

**Cour
Pénale
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**International
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Court**

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No.: **ICC-01/05-01/08**
Date: **27 July 2016**

TRIAL CHAMBER III

Before: Judge Joyce Aluoch, Presiding Judge
Judge Geoffrey Henderson
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
*IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO***

Public Redacted Document

Public redacted version of “Prosecutor’s Observations on the Re-classification of the Documents Listed in Annex 1 of the Pre-Trial Chamber III’s Decision dated November 17, 2008”, 24 November 2008, ICC-01/05-01/08-277-Conf-Exp

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Jean-Jacques Badibanga

Counsel for the Defence of Jean-Pierre Bemba Gombo

Mr Peter Haynes

Ms Kate Gibson

Legal Representatives of the Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of the Applicants

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Other Section

Background

1. On 17 November 2008, the Pre-Trial Chamber III (“the Chamber”) rendered the “Decision Requesting the Prosecutor, the Victims and Witnesses Unit and the Registry to Submit Observations on the Re-classification of Certain Documents”¹ (“Decision”).

Request for Confidentiality

2. The Office of the Prosecutor (the “Prosecution”), in full compliance with the Chamber’s order in its Decision,² requests that this submission and its annexes be received by the Chamber as “Confidential, Ex Parte, Prosecution and Victims and Witnesses Unit Only”. The Prosecution has taken notice of the fact that the submission with its observations and attached annexes refer to materials that are currently confidential *ex parte* or under seal *ex parte*, for some of which the Prosecution has determined that the original classification is still warranted, and they depict information for which redactions are sought.

Prosecution’s Observations

3. The Prosecution submits the following observations after consultations, in compliance with the Chamber’s order in its Decision,³ with the Victims and Witnesses Unit (“the VWU”) on 21 November 2008. The Prosecution and the VWU were in agreement regarding the issue of the communication of the documents listed in Annex 1⁴ of the Decision including the proposals for redactions related to some of these documents, prior to any communication to the Defense.

4. In reviewing the documents the Prosecution has determined whether (1) the original classification of documents listed in Annex 1 is still warranted, and when this is not the case, (2) whether proposals for redactions are appropriate in order to share a redacted version of these documents with the Defence. The Prosecution has further considered and determined whether (3) some of the documents may be re-classified as “Confidential” when the basis for the initial *ex parte* or under seal classification no longer exists at this stage, given the fact that

¹ ICC-01/05-01/08-257.

² ICC-01/05-01/08-257 at page 5, para (d).

³ ICC-01/05-01/08-257 at page 4, para 7.

⁴ ICC-01/05-01/08-257-Conf-Exp-Anx1.

due to the process of disclosure the content of some documents is already known to the Defence and; (4) whether some of the documents may be re-classified as “Public”.

5. The Prosecution submits to the Chamber proposals for redactions of 6 documents, provided in Annexes 2 to 7 of the present submission, as listed in paragraph 23 below.

6. In order to protect the safety of witnesses, victims and members of their families pursuant to Rule 81(4) of the Rules of Procedure and Evidence (“the Rules”), the Prosecution considers it necessary to redact some identifying information such as: information revealing identity of witnesses for which redaction of identifying information has been granted by the Chamber; information on the place of residence of witnesses that could affect their safety or the safety of members of their families and information on the nature or lack of protection enjoyed by witnesses.

7. Furthermore, the Prosecution requests a limited number of redactions in order to protect information related to the Prosecution’s ongoing investigation pursuant to Rule 81(2) of the Rules, such as: information revealing means and methods by which the Court enforces protection of witnesses; information about investigative methods of the Office of the Prosecutor; information relating to the Office of the Prosecutor’s contacts. The Prosecution submits that disclosure of such information undermines ongoing investigations as well as the operational means by which the Court protects witnesses under article 68(1) of the Rome Statute (“the Statute”).

8. The Prosecution has prepared a Table for each document, in Annex 1 to the present submission, which tracks and refers to (i) each redaction by page number, (ii) the corresponding rule justifying redaction and (iii) designates the color used for each redaction.

9. The color code is as follows:

Blue: Redactions pursuant to Rule 81(2) of the Rules that relate exclusively to the further and/or ongoing investigation against Jean Pierre Bemba Gombo for crimes described in the Arrest Warrant.

Red: Redactions pursuant to Rule 81(4) of the Rules, to ensure the confidentiality of information, in accordance with Articles 54 (innocent third parties), 72 and 93 of the Statute,

and, in accordance with Article 68 of the Statute, to protect the safety of witnesses and victims and members of their families.

10. The Prosecution further submits that *ex parte* documents emanating from the Prosecution as set out in Annex 1 should be made available to the Defence as long as these documents are material to the preparation of the Defence for the Confirmation of Charges.

11. The Prosecution, in compliance with the Chamber's decision, has determined that the original classification of a number of documents listed in Annex 1 is still warranted and that subsequently they should not be subject of a Chamber's decision on re-classification.

