

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 4 June 2014

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 Redacted document

**Public Redacted version of "Prosecution's Response to "Corrigendum to Defence
Further request for reclassification of Documents related to Witness 169 and
Witness 178""", ICC-01/05-01/08-3018-Conf, 17 March 2014**

Source: Office of the Prosecutor

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

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I. Introduction

1. The Defence, *inter alia*, requested the reclassification as public of 18 confidential documents listed in the Confidential Annex A of its Filing 3005 ("Annex A").¹ It also requested that the Trial Chamber III ("Chamber") orders Victims and Witnesses Unit ("VWU") to finalise all outstanding security assessments and file any subsequent reports within 14 days.²

2. The Office of the Prosecutor ("Prosecution") submits that, at this stage, the basis for the classification as confidential of the items listed in Annex A is still valid. Furthermore, given a) the VWU's ongoing assessment of the [REDACTED]; b) [REDACTED]; c) the [REDACTED] security situation in [REDACTED] and d) [REDACTED], the Prosecution respectfully submits that the Chamber, should not, at this stage, authorise a reclassification as public of the documents listed in Annex A.

II. Procedural Background

3. On 4 March 2014, the Defence filed its "Defence Further Request for Reclassification of Documents related to Witness 169 and Witness 178" ("Filing 3005").³ On 7 March 2014, the Defence filed its "Corrigendum to Defence Further Request for Reclassification of Documents related to Witness 169 and Witness 178", ("Corrected Filing 3005").⁴

¹ ICC-01/05-01/08-3005-Conf-AnxA, Confidential Annex A (Prosecution, Defence, OPCD, OPCV) to Defence Further Request for Reclassification of Documents related to Witness 169 and Witness 178, 4 March 2014.

² ICC-01/05-01/08-3005-Conf-AnxA, Confidential Annex A (Prosecution, Defence, OPCD, OPCV) to Defence Further Request for Reclassification of Documents related to Witness 169 and Witness 178, 4 March 2014, para. 7.

³ ICC-01/05-01/08-3005-Conf, Defence Further Request for Reclassification of Documents related to Witness 169 and Witness 178, 4 March 2014.

⁴ ICC-01/05-01/08-3005-Conf-Corr, Corrigendum to Defence Further Request for Reclassification of Documents related to Witness 169 and Witness 178, 7 March 2014.

4. On 6 March 2014, the Chamber, ordered shortening of the time for a response by the parties, if any, by 17 March 2014.⁵

5. On 11 March 2014, the VWU filed its “Victims and Witnesses Unit’s Observations in relation to document ICC-01/05-01/08-3005-Conf pursuant to the instruction of Trial Chamber III dated 6 March 2014” (“VWU’s Observations”).⁶ The VWU, *inter alia*, submitted that “[REDACTED].”⁷

6. On 11 March 2014, the Registry filed its “Registry’s Further Report on [REDACTED] (“Registry’s Report”).⁸ The Registry, *inter alia*, reported that there is [REDACTED].⁹

III. Request for classification

7. Given references to filings of confidential nature, the Prosecution requests that the Chamber receive this response as a confidential document.

IV. Submissions

On the VWU and Prosecution cooperation regarding VWU’s assessment

⁵ Message from the Trial Chamber III to the parties and participants sent on Thursday, 6 March 2014 at 17:19hrs.

⁶ ICC-01/05-01/08-3009-Conf, Victims and Witnesses Unit’s Observations in relation to document ICC-01/05-01/08-3005-Conf pursuant to the instruction of Trial Chamber III dated 6 March 2014, 11 March 2014.

⁷ ICC-01/05-01/08-3009-Conf, Victims and Witnesses Unit’s Observations in relation to document ICC-01/05-01/08-3005-Conf pursuant to the instruction of Trial Chamber III dated 6 March 2014, 11 March 2014, para. 1.

⁸ ICC-01/05-01/08-3010-Conf, Registry’s Further Report on [REDACTED], 11 March 2014.

⁹ ICC-01/05-01/08-3010-Conf, Registry’s Further Report on [REDACTED], 11 March 2014, para. 4.

8. The Prosecution notes the VWU's submissions to the effect that [REDACTED],¹⁰ [REDACTED]¹¹ [REDACTED].¹²

9. From the outset the Prosecution emphasises that it has fully cooperated with the VWU on the above matters and will continue to do so diligently. The Prosecution, [REDACTED]. The Prosecution remains available to continue its full cooperation with the VWU by continuing to [REDACTED].

On the basis of the current classification of the documents

10. The Chamber, in addressing the issues of the reclassification as public of filings associated with the conduct of Witnesses 169 and 178, held that:

"16. When deciding on the defence's request for the provision of public redacted versions of all filings associated with the conduct of Witnesses 169 and 178 - consistent with its responsibility pursuant to Article 64(2) of the Statute to guarantee the fairness of the proceedings - the Chamber must balance its duty to observe the principle of publicity of proceedings, pursuant to Articles 64(7) and 67(1) of the Statute and Regulation 20 of the Regulations of the Court, against its obligation under Article 68 of the Statute "to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses".

