

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 13 July 2011

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 "Defence request for the reclassification of documents"

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

Counsel for the Defence

Mr Nkwebe Liriss
Mr Aimé Kilolo Musamba

Legal Representatives of the Victims

Ms Marie Edith Douzima-Lawson
Mr Assingambi Zarambaud

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

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” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”), issues the following Decision on the “Defence request for the reclassification of documents”.

I. Background and submissions

1. Witness CAR-OTP-WWWW-0006 (“Witness 06”) is a prosecutor before the *Tribunal de Grande Instance de Bangui* who opened an investigation into the 2002-2003 events in the Central African Republic (“CAR”) that are under examination in the *Bemba* case. Witness 06 gave evidence before this Court, mainly in open session, at the public hearings on 4 to 7 and 11 to 12 April 2011.¹
2. On 21 April 2011, counsel for Mr Jean-Pierre Bemba Gombo (“defence”) filed the confidential “Defence request for the reclassification of documents” (“Request”),² in which the defence requested the Chamber to reclassify as public:
 - a. Six judicial documents used during the questioning of Witness 06, as well as those portions of the transcript of 11 April 2011 in which the defence read extracts from these documents in open session;³
 - b. Three additional documents that the defence intended to use during the questioning of Witness CAR-OTP-WWWW-0009 (“Witness 09”).

¹ Transcripts of hearings on 4, 5, 6, 7, 11 and 12 April 2011, ICC-01/05-01/08-T-94-ENG ET, ICC-01/05-01/08-T-95-Red-ENG CT, ICC-01/05-01/08-T-96-Red-ENG CT, ICC-01/05-01/08-T-97-ENG ET, ICC-01/05-01/08-T-98-Red-ENG CT, ICC-01/05-01/08-T-99-ENG CT2 respectively.

² Defence request for the reclassification of documents, 21 April 2011, ICC-01/05-01/08-1380-Conf.

³ See ICC-01/05-01/08-1380-Conf, footnote 5 referring to Transcript of hearing, 11 April 2011, ICC-01/05-01/08-T-98-CONF-ENG ET, pages 5 to 18, pages 37, 38, 44 and 45, pages 48 to 50, pages 54 to 56 and pages 59 to 63.

3. Witness 09 is an investigative judge who carried out an investigation into the 2002-2003 events in the CAR that are under examination in the *Bemba* case. He gave evidence, mainly in open session, at the public hearings on 3 to 5 and 9 to 11 May 2011.⁴
4. By oral decision of 3 May 2011,⁵ the Chamber instructed the parties and participants, pending the Chamber's final decision on reclassification of documents, "not to mention in public sessions the names or any information that may lead to the identification of the victims referred to in the documents [...]".
5. On 13 May 2011, the Office of the Prosecutor ("prosecution") filed the "Prosecution's Response to 'Defence request for the reclassification of documents'",⁶ in which it submits that it does not oppose reclassification as public of the documents referred to in the defence Request, save for document CAR-OTP-0001-0539.⁷ The prosecution asserts that redactions should be applied to that document because it contains information bearing on "the identity of victims, including victims who are listed in the Bangui court documents but are not Prosecution witnesses".⁸
6. In addition to the nine documents referred to in the defence Request, the prosecution states that it does not oppose the reclassification as public of two other documents relied on by the defence during its questioning of Witness 09 (CAR-OTP-0019-0211 and CAR-OTP-0019-0237).⁹ The prosecution further explains that, for the document CAR-OTP-0019-0087,

⁴ Transcripts of hearings on 3, 4, 5, 9, 10 and 11 May 2011, ICC-01/05-01/08-T-102-Conf-ENG ET, ICC-01/05-01/08-T-104-Red-ENG, ICC-01/05-01/08-T-105-Red-ENG, ICC-01/05-01/08-T-106-Red-ENG, ICC-01/05-01/08-T-107-ENG ET, ICC-01/05-01/08-T-108-Conf-ENG ET respectively.

