

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 17 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

**Decision on classification of items admitted into evidence pursuant to
Decision ICC-01/05-01/08-3034-Conf**

Decision 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

Ms Kate Gibson

Ms Melinda Taylor

Legal Representatives of the Victims

Ms Marie Edith Douzima-Lawson

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* issues the following Decision on classification of items admitted into evidence pursuant to Decision ICC-01/05-01/08-3034-Conf ("Decision").¹

1. On 7 April 2014, the Chamber issued its "Decision on the submission as evidence of items used during the questioning of witnesses but not submitted as evidence by the parties or participants" ("Decision 3034"),² in which it admitted into evidence 65 items used during the questioning of witnesses but not submitted by the parties or participants.³ In addition, the Chamber ordered the parties and participants to review the level of confidentiality of the items admitted by that decision and:⁴

(a) provide to the Registry, within 10 days of notification of the present Decision with the correct metadata as to the level of confidentiality of all items in relation to which the information is either not clear or has not been previously provided; and

(b) inform to the Chamber, within 10 days of notification of the present Decision, on the possible reclassification as Public, with or without redactions, of items in relation to which the reasons to maintain their confidentiality no longer exist and/or to inform the Chamber of the reasons for maintaining the confidentiality of all items for which no reclassification as public is justified.

2. On 17 April 2014, the Office of the Prosecutor ("prosecution") submitted its "Prosecution's Request for Reclassification of 7 admitted documents as Public and Applications of Redactions" ("Prosecution Submission"),⁵ in which it requests the reclassification of seven documents as public, with redactions it proposes in Annexes 1 to 7 applied.⁶ The prosecution further requests that

¹ The Chamber notes that this Decision makes reference to confidential documents. The Chamber finds that its limited reference to these documents does not require confidential treatment at this time. Thus, in light of the principle of publicity of proceedings enshrined in Article 67(1) of the Rome Statute ("Statute") and Regulation 20 of the Regulations of the Court ("Regulations"), the present Decision is classified as public.

² Decision on the submission as evidence of items used during the questioning of witnesses but not submitted as evidence by the parties or participants, 7 April 2014, ICC-01/05-01/08-3034-Conf.

³ ICC-01/05-01/08-3034-Conf, paragraphs 161(i) and 162.

⁴ ICC-01/05-01/08-3034-Conf, paragraph 164(ii).

⁵ Prosecution's Request for Reclassification of 7 admitted documents as Public and Applications of Redactions, ICC-01/05-01/08-3047, with Annex A and Confidential Annexes 1 to 7.

⁶ ICC-01/05-01/08-3047, paragraph 3. These are items CAR-ICC-0001-0083, CAR-ICC-0001-0091, CAR-OTP-0032-0096, CAR-OTP-0035-0058, CAR-OTP-0035-0059, CAR-OTP-0037-0126_R01, and CAR-OTP-0048-0383.

seven documents currently classified as confidential be reclassified as public with no redactions.⁷ In addition, it submits that 12 documents currently classified as confidential should maintain their current classification, for the reasons it details in its Annex A.⁸ Lastly, as for the documents for which there was no information in eCourt, the prosecution submits that six should be classified as public,⁹ and four should be classified as confidential.¹⁰

3. On 22 April 2014, the defence for Mr Jean-Pierre Bemba ("defence") filed its "Defence Submission pursuant to Trial Chamber's order to review the level of confidentiality of documents admitted into evidence" ("Defence Submission").¹¹ The defence states that two items emanating from it are currently classified as confidential and should maintain that level of confidentiality.¹² In relation to one document, the defence submits that it can be reclassified as public with the redactions the defence proposes in Annex B applied.¹³
4. 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, Rules 87 and 137(2) of the Rules of Procedure and Evidence,

⁷ See ICC-01/05-01/08-3047-Conf-AnxA, pages 13, 14, and 20. These are items CAR-OTP-0046-0212, CAR-OTP-0046-0216, CAR-OTP-0046-0218, CAR-OTP-0046-0222, CAR-OTP-0046-0229, CAR-OTP-0056-0278 and CAR-OTP-0071-0068. The Chamber notes that the admission of item CAR-OTP-0071-0068 was rejected by Decision 3034.

⁸ See ICC-01/05-01/08-3047-Conf-AnxA, pages 2, 4, 5, 7, 8, 10, 11, 12 and 13. These are items CAR-ICC-0001-0088, CAR-OTP-0019-0137, CAR-OTP-0028-0437, CAR-OTP-0028-0446, CAR-OTP-0029-0110, CAR-OTP-0035-0133, CAR-OTP-0036-0162_R01, CAR-OTP-0046-0195, CAR-OTP-0046-0196, CAR-OTP-0046-0199, CAR-OTP-0046-0204, CAR-OTP-0046-0206. The Chamber notes that the admission of items CAR-OTP-0046-0206 and CAR-OTP-0029-0110 were rejected by Decision 3034.

