

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 June 2012

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 Document

Second Order on the reclassification of transcripts

Order 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 Aimé Kilolo Musamba
Mr Peter Haynes

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

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod Jacome

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber III ("Chamber") of the International Criminal Court ("Court") in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* issues the following Second Order on the reclassification of transcripts.

1. On 5 March 2012, the Chamber issued its "Order on the reclassification of transcripts" ("First Order"),¹ in which it, *inter alia*, instructed the Office of the Prosecutor ("prosecution") to review the transcripts of the testimonies of prosecution witnesses that were given in private and closed sessions in order to determine whether they could be made public in whole or in part. In particular, the prosecution was ordered "to file with the Chamber by way of email any such proposal for limited redactions for all prosecution witnesses on a rolling basis [...] and to start reviewing the public redacted versions of the transcripts of the testimony of each prosecution witness without delay, in consultation with the VWU, starting with the testimony of Witness 38".²
2. The prosecution duly complied with the First Order by submitting to the Chamber, on a rolling basis,³ emails with its proposals for limited redactions to the transcripts of the testimonies of the first 28 prosecution witnesses, in accordance with the timetable proposed by the prosecution⁴ and approved by the Chamber.⁵
3. However, the Chamber notes that the Registry regularly notifies the parties, the participants and the Chamber, of various new corrected versions.⁶ As a result, the proposals for redactions submitted to the

¹ Order on the reclassification of transcripts, 5 March 2012, ICC-01/05-01/08-2153.

² ICC-01/05-01/08-2153, paragraph 8 (b) and (c).

³ Emails from the prosecution to the Assistant Legal Officer of Trial Chamber III of 19 and 26 March, 2, 10, 16 and 23 April, 1, 7, 14, 21 and 28 May 2012.

⁴ Email from the prosecution to the Assistant Legal Officer of Trial Chamber III of 9 March 2012 at 11.35..

⁵ Email from the Assistant Legal Officer of Trial Chamber III to the prosecution of 12 March 2012 at 15.14.

⁶ See for example, emails from Court Management on 14 May 2012, Correction of the transcript ICC-01/05-01/08-T-181-CONF-ENG-CT and Correction of the transcript ICC-01/05-01/08-T-183-CONF-ENG-CT (for Witness 31).

Chamber by the prosecution may not always relate to the latest corrected version of the transcripts that is available.

4. The Chamber has been informed by the Registry that the review of transcripts is conducted on a rolling basis by stenographers and interpreters and takes around three to five days per transcript in periods when the Chamber is not sitting and five to ten days if there are ongoing trial hearings.⁷ According to the procedure currently followed within the Registry and depending on the availability of interpreters, this review process does not necessarily begin immediately after the related hearings.⁸ As such, it is not possible to predict with certainty when the corrected version of a transcript will be notified.
5. In view of the foregoing and in the interest of efficiency, certainty and publicity of the proceedings, the Chamber considers it necessary to (i) adjust the procedure for the Registry's review of transcripts; (ii) adjust the procedure for the prosecution's submission of proposals for redactions of transcripts of the testimony of prosecution witnesses; (iii) set out the procedure to be followed by the legal representative of victims for the submission of proposals for redactions of transcripts of the testimony of the legal representative's witnesses; and (iv) prospectively set out the procedure to be followed by the defence in its submission of proposals for redactions to transcripts of the testimony of defence witnesses.
6. To that end, and in accordance with Articles 64(2), (6)(c) and (f), (7) and (10), 67(1), 68(1) and (2) of the Rome Statute, Rules 15, 16(2)(b), 42, 43, 86, 87, 134(3), 137 of the Rules of Procedure and Evidence and Regulations 20, 21, 26, 27, 42 of the Regulations of the Court, the Chamber decides to put

⁷ Email on 15 May 2012 from the Registry to a Chamber's Legal Officer at 10.41.

⁸ This information was provided at a meeting between CMS representatives and members of Trial Chamber III.

in place the following procedure for the review of transcripts by the Registry and the submission of proposals for redactions by the parties.