⁵ Transcript of hearing on 3 May 2011, ICC-01/05-01/08-T-102-Conf-ENG ET, page 4, lines 1 to 8.

⁶ Prosecution's Response to "Defence request for the reclassification of documents", 13 May 2011, ICC-01/05-01/08-1405-Conf.

⁷ ICC-01/05-01/08-1405-Conf, paragraphs 2 and 3.

⁸ ICC-01/05-01/08-1405-Conf, paragraph 3.

⁹ ICC-01/05-01/08-1405-Conf, paragraph 2.

it exists two different versions of this document, one bearing annotations and the other bearing no annotations.¹⁰ The prosecution requests that the Chamber reclassify as public the non-annotated version, which would then be the version used in future proceedings.¹¹ Further, the prosecution does not oppose the reclassification as public of the relevant parts of transcripts of hearings referring to the documents at issue, as long as the reclassification reflects any redactions of information contained in the documents.¹²

7. Finally, the prosecution proposed on 13 May 2011 that the views of the CAR authorities should be sought before the Chamber makes its final determination on the reclassification, and informs the Chamber that the prosecution has already consulted with said authorities and is awaiting a response.¹³ On 5 July 2011, the prosecution informed the Chamber that the CAR authorities were not able to provide a final response.¹⁴ On 8 July 2011, the Chamber invited the prosecution to communicate once more with the CAR authorities in order to get their views by 12 July 2011 on the issue of reclassification of the documents at issue.¹⁵ To date, the prosecution is not in a position to provide the Chamber with any views from the CAR authorities.¹⁶

II. Analysis and Conclusions

8. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber has considered Articles 64(7), 67(1) and 68 of the Statute, Rule 81(4) and 87 of the Rules of Procedure and Evidence ("Rules") and

¹⁰ ICC-01/05-01/08-1405-Conf, paragraph 5.

¹¹ ICC-01/05-01/08-1405-Conf, paragraph 5.

¹² ICC-01/05-01/08-1405-Conf, paragraph 4.

¹³ ICC-01/05-01/08-1405-Conf, paragraph 2.

¹⁴ Email from the prosecution to the Chamber's Legal Officer on 8 July 2011 at 13.37.

¹⁵ Email from the Chamber's Legal Officer to the prosecution on 8 July 2011 at 15.22.

¹⁶ Email from the prosecution to the Chamber's Legal Officer on 12 July 2011 at 17.41.

Regulation 23bis and 42(1), 42(3) and (4) of the Regulations of the Court.

9. The Chamber has considered the level of confidentiality of the following documents referred to by the defence in its Request:
- a. *Réquisitoire de non lieu partiel et de renvoi devant la cour criminelle* : CAR-OTP-0004-0065 (annotated version) and CAR-OTP-0019-0087 (non-annotated version);
 - b. *Procès verbal d'audition de témoin*: CAR-OTP-0019-0234, CAR-OTP-0019-0245, CAR-OTP-0004-0265, and CAR-OTP-0019-0237;
 - c. *Procès verbal d'interrogatoire*: CAR-OTP-0019-0211, CAR-OTP-0019-0207, CAR-OTP-0019-0215 and CAR-OTP-0019-0230 ;
 - d. *Note de service* : CAR-OTP-004-0237; and
 - e. *Procès verbal d'audition de victime*: CAR-OTP-0001-0539.

Réquisitoire de non lieu partiel et de renvoi devant la cour criminelle

10. At the hearing on 9 May 2011,¹⁷ the Chamber recalled that this document, in its annotated version (CAR-OTP-0004-0065), had already been made public on 15 June 2010 by the Chamber, and is registered in the record of the case under reference number ICC-01/05-01/08-721-Anx26. Therefore, the defence request for reclassification as public of document CAR-OTP-0004-0065 is moot. In addition, the Chamber considers that there is no longer a basis for the classification as confidential of CAR-OTP-0019-0087 because it is the same document as CAR-OTP-0004-0065, but non-annotated.

