

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 14 February 2012

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*, prosecution and Victims and Witnesses Unit only

**Order for joint submission by the prosecution and Victims and Witnesses Unit
pursuant to the "Order on the reclassification of documents" of 19 January
2012**

Order 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

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod Jacome

Detention Section

**Victims Participation and Other
Reparations Section**

Trial Chamber III ("Chamber") of the International Criminal Court ("Court" or "ICC"), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, ("Bemba case") issues the following Order for joint submission by the prosecution and Victims and Witnesses Unit pursuant to the "Order on the reclassification of documents" of 19 January 2012.

I. Background and Submissions

1. On 18 October 2011, the Chamber issued its "Order on the reclassification of documents".¹ The order provided that some documents might need to be reclassified and disclosed to the defence due to apparent inconsistencies between alleged incidents of witness interference reported by Witnesses 169 and 178 and telephone records analysed by the Victims and Witnesses Unit ("VWU"). These documents include: (i) the "Prosecution's Report to the Trial Chamber III [sic] on the current security situations of Witnesses 169 and 178" ("Report");² (ii) transcripts of two *ex parte* hearings held on 26 August 2011 and 7 September 2011;³ and (iii) the "Victim's and Witnesses Unit's report on the analysis of the phone records of CAR-OTP-PPPP-0169, CAR-OTP-PPPP-0178, and CAR-OTP-PPPP-0178's wife" and its four annexes.⁴
2. The Office of the Prosecutor ("prosecution") provided its observations on 1 November 2011,⁵ submitting that the documents "should not be shared with

¹ Order on the reclassification of documents, 18 October 2011, ICC-01/05-01/08-1847-Conf-Exp.

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.

³ Transcripts of *ex parte* hearings held on 26 August 2011, ICC-01/05-01/08-T-148-Conf-Exp-ENG ET, and 7 September 2011, ICC-01/05-01/08-T-155-Conf-Exp-ENG ET.

⁴ Victims and Witnesses Unit's report on the analysis of the phone records of CAR-OTP-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 CAR-OTP-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.

⁵ Prosecution's Submission Regarding Trial Chamber III's "Order on the Reclassification of Documents" of 18 October 2011, 1 November 2011, ICC-01/05-01/08-1869-Conf-Exp.

the Defence and the participants until the Prosecution finalizes its investigations" on the alleged incidents of witness interference reported by Witnesses 169 and 178,⁶ and that "at the conclusion of [the prosecution's] ongoing investigation, it will be possible then to disclose portions dealing with the highlighted inconsistencies in all of these documents in redacted form to the Defence and the other participants".⁷

3. On 19 January 2012 the Chamber issued its "Order on the reclassification of documents" ("Order"),⁸ wherein the Chamber ordered the prosecution and the VWU "to provide to the Chamber, no later than Thursday 26 January 2012, with proposed redactions, if any,"⁹ and only to the extent to "address security concerns of the witnesses as well as portions containing information on the identity and location of the witnesses and their family members, the identity and location of the Court's field staff and investigations as well as locations where interviews take place."¹⁰
4. On 26 January 2012 and 27 January 2012, the VWU and the prosecution, respectively, submitted their proposed redactions.¹¹
5. The prosecution stresses in its submission that the investigation on the reported incidents is still ongoing and requests that the documents in question are not shared with the defence before 15 February 2012.¹²

⁶ ICC-01/05-01/08-1869-Conf-Exp, paragraph 22.

⁷ ICC-01/05-01/08-1869-Conf-Exp, paragraph 24.

⁸ Order on the reclassification of documents, 19 January 2012, ICC-01/05-01/08-2049-Conf-Exp.

⁹ ICC-01/05-01/08-2049-Conf-Exp, paragraph 7.

¹⁰ ICC-01/05-01/08-2049-Conf-Exp *citing* ICC-01/05-01/08-1869-Conf-Exp, paragraph 2.

