

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 October 2011

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, *Ex Parte*, Registry and Prosecution only

Order on the reclassification of documents

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Ms Petra Kneuer

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber III ("Chamber") of the International Criminal Court in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* issues the following Order on the reclassification of documents.

1. On 4 October 2011, the Victims and Witnesses Unit ("VWU") filed a "report on the analysis of the phone records of CAR-OTP-PPPP-0169, CAR-OTP-PPPP-0178 and CAR-OTP-PPPP-0178's wife" ("Report").¹
2. The Report contains the VWU's analysis of telephone records of Witnesses 169 and 178, as well as those of Witness 178's wife. This analysis was conducted following threats allegedly made to Witnesses 169 and 178, as reported to the Chamber in an *ex parte* filing made by the Office of the Prosecutor ("prosecution") and two *ex parte* status conferences.²
3. The Report was designated confidential, *ex parte*, available only to the Registry and the Chamber. In the Report, the VWU stated that it "would not be in opposition to the reclassification of the current document as confidential and available to all parties and participants should the Chamber deem the reclassification appropriate".³
4. The Chamber is of the view that the Report should be reclassified pursuant to Regulation 23bis(3) of the Regulations of the Court ("Regulations") so that it is available to the prosecution. Reclassification is appropriate because the Report relates to prosecution witnesses and to incidents of alleged witness interference

¹ Victims and Witnesses Unit's report on the analysis of the phone records of CAROTP-PPPP-0169, CAR-OTP-PPPP-0178 and CAR-OTP-PPPP-0178's wife, 4 October 2011, ICC-01/05-01/08-1816-Conf-Exp and four confidential, *ex parte* annexes. A corrigendum to annex 2 was filed on 11 October 2011: Corrigendum to Annex 2: Victims and Witnesses Unit's report on the analysis of the phone records of CAROTP-PPPP-0169, CAR-OTP-PPPP-0178 and CAR-OTP-PPPP-0178's wife, 11 October 2011, ICC-01/05-01/08-1816-Conf-Exp-Anx2-Corr.

² Prosecution's Report to the Trial Chamber III on the current security situations of Witnesses 169 and 178, 15 July 2011, ICC-01/05-01/08-1623-Conf-Exp; transcript of *ex parte* hearing held on 26 August 2011, ICC-01/05-01/08-T-148-CONF-EXP-ENG ET; transcript of *ex parte* hearing held on 7 September 2011, ICC-01/05-01/08-T-155-CONF-EXP-ENG ET.

³ ICC-01/05-01/08-1816-Conf-Exp, page 5.

raised by the prosecution.

5. Further, the Chamber notes that the Report highlights apparent inconsistencies between the reported incidents of witness interference brought to the Chamber's attention and the telephone records analysed by the VWU. To the extent that such inconsistencies exist, the information contained in the Report may be disclosable under Article 67(2) of the Rome Statute ("Statute") and Rule 77 of the Rules of Procedure and Evidence.

6. Before ruling on whether and to what extent the information in the Report should be disclosed to the defence, the Chamber wishes to provide the prosecution with an opportunity to comment. Specifically, the Chamber invites the prosecution to provide observations on whether, in light of the Report, the following documents are required to be disclosed to the defence, in whole or in part:

- a. The Report and its annexes;
- b. The "Prosecution's Report to the Trial Chamber III [*sic*] on the current security situations of Witnesses 169 and 178" ("August Report");⁴
- c. The transcript of the *ex parte* hearing held on 26 August 2011;⁵ and
- d. The transcript of the *ex parte* hearing held on 7 September 2011.⁶

7. Regarding the disclosure of the August Report, the Chamber acknowledges that in the prosecution's 6 September 2011 submission ("Filing 1709"),⁷ it requested the Chamber "to maintain the non-disclosure to the Defence, participants and the public of [the August Report] until the conclusion of its

⁴ Prosecution's Report to the Trial Chamber III on the current security situations of Witnesses 169 and 178, 15 July 2011, ICC-01/05-01/08-1623-Conf-Exp.

⁵ Transcript of *ex parte* hearing held on 26 August 2011, ICC-01/05-01/08-T-148-CONF-EXP-ENG ET.

⁶ Transcripts of *ex parte* hearing held on 7 September 2011, ICC-01/05-01/08-T-155-CONF-EXP-ENG ET.

⁷ Prosecution's Submissions on granting access to ICC-01/05-01/08-1623", 6 September 2011, ICC-01/05-01/08-1709-Conf-Exp.

current investigation into the threats to Witnesses 169 and 178".⁸

8. The Chamber understands from the August Report and Filing 1709 that the prosecution is undertaking its own analysis of the phone records of Witnesses 169 and 178. In light of the prosecution's position that the disclosure of the August Report is contingent upon the completion of its analysis, the Chamber instructs the prosecution to inform the Chamber whether and when the Chamber can expect to receive the results of any such analysis. Further, the Chamber wishes to know whether and to what extent the prosecution has changed its position on the disclosure of the August Report, as expressed in Filing 1709.

9. In light of the above, the Chamber ORDERS, pursuant to Article 64(6)(f) of the Statute and Regulations 23*bis*(3) and 34(a) of the Regulations, that:

- (a) The Registry shall reclassify the Report (filing ICC-01/05-01/08-1816-Conf-Exp), together with its annexes, as *Confidential, Ex Parte*, Registry and prosecution only; and
- (b) The prosecution shall provide its observations on the matters discussed above in paragraphs 6 and 8, no later than Tuesday, 1 November 2011.

⁸ ICC-01/05-01/08-1709-Conf-Exp, paragraph 10.

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



Judge Sylvia Steiner

Judge Joyce Aluoch

Judge Kuniko Ozaki

Dated this 18 October 2011

At The Hague, The Netherlands