17. In this regard, the Chamber notes Maître Zarambaud's submission that the allegations contained in the relevant filings have not been verified or confirmed and his assessment that communication of the allegations to the public would lead to confusion and negatively affect the victims participating in the Bemba case. The Chamber further notes that the VWU has been ordered to prepare a report on the issues addressed in the Prosecution Submission as soon as practicable, [REDACTED]. Pending completion of this report, the Chamber considers that publication of the relevant information [REDACTED]. In view of the above, the Chamber considers that, at this stage, the request for reclassification should be rejected."¹³

¹⁰ ICC-01/05-01/08-3009-Conf, Victims and Witnesses Unit's Observations in relation to document ICC-01/05-01/08-3005-Conf pursuant to the instruction of Trial Chamber III dated 6 March 2014, 11 March 2014, para. 2.

¹¹ ICC-01/05-01/08-3009-Conf, Victims and Witnesses Unit's Observations in relation to document ICC-01/05-01/08-3005-Conf pursuant to the instruction of Trial Chamber III dated 6 March 2014, 11 March 2014, para. 3.

¹² ICC-01/05-01/08-3009-Conf, Victims and Witnesses Unit's Observations in relation to document ICC-01/05-01/08-3005-Conf pursuant to the instruction of Trial Chamber III dated 6 March 2014, 11 March 2014, para. 4.

¹³ ICC-01/05-01/08-2924-Conf, Decision on "Defence Motion concerning '[REDACTED]', 18 December 2013, paras. 16 – 17.

11. The Prosecution submits that these findings by the Chamber and the reasons therein to maintain the current classification as confidential of the items listed in Annex A, are still valid.

12. The Prosecution emphasises that the Registry's report and assessment [REDACTED]. The Chamber ordered the VWU to prepare [REDACTED].¹⁴ The Prosecution submits that [REDACTED], no public reclassification of the listed items should be authorised. To authorise reclassification at this stage would run contrary to the Chamber's order above by [REDACTED].¹⁵ The Chamber, as well as the parties and participants, would not be able to make informed determination and recommendations regarding the impact of the public reclassifications of the listed filings [REDACTED].

13. In its most recent report on the functioning of the [REDACTED].¹⁶ [REDACTED].¹⁷

14. As ordered by the Chamber, the VWU should be allowed to [REDACTED]. Imposing artificial deadlines upon the VWU, [REDACTED].

On the scope of the new or additional redactions

15. With regard to the scope of the redactions, the Prosecution emphasises that the redactions proposed to the listed confidential documents were for the purpose of disclosure to the parties and participants, and not for the public. If and at the time

¹⁴ ICC-01/05-01/08-2845-Conf-Red, Confidential redacted version of "Decision on the prosecution's [REDACTED] [REDACTED]" (ICC-01/05-01/08-2827-Conf-Exp)" of 25 October 2013, 5 November 2013, paras. 7 and 13.

¹⁵ ICC-01/05-01/08-2924-Conf, Decision on "Defence Motion concerning '[REDACTED]', 18 December 2013, paras. 16 – 17.

¹⁶ ICC-01/05-01/08-3010-Conf, Registry's Further Report on the functioning of the [REDACTED], 10 March 2014, page 3, para.5.

¹⁷ ICC-01/05-01/08-3010-Conf, Registry's Further Report on the functioning of the [REDACTED], 10 March 2014, page 4, para. 4.

the Chamber determines appropriate that a public redacted version of the documents listed in Annex A is possible, the parties should be allowed to propose new or additional redactions to the filings listed therein. These redactions should apply to i) the identity of all of the protected witnesses, including ICC personnel ii) information related to the safety, physical and psychological well-being, dignity and privacy of all witnesses and their family members; and iii) [REDACTED] other information that could lead to identifying the working practices and security measures employed by organs of the Court to protect witnesses and perform their duties *vis-à-vis* witnesses.

On the Defence submissions regarding the publicity of the proceedings

16. The Chamber has unequivocally addressed the issue of the publicity of the proceedings in several of its recent decisions.¹⁸ The Chamber, *inter alia*, held that it:

“...struck a balance between its obligations relating to the principle of publicity of proceedings and its duty to protect victims and witnesses—supported by the concerns raised by Maître Zarambaud and the need to consider the pending VWU Security Assessment. Accordingly, the Chamber ruled that “at this stage, [the defence’s] request for reclassification should be rejected...”¹⁹

17. The Prosecution reiterates that it is not against the public reclassification of the listed items. However, such reclassification should be done with due consideration to the security and well-being situation of all the concerned individuals.

V. Relief Sought

18. For the reasons set out above, the Prosecution respectfully requests the

¹⁸ See for example ICC-01/05-01/08-2924-Conf, Decision on “Defence Motion concerning ‘[REDACTED]’”, 18 December 2013, paras. 16 – 17.

¹⁹ ICC-01/05-01/08-2980-Conf, Decision on “Defence Request for Leave to Appeal the Decision on the Defence Motion concerning [REDACTED]”, 14 February 2014, para. 25 (emphasis added).

Chamber to reject the Defence request for reclassification as public of the documents listed in Annex A.



Fatou Bensouda, Prosecutor

Dated this 4th Day of June 2014

At The Hague, The Netherlands