12. The Prosecution submits that the documents listed in paragraph 24 below (Prosecution's submissions, individual security risks assessment of witnesses, transcripts of *ex parte* hearings) deal almost exclusively with matters not to be divulged to the Defence.

13. These documents provide security-related information pertaining to (a) the security situations of witnesses, whether their identity is already known by the Defence or not, (b) the range of protective measures, general and specific, put in place to ensure the security of witnesses.

14. The first category of information contained in these documents includes identifying information about family members of witnesses; location of witnesses and their respective family; the identity of witnesses for which redaction of identifying information has been granted by the Chamber and information whether witnesses benefit from protective measures.

15. The second category of information contained in these documents includes details about the functioning of the [REDACTED].

16. In addition, some of these documents are individual risks assessments of witnesses which are Prosecution's internal work products. They were exceptionally provided to the Chamber in compliance with its orders.⁵ The Prosecution respectfully submits that as internal work products they are not intended and should be divulged to the Defence.

⁵ ICC-01/05-01/08-111-US-Exp and ICC-01/05-01/08-141-Conf

17. The Prosecution submits that disclosing the type of information referred to above is not material to the preparation of the Defence, therefore non-disclosure does not prejudice Mr. Bemba's right to fair trial.

18. Moreover, the Prosecution submits that the release of this type of information potentially increases further the risk to victims, witnesses or family of witnesses because it provides additional information on their identity, profile and situation. This would consequently undermine the Prosecution's ability to seek additional protective measures in regard to these victims, witnesses and their families, at a later stage of the proceedings.

19. The Prosecution further submits that revealing the methods by which the Court's organs, the Registry through the VWU and the Prosecutor's Office, enforce the protection of victims, witnesses and their families undermines not only ongoing investigations but also the operational means by which the Court protects witnesses under Article 68(1) of the Statute.

20. Based on the reasons above the Prosecution proposals regarding the issue of the re-classification of documents listed in Annex 1 is as follows:

21. Documents to be re-classified to the status of "Public":

ICC-01/05-01/08-26-US-Exp-Anx1., entitled "Photographs of Jean Pierre Bemba";

ICC-01/05-01/08-26-US-Exp-Anx12., entitled "Chapitre de la création du siège";

ICC-01/05-01/08-29-US-Exp-Anx2A., entitled "Refugees flee amid ethnic discrimination as perpetrators go unpunished";

ICC-01/05-01/08-29-US-Exp-Anx2B., entitled "République Centrafricaine: Réfugiés en fuite, discrimination ethnique et coupables impunis";

ICC-01/05-01/08-56-US-Exp., entitled "Motion on extension of time limit";

22. Documents to be re-classified to the status of "Confidential":

ICC-01/05-01/08-29-US-Exp-Anx1A., entitled "Letter Aff. Etat Centrafricain/ Patasse Nos Réf : NG.G.W.2004-39";

ICC-01/05-01/08-29-US-Exp-AnxB., entitled “Mémoire”;

ICC-01/05-01/08-29-US-Exp-Anx., entitled “List of Under Seal documents”;

ICC-01/05-01/08-41-US-Exp., entitled “Submission of the French version of the "Prosecutor's Submission on Further Information and Materials"”;

ICC-01/05-01/08-41-US-Exp-AnxA, entitled “Version expurgée des « Conclusions du Procureur relatives aux renseignements et éléments supplémentaires »”;

ICC-01/05-01/08-44-US-Exp-Anx., entitled “List of Annexes”;

ICC-01/05-01/08-82-US-Exp., entitled “Prosecution's Submission of Media Articles”;

ICC-01/05-01/08-82-US-Exp-Anx., entitled “List of Annexes”;

ICC-01/05-01/08-82-US-Exp-AnxI-25., 25 annexes to Prosecution's Submission of Media Articles;

ICC-01/05-01/08-114-US-Exp-Anx., entitled “Annex: List of Annexes”;

ICC-01/05-01/08-124-US-Exp., entitled “Prosecution's Submission of Proposed Redacted Statement of Witness 0009”;

ICC-01/05-01/08-211-US-Exp., entitled “Prosecution's Submission of Additional Information Pursuant to "Decision on the Security Situation of Witnesses””;

ICC-01/05-01/08-211-US-Exp-Anx., entitled “Annex to "Prosecution's Submission of Additional Information Pursuant to “Decision on the Security Situation of Witnesses” - List of Annexes””;

ICC-01/05-01/08-T-1-CONF-EXP-FRA ET 26-05-2008 1-8 NB PT, Transcripts;

ICC-01/05-01/08-T-1-CONF-EXP-ENG ET 26-05-2008 1-7 NB PT, Transcripts;

23. Documents to be re-classified to the status of “Confidential” with redactions:

ICC-01/05-01/08-32-US-Exp., entitled “Prosecution's Application Pursuant to Rules 81(2) and 81(4) for redactions to the Application for a Warrant of Arrest and the Further Submission”;

