



Original: **English**

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

Date: **09/07/2014**

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

**Public Redacted Version of Defence Response to the Prosecution Submissions on
the Reclassification of Documents**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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Unrepresented Victims

Unrepresented

(Participation/Reparation)

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REGISTRY

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Mr. Herman von Hebel

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Mr. Patrick Craig

Detention Section

Victims Participation and Reparations Section

Other

A. BACKGROUND

1. On 11 December 2013, Trial Chamber III (“the Chamber”) rendered its *Order on the classification of items admitted into evidence* (“Order”),¹ ordering as follows:

(a) ORDERS the parties and participants to review the level of confidentiality of all items originating from them; [...]

(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; [...]

2. On 6 January 2014, the Prosecution requested an extension of time until 24 January 2014 to file proposed redactions to a number of the documents for which reclassification was sought.² On 9 January 2014, the Chamber granted the Prosecution request for an extension of time.³ On 10 January 2014, the Prosecution submitted a chart listing all the items admitted into evidence, apart from those for which redactions were still being applied.⁴ On 24 January 2014, the Prosecution accordingly filed its *Request for Reclassification of 40 admitted Documents as Public and for Application of Redactions*.⁵

3. As such, the Defence files the following response within 7 days, pursuant to the Chamber’s Order of 11 December 2013.

¹ ICC-01/05-01/08-2921

² ICC-01/05-01/08-2926.

³ ICC-01/05-01/08-2929.

⁴ ICC-01/05-01/08-2931-Conf-Anx

⁵ ICC-01/05-01/08-2946.

B. SUBMISSIONS

4. The Defence takes no position on the Prosecution's proposed reclassification of documents contained in ICC-01/05-01/08-2931-Conf-AnxA, apart from those set out below.

5. The Defence makes the generic submission that the reclassification of exhibits as public makes the filing of briefs and writing of judgments an easier and more transparent process. Conversely, such reclassification at this stage of proceedings represents little or no threat to witness protective measures, the proceedings and the transcript having been suitably controlled at the time of the production of the relevant exhibits.

(a) Procès-Verbaux

6. The Defence submits that there is an insufficient basis to maintain the confidentiality of the dossier of 203 "*procès-verbaux d'audition de victime*", admitted through Witness CAR-OTP-PPPP-0009.⁶

7. The Prosecution asserts that the 203 statements should remain confidential because they were made by victims "of the MLC crimes taken by the Investigating Judge of the Tribunal of Bangui. Reclassification of the statement would increase the risk that the victim could be identified and would increase the risk of harm to the witness."⁷

8. Witness 009 was not subject to protective measures, and has not, so far as the Defence is aware, ever voiced any concern that he may be harmed as a result of his testimony in this case. The victims listed are not subject to witness protective

⁶ [REDACTED]

⁷ ICC-01/05-01/08-2931-Conf-AnxA.

measures in the present case, nor are they participating civil parties. They necessarily made the statements in the knowledge that they would be used in the context of judicial proceedings. If the Prosecution has taken custody of these *procès-verbaux* upon guarantees that they would remain confidential, then they have done so in error. Decisions concerning the public or confidential status of documents rests with the Chamber. If the Chamber was of the view that their identities should not be revealed to the public, then the redaction of names and, if necessary, details concerning the location of particular attacks or residences would ensure their anonymity. In such circumstances, the Defence submits that their continued classification as confidential is unwarranted.

9. Moreover, the Chamber admitted the *procès-verbaux*, over Defence objection, on the basis that they were relevant to the Chamber's assessment of the contextual elements of the crimes for which the Mr. Bemba is charged, and may assist in its assessment of whether the crimes were committed as part of a widespread or systematic attack. The Chamber also held that "the *procès-verbaux* were the focus of a significant part of Witness 9's testimony and will therefore assist the Chamber in assessing that testimony."⁸ The significance ascribed by the Chamber to this dossier of statements also weighs in favour of their reclassification.

(b) Photographs [REDACTED]

10. [REDACTED]⁹ in effect represent a pictorial record of events in the Central African Republic. They purport to capture the events around which the Prosecution case is framed; images of alleged MLC troops, alleged Bozizé rebels, of victims, perpetrators, locations, and provide a contemporaneous record of the way in which the different troops interacted with the local Central African population. They are of central importance to the present proceedings.

⁸ ICC-01/05-01/08-2012-Red, para. 64.

⁹ [REDACTED]

11. [REDACTED] provided extensive testimony about these photographs, and was questioned at length by the Prosecution, Defence, Legal Representatives of Victims, and the Chamber as to their content, provenance, and significance. They were also shown to other Prosecution and Defence witnesses, and as such are critical to a complete understanding of the transcripts of the case.

12. The Prosecution has argued that these photographs should remain confidential because [REDACTED]. The Prosecution fails to substantiate either assertion. [REDACTED]. By contrast, given the importance of these photographs to the case and an understanding of a notable part of the evidence heard, the Defence submits that the balance weighs in favour of their reclassification.

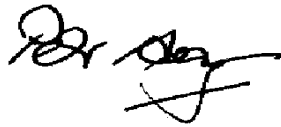
(c) Video [REDACTED]

13. The Defence takes a similar position in relation to [REDACTED]. This footage represents a contemporaneous record of central events in the present case, and is an essential piece of evidence relevant to the date of entry of the MLC troops, the identity of perpetrators, the conduct of troops during the events, and the attitude of the local population to the different warring parties and their location at various times, and their movements throughout the relevant areas. It was discussed at length by [REDACTED] and played in full during the course of the trial, and as such is also important to an understanding of the transcripts of the case. The parties' submissions as to these matters and the Chamber's findings would be meaningless to the public at large, were all references to the existence of this tape redacted from the filings and judgment.

14. The Prosecution has argued in favour of its continued classification as confidential on the basis that it [REDACTED].

15. [REDACTED]. As such, the Defence submits that this video should be re-classified as public.

The whole respectfully submitted.

A handwritten signature in black ink, appearing to read 'Peter Haynes', with a stylized flourish at the end.

Peter Haynes QC
Counsel of Mr. Jean-Pierre Bemba

Done this day 09 July 2014

The Hague, The Netherlands