Procès verbal d'audition de témoin and Procès verbal d'interrogatoire

11. These documents are records of interviews of witnesses or suspects

¹⁷ Transcript of hearing, 9 May 2011, ICC-01/05-01/08-T-106-Red-ENG, page 10, lines 17 to 19.

conducted by Witness 06 before the Bangui court, some of which were conducted in Witness 09's presence. The Chamber notes that witnesses and suspects interviewed during the proceedings at national level are known to the public in the CAR because those individuals held key positions within public services during the 2002-2003 events. In addition, the individuals have been identified in public judicial documents, such as the *Réquisitoire de non lieu partiel et de renvoi devant la cour criminelle*.¹⁸ The Chamber further notes that the identities of the interviewed individuals were all publicly revealed during the questioning of Witnesses 06 and 09.¹⁹ Finally, names of other persons mentioned in these documents have also been made public during the questioning of Witnesses 06 and 09, both of whom testified in open court.²⁰ Therefore, there is no longer a basis for the classification as confidential of documents CAR-OTP-0019-0234, CAR-OTP-0019-0245, CAR-OTP-0004-0265, CAR-OTP-0019-0237, CAR-OTP-0019-0211, CAR-OTP-0019-0207, CAR-OTP-0019-0215 and CAR-OTP-0019-0230.

Note de service

12. The Chamber notes that the *Note de service* is a four-page document dated 18 December 2002 and contains a two-page annex at CAR-OTP-0042-0239 and CAR-OTP-0042-0240 ("Annex"). The first two pages of the *Note de service*

¹⁸ See for example, CAR-OTP-0004-0065 at 0086 and 0088 or CAR-OTP-0019-0087 at 0108 and 0110.

¹⁹ See for example Transcript of hearing on 6 April 2011, ICC-01/05-01/08-T-96-Red-ENG, page 14, line 11 (Bombayake); Transcript of hearing on 7 April 2011, ICC-01/05-01/08-T-97-ENG ET, page 18, line 24 (Angoa), page 19, lines 1 to 3 (Yangongo); Transcript of hearing on 11 April 2011, ICC-01/05-01/08-T-98-Red-ENG CT, page 32, line 3; Transcript of hearing on 4 May 2011, ICC-01/05-01/08-T-104-Red-ENG, page 65, lines 17 and 19 (Moholo), page 66, line 17 (Konamna); Transcript of hearing on 9 May 2011, ICC-01/05-01/08-T-106-Red-ENG, page 39, line 20 (Ouandane).

²⁰ See for example, Transcript of hearing on 5 April 2011, ICC-01/05-01/08-T-95-Red-ENG CT, page 53, line 5 (Ndoubabe), page 69, line 10 (Service); Transcript of hearing on 6 April 2011, ICC-01/05-01/08-T-96-Red-ENG CT, page 14, line 13 (Moustapha); Transcript of hearing on 7 April 2011, ICC-01/05-01/08-T-97-ENG ET, page 22, line 9 (Lengbe); Transcript of hearing on 11 April 2011, ICC-01/05-01/08-T-98-Red-ENG CT, page 29, line 13 (Barsin), page 20, line 23 (Mazette), page 27, line 13 (Kouagou), page 27, line 21 (Yaounde), page 28, line 4 (Sakama), page 29, line 18 (Sila), page 29, line 20 (Ndagbia), page 28, line 21 (Leppa), page 29, line 2 (Zolo), page 29, line 4 (Ngboya), page 29, line 11 (Dambourou), page 30, line 1 (Nzoba), page 58, line 20 (Gab-Befio); Transcript of hearing on 11 April 2011, ICC-01/05-01/08-T-98-Red-FRA CT, page 28, line 1 (Dobigue), page 30, line 5 (Bangandekoy); Transcript of hearing on 11 April 2011, ICC-01/05-01/08-T-98-CONF-ENG CT, page 53, line 9 (Kianzi); Transcript of hearing on 9 May 2011, ICC-01/05-01/08-T-106-Red-ENG, page 46, line 2 (Demafouh).

show the existence of an operation cell created in the CAR at the time of the events under examination in the *Bemba* case. The existence and the role played by this operation cell have been extensively discussed in open court. However, the Annex, which shows the composition of this cell, reveals the identities of persons composing the operation cell. While most of the names referred to in the Annex to the *Note de Service* were made public during the testimony of Witnesses 06 and 09,²¹ some names were not mentioned in open session and remain therefore confidential. Against this background and pursuant to the Chamber's duty to protect persons who may be at risk as a result of testimony before the Court, the said Annex must be redacted to ensure the continuing confidentiality of the identities of those persons who have not been identified in open session.