Filing of corrected versions of the transcripts of the testimony of prosecution witnesses and of the legal representative's witnesses

7. The Chamber is of the view that in order to ensure the publicity, fairness, efficiency and expeditiousness of the proceedings, the parties need to be certain that by a given date they will have been provided with a *final corrected* version of the transcripts of the testimony of each witness. The Registry shall therefore make all efforts to finalise as soon as possible its review of the transcripts of the testimony of prosecution witnesses and of the witnesses called by the legal representative (CAR-V20-PPPP-0001 and CAR-V20-PPPP-0002). Taking into account the conclusion of the presentation of evidence by the prosecution, the schedule for the presentation of evidence by the defence⁹ and noting that only three hearing days in the case are currently scheduled until the summer recess, the Chamber instructs the parties and participants to provide to the Registry any request for corrections to the transcripts by 15 June 2012. The Registry is instructed to report to the Chamber by 22 June 2012 with a precise timeline for the finalisation of its review of the transcripts. The review of the transcripts and notification to the parties, participants and the Chamber by the Registry should be completed before the commencement of the presentation of the defence evidence.
8. Further, in order to avoid any confusion between the different versions of transcripts, once the final corrected version of a transcript is completed,

⁹ Decision on the starting date of the defence presentation of evidence and related issues, 24 May 2012, ICC-01/05-01/08-2221.

access in the TRIM system of the Court shall be limited to the latter version.¹⁰

Proposals for redactions to the transcripts of the testimony of witnesses called by the prosecution and the legal representative of victims

9. Pending completion of the review process by the Registry, as instructed by the Chamber on 31 May 2012,¹¹ the prosecution shall suspend its submission to the Chamber of proposals for redactions made in accordance with the First Order.

10. Upon notification of the filing of the corrected versions of the transcripts, the prosecution, in consultation with the Victims and Witnesses Unit ("VWU") and the Court Management Services, as necessary, should identify anew any parts of the English and French transcripts that need to be redacted in order for the transcripts to be reclassified as public and submit to the Chamber, in the English versions of the transcripts, any proposals for redactions. These proposals shall be communicated to the Chamber by way of email, which should be copied to the defence and the legal representatives of victims, for their information.

11. In relation to the format of the prosecution's proposals for limited redactions, after a preliminary review of the proposals sent by the prosecution to date, the Chamber notes that the prosecution's proposals are currently being made by way of comments in the margin of the transcripts. First, the Chamber is of the view that using such comments is not an efficient method for proposing redactions as such comments do not appear in the printable versions of the transcripts. Further, the comments

¹⁰ In the Transcend system, access to all available versions of transcripts should be maintained.

¹¹ Email from the Chamber's Assistant Legal Officer to the prosecution on 31 May 2012 at 11:40.

are currently made using the same colour code for both recommendations for the application of redactions and recommendations for the lifting of redactions, which renders the proposals less clear. The Chamber is of the view that *only* proposals for redactions which need to be retained in the transcripts in order for them to be reclassified as public should be highlighted by the prosecution.

12. In addition, in relation to the public portions of the transcripts, the prosecution should review any redactions implemented pursuant to a redaction order by the Chamber and determine whether the basis for the relevant redactions still exists.
13. Further, while the prosecution's review should deal with both language versions of the transcripts (English and French), only the English versions of the proposed redacted transcripts shall be submitted by the prosecution to the Chamber.
14. In line with its previous practice, the prosecution shall provide its amended proposals for redactions on a rolling basis.
15. Upon notification of the corrected version of the relevant transcripts, the legal representative, in consultation with the Victims and Witnesses Unit ("VWU") and the Court Management Services, as necessary, should examine whether any portions of the transcripts can be reclassified as public with appropriate redactions. The legal representative should then transmit the English version of the transcript to the Chamber, highlighting the suggested redactions. These proposals shall be communicated to the Chamber by way of email, which should be copied to the prosecution and the defence for their information. The legal representatives should review as well any redactions implemented pursuant to a redaction order by the

Chamber and determine whether the basis for the relevant redactions still exists.

Review of the prosecution's and legal representative's proposals by the Chamber and implementation of reclassifications by the Registry

16. Upon review of the proposals, the Chamber will inform the prosecution and the legal representative of whether the redactions proposed are approved. In accordance with the Chamber's instructions, the prosecution and the legal representative shall then implement the redactions in the English and the French version of the transcripts. Subsequently, the prosecution and the legal representative shall submit each transcript in both language versions to the Registry. The Registry shall then notify and publish the public or public redacted versions of both the English and French versions of the transcripts. In the event that the Registry notes inconsistencies in the application of redactions to the different language versions of the transcripts prepared by the prosecution or the legal representative, the Registry shall liaise directly with the prosecution or the legal representative to resolve the issue.