⁹ See ICC-01/05-01/08-3047-Conf-AnxA, pages 6, 7, 9, 16 and 18. These are CAR-OTP-0029-0266, CAR-OTP-0035-0057, CAR-OTP-0036-0039, CAR-OTP-0042-0254, CAR-OTP-0069-0146 and CAR-OTP-0070-0138.

¹⁰ See ICC-01/05-01/08-3047-Conf-AnxA, pages 8, 10 and 15. These are CAR-OTP-0037-0122_R01, CAR-OTP-0044-0037, CAR-OTP-0066-0002 and CAR-OTP-0066-0067. The Chamber notes that the admission of items CAR-OTP-0066-0002 and CAR-OTP-0066-0067 were rejected by Decision 3034.

¹¹ Defence Submission pursuant to Trial Chamber's order to review the level of confidentiality of documents admitted into evidence, 22 April 2014, ICC-01/05-01/08-3051-Conf, with Confidential Annexes A and B.

¹² ICC-01/05-01/08-3051-Conf, paragraph 4 and ICC-01/05-01/08-3051-Conf-AnxA, page 2. These are items CAR-D04-0004-0041 and CAR-D04-0004-0040.

¹³ This is item CAR-D04-0003-0513, see ICC-01/05-01/08-3051-Conf-AnxB.

Regulations 20(3), 21(7), 23bis(3) and 26 of the Regulations and Regulations 10, 14 and 18 of the Regulations of the Registry.

5. The Chamber notes that the prosecution identifies items for which the level of confidentiality was either unclear or has not been previously provided in eCourt.¹⁴ The Chamber orders the Registry to update in eCourt, as soon as possible, the level of confidentiality of such items.
6. The Chamber notes that the prosecution requests that item CAR-OTP-0071-0068 be reclassified as public.¹⁵ However, in its Decision 3034, the Chamber did not admit this item into evidence.¹⁶ Therefore, the Chamber will not address this request in the present Decision.
7. The prosecution requests the reclassification as public, with no redactions, of the following items: (i) CAR-OTP-0046-0212 (EVD-T-CHM-00057), a photograph; (ii) CAR-OTP-0046-0216 (EVD-T-CHM-00058), a photograph; (iii) CAR-OTP-0046-0218 (EVD-T-CHM-00026), a photograph; (iv) CAR-OTP-0046-0222 (EVD-T-CHM-00052), a photograph; (v) CAR-OTP-0046-0229 (EVD-T-CHM-00027), a photograph; and (vi) CAR-OTP-0056-0278 (EVD-T-CHM-00019), the English transcript of an audio broadcast. Taking into account the nature of the documents, and the information they contain, the Chamber is satisfied that the abovementioned documents can be reclassified as public with no redactions.
8. The prosecution requests the reclassification as public and proposes limited redactions in Annexes 1 to 7 of the Prosecution Submission, to the following documents: (i) CAR-ICC-0001-0083 (EVD-T-CHM-00006), a sketch drawn by Witness D04-50; (ii) CAR-ICC-0001-0091 (EVD-T-CHM-00039), an extract of a

¹⁴ See footnotes 8 and 9 above.

¹⁵ ICC-01/05-01/08-3047-Conf-AnxA, page 20.

¹⁶ ICC-01/05-01/08-3034-Conf, paragraph 161(ii).

book annotated by Witness D04-18; (iii) CAR-OTP-0032-0096 (EVD-T-CHM-00007), a letter; (iv) CAR-OTP-0035-0058 (EVD-T-CHM-00009), a sketch annotated by Witness P-69; (v) CAR-OTP-0035-0059 (EVD-T-CHM-00010), a sketch annotated by Witness P-69; (vi) CAR-OTP-0037-0126_R01 (EVD-T-OTP-00349), a report on the occupation of a property; and (vii) CAR-OTP-0048-0383 (EVD-T-CHM-00018), a series of email communications. The defence requests the reclassification as public and proposes limited redactions in Annex B of the Defence Submission, to the item CAR-D04-0003-0513 (EVD-T-CHM-00003), a letter of instruction to Mr Octave Dioba.

9. Having reviewed the proposals for redactions submitted by the prosecution and the defence, the Chamber is satisfied that, with the exception of item CAR-OTP-0048-0383, the redactions are limited and sufficient to protect witnesses, victims or any third persons at risk on account of the Court's activities. Thus, the Chamber is satisfied that the abovementioned documents, save for item CAR-OTP-0048-0383, can be reclassified as public once the redactions proposed in Annexes 1 to 6 to the Prosecution Submission and Annex B to the Defence Submission are applied.
10. As to item CAR-OTP-0048-0383, the Chamber notes that at the top right side of the document, in the prosecution's proposal for redactions in Annex 7 of the Prosecution Submission, an email address later redacted is left unredacted. In addition, the Chamber is not satisfied that redaction of the Thuraya number is necessary. As such, the Chamber directs the prosecution to lift the redaction of the Thuraya number, and to adopt a consistent approach on the redaction of the email address.
11. As to the items the prosecution proposes to maintain as confidential, the Chamber is satisfied that, considering the nature of the information they contain, the level of confidentiality of the following documents should be

maintained: (i) CAR-OTP-0028-0437 (EVD-T-OTP-00387), a work certificate; (ii) CAR-OTP-0036-0162_R01 (EVD-T-D04-00003), a death certificate; and (iii) CAR-OTP-0044-0037 (EVD-T-CHM-00017), a forensic report.

