Trial Chamber III in the admissibility litigation underlying this appeal, the Registry

⁹ ICC-01/05-01/08-944-AnxC.

¹⁰ ICC-01/05-01/08-944-AnxD.

¹¹ Administrative Instruction ICC/AI/2007/001, 19/06/2007.

¹² The content of the documents CAR-OTP-0019-0169 to 0170 and CAR-OTP-0019-0199 (ICC-01/05-01/08-944-AnxC and ICC-01/05-01/08-944-AnxD, respectively) has been summarised by the Trial Chamber in the public impugned Decision (see paras. 11 and 13); and both Appellant and Prosecution have referred to document CAR-OTP-0062-0203 to 0205 in the public redacted versions of the Appeal Brief (paras. 14-16; 18) and the Prosecution's Response to the Appeal Brief (paras. 38-39, 56-59), though the Appellant redacted the name of the Public Prosecutor.

¹³ For instance, there may be security considerations pertaining to the disclosure of the court officials named in the documents or limitations imposed by national law on the dissemination of the material.

was instructed to consult with the CAR authorities whether certain documents related to national proceedings (other than these three) could be re-classified as public, prior to any reclassification taking place.¹⁴

8. Finally, and pursuant to the Chamber's Order, the Prosecution attaches as Confidential Annex A the document CAR-OTP-0062-0203 to 0205 (EVD-P-04250).¹⁵ This document is Confidential available to the Defence, OPCV and legal representatives of victims authorized to participate in the proceedings.¹⁶



Luis Moreno-Ocampo, Prosecutor

Dated this 14th day of October 2010

At The Hague, The Netherlands

¹⁴ In particular, on 11 June 2010 the legal officer of Trial Chamber III asked the Registry to check with the CAR authorities whether annexes 17, 19 and 26 of the Defence filing ICC-01/05-01/08-721 could be reclassified public. The documents were re-classified pursuant to an instruction of Trial Chamber III dated 15 June 2010.

¹⁵ The factual and legal basis underpinning the confidential status of this document under Regulation 23*bis* is explained in paragraphs 5 and 6 above.

¹⁶ Trial Chamber III, Defence, Victims and OPCV were granted access to this document in E-court on 23 June 2010.