



Original: English

No.: ICC-01/05-01/08  
Date: 14 September 2017

**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**

**Public redacted version of “Decision on the Defence’s Request for reclassification  
of ICC-01/05-01/08-3493-Conf and its annexes”, 26 July 2017**

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 James Stewart  
Mr Jean-Jacques Badibanga

**Counsel for the Defence**

Mr Peter Haynes QC  
Ms Kate Gibson

**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**

Xavier-Jean Keita

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Trust Fund for Victims**

Mr Pieter de Baan

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, having regard to Regulation 23bis of the Regulations of the Court (“Regulations”), issues the following “Decision on the Defence’s Request for reclassification of ICC-01/05-01/08-3493-Conf and its annexes”:

## **I. Procedural background and submissions**

1. On 1 February 2017, the Trust Fund for Victims (“TFV”) filed a confidential, *ex parte* Registry only report (“TFV Report”) with five confidential, *ex parte* Registry only annexes relating to informal meetings between the Registry and various Court officials with [REDACTED]. These meetings were held, at the initiative of the TFV, in the context of the ongoing reparations proceedings, with a view to exploring whether [REDACTED] could be a potential partner organisation under Rule 98(4) of the Rules of Procedure and Evidence (“Rules”).<sup>1</sup>
2. On 23 June 2017, the Chamber ordered the reclassification of the TFV Report and its annexes from “confidential, *ex parte* Registry only” to “confidential”.<sup>2</sup>
3. On 3 July 2017, the Defence requested the reclassification of the TVF Report from “confidential” to “public” (“Request”), submitting that it does not see any factual or legal basis for its confidential classification. It argues that the information contained therein neither protects victims/witnesses nor can it be considered sensitive, as most of it is available on the internet. Alternatively, the Defence requests that the TFV Report and its annexes be reclassified as “public redacted”.<sup>3</sup>
4. On 6 July 2017, the Chamber requested observations on the Request from the TFV by 17 July 2017.<sup>4</sup>

<sup>1</sup> Report on meeting in the context of reparations on 21 and 22 December organized by the Trust Fund with a delegation from [REDACTED], 1 February 2017, ICC-01/05-01/08-3493-Conf with five confidential annexes (formerly: ICC-01/05-01/08-3493-Conf-Exp with five confidential *ex parte* annexes only available to the Registry).

<sup>2</sup> Email from Trial Chamber III to the TFV, 23 June 2017, 17:30. The reclassification was effected on 27 June 2017.

<sup>3</sup> Request for re-classification of ICC-01/05-01/08-3493-Conf and its annexes, 3 July 2017, ICC-01/05-01/08-3538-Conf.

<sup>4</sup> Email from Trial Chamber III to the TFV, 6 July 2017, 12:16.

5. On 18 July 2017, the TFV filed its observations on the Request. The TFV submits that the TFV Report and annexes' classification should be upheld to keep [REDACTED]'s involvement in these meetings confidential. It stresses that the security situation in the Central African Republic ("CAR") remains extremely volatile and [REDACTED]'s public identification as an organisation associated with the Court would pose significant security risks to [REDACTED]. Furthermore, the TFV argues that the Request is premature, as the Chamber has not yet indicated whether it intends to issue an award under Rule 98(4) of the Rules.<sup>5</sup>

## II. Analysis

6. Pursuant to Regulation 23*bis* (3) of the Regulations a document must be reclassified where the basis for its classification no longer exists.
7. The Chamber notes that the TFV Report and annexes are currently classified "confidential" on the basis of the potential security risks for [REDACTED] were [REDACTED] to be publicly identified as an organisation in discussions with the Court. While it is publicly known that the TFV organised consultations between various Court officials and "*an organisation* under consideration" in the context of a potential award under Rule 98(4) of the Rules,<sup>6</sup> the organisation's name itself is not yet in the public domain.
8. The Chamber is of the view that the unstable situation in the CAR at present warrants the continuing redaction of [REDACTED]'s name from the public in order to protect [REDACTED]. However, to ensure that the publicity of the proceedings is only limited to the extent strictly necessary, the Chamber considers that the application of redactions to the TFV Report and annex A suffices to safeguard the security of [REDACTED]. Due to the fact that

<sup>5</sup> Observations on the "Request for re-classification of ICC-01/05-01/08-3493-Conf and its annexes", ICC-01/05-01/08-3538-Conf, 18 July 2017, ICC-01/05-01/08-3542-Conf.

<sup>6</sup> TFV Annual Report 2016, [http://www.trustfundforvictims.org/sites/default/files/imce/Annual%20Report-2016\\_Online\\_Revised.pdf](http://www.trustfundforvictims.org/sites/default/files/imce/Annual%20Report-2016_Online_Revised.pdf) (*emphasis added*).

[REDACTED] itself is best-placed to identify the information which ought to be redacted, the Chamber considers that it be consulted in the process of preparing a redacted version of the TFV Report and annex A.

9. In respect of the remaining annexes, the Chamber notes that, although much of the information they contain appears to be available online, their distinct design and content is likely to lead to [REDACTED]'s identification. These annexes would require extensive redactions in order to be made public, which would render them unintelligible and therefore defeat the purpose of filing public redacted versions thereof.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**REJECTS** the Request to reclassify the TFV Report and its annexes as public;

**REJECTS** the Request to reclassify the annexes 1-4 as public redacted;

**GRANTS** the Request to reclassify the TFV Report and annex A as public redacted;

**ORDERS** the TFV to consult with the [REDACTED] and file a public redacted version of the TFV Report and annex A by 15 August 2017.

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

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|-----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| <br>Judge Geoffrey Henderson | <br>Judge Joyce Aluoch | <br>Judge Chang-ho Chung |
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Dated this 14 September 2017

At The Hague, The Netherlands