ICC-01/05-01/08-32-US-Exp-AnxC., entitled “Draft French Translation of the Prosecution's Application Pursuant to Rules 81(2) and 81(4) for redactions to the Application for a Warrant of Arrest and the Further Submission”;

ICC-01/05-01/08-44-US-Exp., entitled “Prosecution's Application for Redaction Pursuant to Rules 81(2) and 81(4)”;

ICC-01/05-01/08-91-US-Exp., entitled “Prosecutor's Position regarding Disclosure of Additional Witnesses for Referral to VWU in Response to Pre-Trial Chamber III's Order dated July 23, 2008”;

ICC-01/05-01/08-114-US-Exp., entitled “Prosecution's Amended Application for Proposed Redactions Pursuant to Rules 81(2) and 81(4)”;

ICC-01/05-01/08-122-US-Exp., entitled “Prosecutor's Submission of Additional Information Demonstrating the Existence of an Objectively Identifiable Risk”;

24. Documents for which the original classification as *ex parte* under seal and *ex parte* confidential is still warranted

ICC-01/05-01/08-58-US-Exp., entitled “Prosecutor's Decision concerning the Prosecutor's proposals for redactions”;

ICC-01/05-01/08-58-US-Exp-Anx., entitled “Annex to Prosecutor's Decision concerning the Prosecutor's proposals for redactions”;

ICC-01/05-01/08-119-US-Exp., entitled “Prosecution's Response to "Ordonnance relative à la protection des témoins et au rapport d'évaluation des risques"” ;

ICC-01/05-01/08-119-US-Exp-Anxl-4 and Annexes A7-A14, 12 Annexes to Prosecution's Response to "Ordonnance relative à la protection des témoins et au rapport d'évaluation des risques”;

ICC-01/05-01/08-131-US-Exp., entitled “Prosecutor's Amended Application for Proposed Summaries and Relations Pursuant to Article 68(5) of the Rome Statute and Rules 81(2) and 81(4) of the Rules of Procedure and Evidence”;

ICC-01/05-01/08-131-US-Exp-Anx, entitled “Annex to the Prosecutor's Amended Application for Proposed Summaries and Redactions Pursuant to Article 68(5) of the Rome Statute and Rules 81(2) and 81(4) of the Rules of Procedure and Evidence”;

ICC-01/05-01/08-147-US-Exp., entitled “Prosecution's Submission of the Individual Risk Assessments for Eleven Additional Witnesses”;

ICC-01/05-01/08-147-US-Exp-AnxA1-6 and Annexes A9-A10., 8 Annexes to the “Prosecution's Submission of the Individual Risk Assessments for Eleven Additional Witnesses” - Individual Security Risk Assessment Summary;

ICC-01/05-01/08-209-US-Exp., entitled “Prosecution's Submission of Additional Information Pursuant to "Decision on the Security Situation of Witnesses"”;

ICC-01/05-01/08-T-2-CONF-EXP-ENG ET 19-06-2008 1-22 NB PT, Transcripts;

ICC-01/05-01/08-T-2-CONF-EXP-FRA ET 19-06-2008 1-21 NB PT, Transcripts;

ICC-01/05-01/08-T-4-CONF-EXP-FRA ET 28-08-2008 1-80 SZ PT, Transcripts;

ICC-01/05-01/08-T-4-CONF-EXP-ENG ET 28-08-2008 1-90 NB PT, Transcripts;

ICC-01/05-01/08-T-5-CONF-EXP-ENG ET 17-09-2008 1-108 SZ PT, Transcripts;

ICC-01/05-01/08-T-5-CONF-EXP-FRA ET 17-09-2008 1-100 NB PT, Transcripts;

ICC-01/05-01/08-T-6-CONF-EXP-ENG ET 08-10-2008 1-43 SZ PT, Transcripts;

ICC-01/05-01/08-T-6-CONF-EXP-FRA ET 08-10-2008 1-41 SZ PT, Transcripts.

Relief Sought

25. For the foregoing reasons, the Prosecution respectfully submits that:

(a) In regard to documents listed in paragraph 21 above, a re-classification to the status of “Public” is possible at this stage and they may therefore be shared with the Defence;

(b) In regard to documents listed in paragraph 22 above, a re-classification to the Status of “Confidential” is possible and they too may therefore be communicated to the Defence

26. The Prosecution further submits and respectfully requests the Chamber that:

(a) In regard to documents listed under paragraph 23 above, the Chamber authorizes the proposed redactions as submitted in Annexes 1 to 7 to this Application prior to any communication of such documents to the Defence and that;

(b) In regard to documents listed under paragraph 24 above, the Chamber maintains the original still warranted classification as *ex parte* under seal and *ex parte* confidential.



Fatou Bensouda, Prosecutor

Dated this 27th Day of July 2016

At The Hague, The Netherlands