13. In these circumstances, pursuant to Rules 81(4) and 87(1) of the Rules, the Chamber is of the view that the names of the four last individuals identified on page CAR-OTP-0042-0240 should be redacted. Once these redactions are made, the *Note de Service*, together with the redacted Annex, is to be reclassified as public.

Procès verbal d'audition de victime

14. Document CAR-OTP-0001-0539 is the record of an interview that Witness 09 conducted before the Bangui court of an individual who is a prosecution witness in the *Bemba* case. The Chamber notes that protective measures were granted to this witness when testifying before this Court.²² To ensure that these protective measures are not undermined, and pursuant to Article 68(1) of the Statute, the Chamber is of the view that document CAR-OTP-0001-0539

²¹ All names referred to on the first page of the *Annex to the Note de Service*, at CAR-OTP-0042-0239 were mentioned in open session.

²² Transcript of hearing, 15 February 2011, ICC-01/05-01/08-T-66-Red-ENG-CT, page 1, line 22 to page 3, line 25.

should be redacted so that any information that could lead to the identification of the protected witness is kept confidential.

15. With regard to the prosecution consultations with the CAR authorities on the issue of reclassification, the Chamber notes that the CAR authorities have not informed the prosecution of its position. The Chamber is mindful that Regulation 42 (4) of the Regulations of the Court requires the Chamber to “*seek, whenever possible, (...)*” the consent of the CAR authorities. However, the actual consent of the CAR authorities is not a prerequisite for the Chamber’s final determination on the reclassification of the documents. In the present case, the documents at issue have been publicly referred to at several hearings before this Chamber and the prosecution does not oppose their reclassification as public, save for minor redactions to be applied to one document. Therefore, the Chamber considers that it is in a position to make a determination on the reclassification of the documents at issue, without prior consent of the CAR authorities.

16. For these reasons, the Trial Chamber hereby:

(a) PARTIALLY GRANTS the defence Request;

(b) ORDERS the reclassification as public of the following documents: CAR-OTP-0019-0087, CAR-OTP-0019-0234, CAR-OTP-0019-0245, CAR-OTP-0004-0265, CAR-OTP-0019-0211, CAR-OTP-0019-0237, CAR-OTP-0019-0207, CAR-OTP-0019-0215 and CAR-OTP-0019-0230;

(c) ORDERS the Registry, in consultation with the prosecution, to review the

public redacted versions of the transcripts of hearings at which Witnesses 06 and 09 gave evidence and ORDERS, where applicable, the lifting of any redactions to these transcripts that are no longer necessary due to the reclassification ordered under subparagraph (b), above. Specifically, those parts of transcripts that refer to (i) the documents reclassified as public; or (ii) information contained therein should be made public;

(d) ORDERS the prosecution to apply redactions to documents:


- CAR-OTP-0042-0237 at 0240 in accordance with paragraph 13 above;
- CAR-OTP-0001-0539 in accordance with paragraph 14 above;

(e) ORDERS the Registry, in consultation with the prosecution, to review the relevant public redacted versions of the related transcripts of hearings at which Witnesses 06 and 09 gave evidence with a view to ensuring that redactions ordered in (e) are applied;

(f) ORDERS the Registry to file new public redacted versions of those transcripts that comply with the order in subparagraphs (c) and (e), above;

(g) ORDERS the reclassification as public of documents ICC-01/05-01/08-1380-Conf and ICC-01/05-01/08-1405-Conf.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 13 July 2011

At The Hague, The Netherlands