Proposals for redactions of the transcripts of the testimony of witnesses called by the defence

17. In order to ensure the publicity, fairness, efficiency and expeditiousness of the proceedings, the Chamber orders the parties and participants to submit request for corrections to the transcripts within 5 working days following the completion of evidence by the respective witness. The Chamber is of the view that for each witness, all efforts should be made by the Registry for its review to be completed within 30 working days following the submission of corrections.

18. Upon notification of the filing of the corrected versions of the transcripts of each defence witness, the defence, in consultation with the Victims and Witnesses Unit ("VWU") and the Court Management Services, as necessary, should identify any parts of the transcripts that need to be redacted in order for the transcripts to be reclassified as public, and submit to the Chamber, in the English versions of the transcripts, any proposals for redactions that appear to be absolutely necessary. These proposals shall be communicated to the Chamber, on a rolling basis, by way of email which should be copied to the prosecution and legal representatives of victims for their information. In addition, upon notification of the corrected version, the defence shall inform the Chamber of the amount of time required for its review.
19. Upon review, the Chamber will inform the defence of whether the redactions proposed are approved. In accordance with the Chamber's instructions, the defence shall then implement the relevant approved redactions in the English and the French versions of the transcripts. Subsequently, the defence shall submit the transcripts in both language versions to the Registry. The Registry shall then notify and publish the public or public redacted versions of both the English and French versions of the transcripts. In the event that the Registry notes inconsistencies in the application of redactions to the different language versions of the transcripts prepared by the defence, the Registry shall liaise directly with the defence to resolve the issue.
20. The Chamber is mindful that exceptionally the need for corrections may only become evident at a later stage. In that case, the Registry shall implement the corrections as necessary, and it should be responsible for transferring the relevant redactions to the new corrected version.

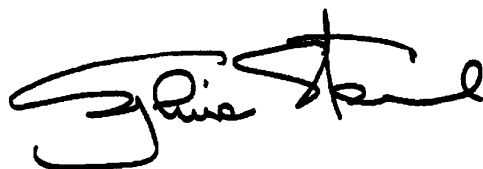
21. For the foregoing reasons, the Chamber hereby orders:

- a. the parties and participants to provide to the Registry any request for corrections to the transcripts of testimonies of prosecution and legal representative's witnesses by 15 June 2012;
- b. the Registry to make all efforts to finalise, as soon as practicable and in any event before the commencement of the presentation of evidence by the defence, its review of the transcripts of the testimony of all witnesses called by the prosecution and the legal representatives, and to subsequently notify the parties, the participants and the Chamber of the filing of the final corrected versions of the relevant transcripts;
- c. the Registry to report to the Chamber by 22 June 2012 with a precise timeline for the finalisation of its review of the transcripts;
- d. the Registry to limit access in the TRIM system of the Court to the final corrected version of the transcripts;
- e. the prosecution to suspend its submissions to the Chamber of proposals for redactions made in accordance with the First Order;
- f. the prosecution to submit to the Chamber by way of email any proposals for redactions to the English version of the corrected transcripts of the testimony of all prosecution witnesses on a rolling basis in accordance with the procedure set out in paragraphs 9 to 14 of the present Order. To this end, the prosecution shall provide the Chamber with a proposed time-table indicating the anticipated sequence of the filings of the abovementioned proposals;
- g. the legal representative to submit to the Chamber by way of email her proposals for redactions in accordance with the procedure set out in paragraph 15 of the present Order;
- h. the parties and participants to provide to the Registry any request for corrections to the transcripts of testimonies of defence witnesses

within 5 days following the completion of the relevant witness's testimony;

- i. the Registry to notify to the parties, the participants and the Chamber the corrected versions of the transcripts of the testimony of each defence witness no later than 30 working days after the completion of the testimony of each witness;
- j. the defence to submit to the Chamber by way of email any proposals for limited redactions to the English version of the corrected transcripts of the testimony of all defence witnesses on a rolling basis and in accordance with the procedure set out in paragraphs 18 to 19 of the present Order.

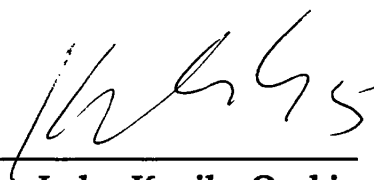
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 4 June 2012

At The Hague, The Netherlands