¹¹ Victims and Witnesses Unit's proposal for redacted versions of annexes to document ICC-01/05-01/08-1816-Conf-Exp pursuant to Trial Chamber III's "Order on the reclassification of documents" dated 19 January 2012, 26 January 2012, ICC-01/05-01/08-2067-Conf-Exp with five annexes; and Prosecution's Submission of Proposed Redacted Versions of ICC-01/05-01/08-1623-Conf-Exp, ICC-01/05-01/08-T-148-CONF-EXP and ICC-01/05-01/08-T-155-CONF-EXP, 27 January 2012, ICC-01/05-01/08-2079-Conf-Exp with nine annexes. The prosecution initially provided proposed redactions by way of email sent to the Chamber's Legal Officer at 16.47pm on 26 January 2012 and was instructed to make a formal filing.

¹² ICC-01/05-01/08-2079-Conf-Exp, paragraph 3.

II. Analysis and Conclusions

6. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber has considered the following provisions of the Statute and the Rules and Procedure of Evidence ("Rules"): Articles 64(6)(f), 67, 68(1) of the Statute as well as Rule 81 of the Rules.
7. The Chamber notes that, as it is apparent from their filings, the prosecution and the VWU do not agree on the extent of the necessary redactions, even though the parameters for the redactions to be implemented were clearly indicated in the Chamber's Order and despite the Chamber's instruction to the effect that the prosecution and the VWU should work "in consultation" with each other.¹³
8. The Chamber notes that the redactions proposed by the VWU are strictly limited to: the names of safe haven or interview locations; the locations of the witnesses and/or their family members; information which could indirectly put the witnesses' family members at risk (*i.e.* the term "daughter", or the occupation and location of the family member); the locations and vehicle plate numbers of the VWU; the phone numbers used by the witnesses or their families; the identity, occupation or signature of third parties involved in VWU operations; or information that could lead to the identification of a VWU staff member involved in the security assessments and who deals with witnesses and victims in the field, as indicated in the VWU justifications for the redactions.¹⁴ The Chamber notes that these redactions do not include phrases of more than five words, and are generally limited to individual words.

¹³ ICC-01/05-01/08-2049-Conf-Exp-ENG ET, paragraph 7.

¹⁴ See ICC-01/05-01/08-2067-Conf-Exp-Anx5.

9. In contrast, the prosecution has submitted extensive proposals for redactions. While most of the prosecution's justifications are similar to the justifications provided by the VWU, the redactions proposed by the prosecution go beyond the actual text or words identified as needing to be redacted according to the VWU. In addition, the prosecution suggests extensive redactions on the basis of Rule 81(2) of the Rules, in order to "protect further ongoing investigations", a basis for redactions not specifically authorised by the Chamber's Order.¹⁵
10. While the Chamber acknowledges that some of the information related to ongoing investigations, such as the identity of prosecution's investigators or the identity of ICC staff who reside in the field, may need to be redacted, the Chamber is of the view that this does not warrant the redaction of the entire section referring to the "Prosecutor's course of action in relation to Witnesses 169 and 178" in its Report.¹⁶ The same is true for redactions aimed at protecting the safety, dignity and privacy of witnesses and victims and members of their families in accordance with Rule 81(4) of the Rules, which do not justify redacting the witnesses' complete account of the events,¹⁷ or names of persons that are neither the witnesses, their family members or ICC staff.
11. For the reasons set out above, the Chamber ORDERS the prosecution and the VWU to constructively engage with each other in order to submit a joint filing with the proposed redactions which are strictly necessary in accordance with the Chamber's orders by Tuesday 21 February 2012 at 16.00.

¹⁵ See ICC-01/05-01/08-2067-Conf-Exp-Anx1, ICC-01/05-01/08-2019-Conf-Exp-AnxB-1, ICC-01/05-01/08-2019-Conf-Exp-AnxB-2.

¹⁶ See ICC-01/05-01/08-2079-Conf-Exp-AnxB1, pages 8 and 9.

¹⁷ As proposed in ICC-01/05-01/08-2079-Conf-Exp-AnxB1, paragraph 3(ii), (iii), (iv), (v), (vi), (vii), (viii) and (ix), paragraphs 6, 7 and 9.

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



Judge Sylvia Steiner

Judge Joyce Aluoch

Judge Kuniko Ozaki

Dated this 14 February 2012

At The Hague, The Netherlands