

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 11 December 2013

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
With Confidential Annex**

Order on the classification of items admitted into evidence

Order 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

Legal Representatives of the Victims

Ms Marie Edith Douzima-Lawson

Mr Assingambi Zarambaud

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

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Patrick Craig

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* ("Bemba case") issues the following Order on the classification of items admitted into evidence ("Order").

1. Through its decisions of 15 December 2011,¹ 6 September 2012,² 14 June 2013,³ 27 June 2013,⁴ 3 September 2013,⁵ and 6 November 2013,⁶ the Chamber has admitted 583 items of evidence in the *Bemba* case.⁷
2. The Chamber notes that there is some uncertainty in the record of the case as to the level of confidentiality of some of the items admitted into evidence. In particular, the Chamber has found inconsistencies such as: (i) items which are classified in the eCourt system as both public and confidential;⁸ (ii) items for which the Chamber has ordered reclassification as public, yet the relevant items still appear classified as confidential in the eCourt system;⁹ (iii) items which are classified as confidential with no redactions, despite the Chamber having ordered that redactions be

¹ First decision on the prosecution and defence requests for the admission of evidence, 15 December 2011, ICC-01/05-01/08-2012-Conf, and Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011, 9 February 2012, ICC-01/05-01/08-2012-Red.

² Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, 6 September 2012, ICC-01/05-01/08-2299-Conf, and Public Redacted Version of "Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute" of 6 September 2012, 8 October 2012, ICC-01/05-01/08-2299-Red.

³ Second Decision on the admission into evidence of material used during the questioning of witnesses, 14 June 2013, ICC-01/05-01/08-2688-Conf.

⁴ Decision on the admission into evidence of items deferred in the Chamber's "Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute" (ICC-01/05-01/08-2299), 27 June 2013, ICC-01/05-01/08-2721.

⁵ Decision on the admission into evidence of items deferred in the Chamber's "First decision on the prosecution and defence requests for the admission of evidence" (ICC-01/05-01/08-2012), 3 September 2013, ICC-01/05-01/08-2793.

⁶ Third Decision on the prosecution and defence requests for the admission of evidence, 6 November 2013, ICC-01/05-01/08-2864-Conf.

⁷ The totality of the items admitted into evidence to date are set out in the confidential annex to the present order.

⁸ See, for example, item CAR-D04-0003-0503/EVD-T-D04-00054, in relation to which the metadata indicates that the document level of confidentiality is Public, while marked as Confidential in the EVD level of confidentiality.

⁹ See, for example, documents CAR-OTP-0019-0234/EVD-T-D04-00022, CAR-OTP-0019-0245/EVD-T-D04-00030, CAR-OTP-0019-0211/EVD-T-D04-00017, CAR-OTP-0019-0237/EVD-T-D04-00029, CAR-OTP-0019-0207/EVD-T-D04-00021, CAR-OTP-0019-0215/EVD-T-D04-00018 and CAR-OTP-0019-0230/EVD-T-D04-00020, which were reclassified as public by Decision on the "Defence request for the reclassification of documents", 13 July 2011, ICC-01/05-01/08-1595, paragraph 16(b), but still appear classified as Confidential in eCourt.

applied in order for them to be reclassified as public;¹⁰ (iv) items for which the level of confidentiality is not indicated;¹¹ (iv) items classified as confidential, although publicly available from open sources;¹² and (v) items classified as confidential, despite having either been discussed in open session, or discussed in closed or private session and subsequently left unredacted in the parties' proposed redactions to the transcripts to be reclassified as public.¹³

3. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber has considered Articles 64(2), 64(6)(c), 64(7), 64(10), 67(1), 68, and 69(5) of the Statute, Rule 137(2) of the Rules of Procedure and Evidence, Regulations 20(3), 21(7), 23*bis*(3), 26, and 34(a) of the Regulations of the Court, and Regulations 10, 14, 18, and 24(2) of the Regulations of the Registry.
4. In view of the above, and in order for the Chamber to properly discharge its obligation to conduct the trial in public while ensuring full respect for the rights of the accused and paying due regard to the protection of victims, witnesses, and confidential information, the Chamber hereby:

¹⁰ *See, for example*, document CAR-ICC-0001-00012/EVD-T-OTP-00603, which the Chamber ordered to be reclassified as public with redactions by oral decision of 24 March 2011, ICC-01/05-01/08-T-88-ENG ET WT, page 3, lines 17 to 22 and document CAR-OTP-0001-0539/EVD-T-OTP-00248, which the Chamber ordered to be reclassified as public with redactions by Decision ICC-01/05-01/08-1595, paragraphs 13, 14 and 16(d), but both still appear classified as Confidential and no redactions have been applied.

¹¹ *See, for example*, documents CAR-OTP-0005-0135/EVD-T-OTP-00414, CAR-OTP-0005-0333/EVD-T-OTP-00423, CAR-OTP-0013-0065/EVD-T-OTP-00445, CAR-OTP-0013-0161/EVD-T-OTP-00448, CAR-OTP-0013-0005/EVD-T-OTP-00443 and CAR-OTP-0013-0151/EVD-T-OTP-00447.

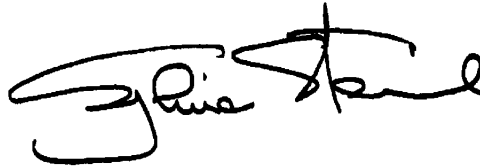
¹² *See, for example*, document CAR-OTP-0013-0114/EVD-T-OTP-00820.

¹³ *See, for example*, document CAR-OTP-0019-0137/EVD-T-OTP-00608 classified as Confidential, which was discussed in-court in several opportunities, transcript of hearing of 4 May 2011, ICC-01/05-01/08-T-104-CONF-ENG CT, page 5, line 15 to page 6, line 23; transcript of hearing of 5 May 2011, ICC-01/05-01/08-T-105-CONF-ENG CT, page 7, line 13 to page 9, line 7; and transcript of hearing of 10 May 2011, ICC-01/05-01/08-T-107-CONF-ENG WT, page 9, line 17 to page 10, line 8, which the prosecution does not propose to redact.

- (a) ORDERS the parties and participants to review the level of confidentiality of all items originating from them;¹⁴
- (b) ORDERS the parties and participants to directly communicate to the Registry the correct level of confidentiality of the items originating from them when this is either unclear or has not previously been provided, by 10 January 2014 at the latest;
- (c) ORDERS the Registry to implement in the Court's eCourt system the information provided by the parties and participants pursuant to paragraph 4(b) above, as soon as practicable;
- (d) ORDERS the parties and participants to request that the Chamber reclassify as public, with or without redactions, items in relation to which the reasons for maintaining their confidentiality no longer exist, by 10 January 2014 at the latest;
- (e) ORDERS the parties and participants to inform the Chamber of the reasons for maintaining the confidentiality of all items for which no reclassification as public is requested, by 10 January 2014 at the latest;
- (f) ORDERS the parties and participants to respond to any request for reclassification within 7 days of its notification; and
- (g) ORDERS the Registry, in consultation with the parties and the participants, to ensure that all orders for reclassification of documents issued in the present case are correctly implemented as expeditiously as possible.

¹⁴ As indicated in the relevant ERN number and in the understanding that documents which ID is CAR-OTP have been originated by the prosecution, documents which ID is CAR-D04 or CAR-DEF have been originated by the defence and documents which ID is CAR-V20 come from the legal representatives of victims.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 11 December 2013

At The Hague, The Netherlands