12. The Chamber recalls its approach to the classification of items, as detailed in its decision of 26 May 2014.¹⁷ In line with this approach, and the Chamber's duty to ensure the publicity of the proceedings, in full respect for the rights of the accused and due regard for the protection of victims, witnesses, and confidential information, the Chamber is of the view that, with the application of appropriate redactions, the following items shall be reclassified as public: (i) CAR-ICC-0001-0088 (EVD-T-CHM-00012), a sketch drawn by witness D04-19; (ii) CAR-OTP-0019-0137 (EVD-T-OTP-00608), a Central African Republic ("CAR") judicial decision; (iii) CAR-OTP-0028-0446 (EVD-T-0028-0446), a photograph; (iv) CAR-OTP-0035-0133 (EVD-T-CHM-00050), a photograph; (v) CAR-OTP-0037-0122_R01 (EVD-T-OTP-00348), a CAR *procès verbal de témoin*; (vi) CAR-OTP-0046-0195 (EVD-T-CHM-00051), a photograph; (vii) CAR-OTP-0046-0196 (EVD-T-CHM-00041), a photograph; (viii) CAR-OTP-0046-0199 (EVD-T-CHM-00025), a photograph; and (ix) CAR-OTP-0046-0204 (EVD-T-0046-0204), a photograph.

13. Consequently, the Chamber instructs the prosecution, in coordination with the VWU, to upload public redacted versions of the items mentioned in paragraph 12 above to eCourt or inform the Registry that they can be reclassified as public without redactions, within two weeks of the notification of the present decision. If the prosecution and the VWU consider that redactions are not sufficient to ensure the security of witnesses, victims, or third persons, the prosecution shall inform the Chamber of its reasons for maintaining the

¹⁷ See Decision on the "Prosecution's Submission pursuant to the Order on the classification of items admitted into evidence" and other evidentiary issues", 26 May 2014, ICC-01/05-01/08-3072-Conf.

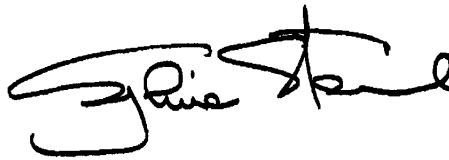
confidentiality of any such items within two weeks of the notification of the present Decision.

14. In view of the above, in line with the Chamber hereby:

- a. ORDERS the Registry to update in eCourt, as soon as possible, the level of confidentiality of items CAR-OTP-0029-0266, CAR-OTP-0035-0057, CAR-OTP-0036-0039, CAR-OTP-0042-0254, CAR-OTP-0069-0146, CAR-OTP-0070-0138 and CAR-OTP-0044-0037;
- b. GRANTS the prosecution's request to reclassify as public, with no redactions, items CAR-OTP-0046-0212, CAR-OTP-0046-0216, CAR-OTP-0046-0218, CAR-OTP-0046-0222, CAR-OTP-0046-0229, and CAR-OTP-0056-0278;
- c. ORDERS the Registry to reclassify as public in eCourt all items mentioned in sub-paragraph b above;
- d. GRANTS the prosecution's and defence's requests to reclassify as public, with the redactions proposed in Annexes 1 to 6 of the Prosecution Submission and Annex B of the Defence Submission, items CAR-ICC-0001-0083, CAR-ICC-0001-0091, CAR-OTP-0032-0096, CAR-OTP-0035-0058, CAR-OTP-0035-0059, CAR-OTP-0037-0126_R01 and CAR-D04-0003-0513;
- e. ORDERS the Registry to implement the redactions authorised in sub-paragraph d above;
- f. ORDERS the prosecution to lift the redaction of the Thuraya number in CAR-OTP-0048-0383, and to adopt a consistent approach on the redaction of the email address;
- g. GRANTS the prosecution's request to maintain the confidentiality of items CAR-OTP-0028-0437, CAR-OTP-0036-0162_R01 and CAR-OTP-0044-0037; and
- h. ORDERS the prosecution, to upload public redacted versions to eCourt, of items CAR-ICC-0001-0088, CAR-OTP-0019-0137, CAR-OTP-0028-0446,

CAR-OTP-0035-0133, CAR-OTP-0037-0122_R01, CAR-OTP-0046-0195, CAR-OTP-0046-0196, CAR-OTP-0046-0199, CAR-OTP-0046-0204, and CAR-OTP-0048-0383 or inform the Registry that they can be reclassified as public without redactions, within two weeks of the notification of the present decision. If the prosecution and the VWU consider that redactions are not sufficient to ensure the security of witnesses, victims, or third persons, the prosecution should inform the Chamber of its reasons for maintaining the confidentiality of any such items within two weeks of the notification of the present Decision.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 17 June 2014

At The Hague, the Netherlands