

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 24 September 2010

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 the « Requête de la Défense aux fins de reclassification d'un document présenté par la République Sud-Africaine relative à la question de la liberté provisoire de M. Jean-Pierre Bemba Gombo »

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

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor

Ms Petra Kneuer, Senior Trial Lawyer

Legal Representatives of the Victims

Ms Marie Edith Douzima-Lawson

Counsel for the Defence

Mr Nkwebe Liriss

Mr Aimé Kilolo Musamba

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**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”) in the case of The Prosecutor v. Jean-Pierre Bemba Gombo hereby issues the following Decision on the « Requête de la Défense aux fins de reclassification d’un document présenté par la République Sud-Africaine relative à la question de la liberté provisoire de M. Jean-Pierre Bemba Gombo ».¹

I. Background and Submissions

1. On 12 August 2009, the Registrar transmitted to Pre-Trial Chamber II the observations of the Republic of South Africa received on the request for interim release of Mr Jean-Pierre Bemba Gombo,² together with 2 annexes. Annex 1, containing the note verbale sent to the Embassy of the Republic of South Africa in the Kingdom of The Netherlands on 6 August 2009 along with its memorandum of service, was classified as *confidential* as it contained sensitive information. Annex 2, the letter from the relevant authorities of the Republic of South Africa received on 12 August 2009 at 14:25, was classified *confidential ex parte Registry only* as requested by the Republic of South Africa.
2. On 30 August 2010, the defence filed its « Requête de la Défense aux fins de reclassification d’un document présenté par la République Sud-Africaine relative à la question de la liberté provisoire de M. Jean-Pierre Bemba Gombo » (“Application” or “defence’s Application”),³ in which it requests the Chamber to order the reclassification of Annex 2 referred to in paragraph 1 above, as *confidential ex parte Registry and Defence only*. The defence submits that such reclassification is necessary in order to

¹ 30 August 2010, ICC-01/05-01/08-866 and Corrigendum de la Requête de la Défense aux fins de reclassification d’un document présenté par la République Sud-Africaine relatif à la question de la liberté provisoire de M. Jean-Pierre Bemba Gombo, 30 August 2010, ICC-01/05-01/06-866-Corr.

² Transmission of the observations of the Republic of South Africa received on the Defence request for interim release of Mr Jean Pierre-Bemba Gombo, 12 August 2009, ICC-01/05-01/08-473 and Conf-Exp-Annexes 1 and 2.

³ ICC-01/05-01/08-866-Corr.

demonstrate that there is a State that is potentially willing to guarantee the accused's appearance, in the event he is granted provisional release.⁴

II. Analysis and Conclusions

3. Regulation 23*bis* of the Regulations of the Court states:

1. Any document filed by the Registrar or a participant and marked "ex parte", "under seal" or "confidential", shall state the factual and legal basis for the chosen classification and, unless otherwise ordered by a Chamber, shall be treated according to that classification throughout the proceedings.

[...]

3. Where the basis for the classification no longer exists, whosoever instigated the classification, be it the Registrar or a participant, shall apply to the Chamber to reclassify the document. A Chamber may also re-classify a document upon request by any other participant or on its own motion. In the case of an application to vary a protective measure, regulation 42 shall apply.

4. In the present case, the Republic of South Africa requested that the information contained in the above-mentioned Annex 2 be kept confidential, since it was considered of a privileged nature. Additionally, the information was provided only to assist the Chamber in making a determination and was not intended for the benefit of any of the parties.
5. The Chamber notes that the Office of the Prosecutor made a similar request which was denied by the Single Judge of Pre-Trial Chamber II "[c]onsidering that the basis for the classification continues to exist".⁵
6. Since the basis for the classification still exists as regards Annex 2, the Chamber sees no reason to justify its reclassification.

⁴ ICC-01/05-01/08-866-Corr, paragraph 11.

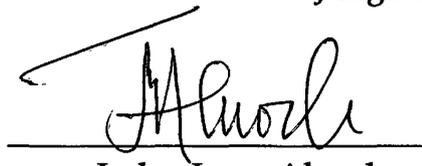
⁵ Decision on the Requests of the Prosecutor and the Legal Representatives of Victims for Re-classification of the Document Submitted by the Authorities of the Republic of South Africa and for Notification of Other Documents, 19 August 2009, ICC-01/05-01/08-480, paragraph 21.

7. For the above reasons, the Chamber rejects the defence's Application.

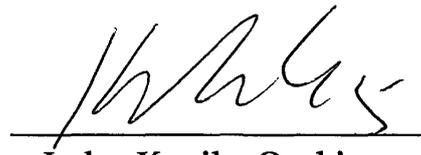
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 24 September 2010

At The Hague, The Netherlands