

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 11 December 2014

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

**Public redacted version of "Decision on the prosecution's application
regarding a letter dated 6 August 2011"**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes

Ms Kate Gibson

Ms Melinda Taylor

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

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court” or “ICC”) in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* issues the following Decision on the prosecution’s application regarding a letter dated 6 August 2011.

I. The prosecution’s application

1. At 13:45 on 9 September 2011, the Chamber received an *ex parte* application from the Office of the Prosecutor (“prosecution”) requesting the reclassification of two filings: ICC-01/05-01/08-1660-Conf-Anx1 and ICC/01/05-01/08-1704-Conf-Anx2.¹

2. Both ICC-01/05-01/08-1660-Conf-Anx1 and ICC/01/05-01/08-1704-Conf-Anx2 were appended to submissions filed by Mr Zarambaud before this Chamber and the Appeals Chamber respectively.² Both filings are the same document: a letter apparently authored by Witness 169, dated 6 August 2011 (“Letter”).

3. Among other matters, the Letter discloses the names of ICC field staff, procedures used by the Victims and Witnesses Unit (“VWU”) in the field and the locations it uses to accommodate witnesses. It also discloses Witness 169’s address and telephone number, as well as the fact that he testified before this Court.

4. The prosecution’s application, which was sent via email, is reproduced in relevant part below:

¹ Email from Senior Trial Attorney to Legal Officer of the Trial Chamber, 9 September 2011, 13:45.

² Annex 1 to Observations de Maître Zarambaud Assingambi, Représentant légal de victimes, sur la demande de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo afin d’accomplir ses devoirs civiques en République démocratique du Congo, en date du 24 août 2011, 29 August 2011, ICC-01/05-01/08-1660-Conf; Annex 2 to Demande du Représentant légal de victimes, Maître Zarambaud Assingambi à participer à la procédure d’appel suite à l’acte d’appel de la Défense du 1^{er} septembre 2011, 5 September 2011, ICC/01/05-01/08-1704-Conf-Anx2.

It is suggested by the Prosecution to reclassify both Annexes.

Due to the urgency of the matter the Prosecution respectfully requests the Trial Chamber III via e-mail to issue the following orders to the Defence pursuant to Article 68 of the Rome Statute and Rules 87 and 88 of the Rules of Procedure and Evidence:

1. The Defence team shall not disclose the document in question to the Defendant, Mr. Bemba;
2. The Defence team shall take immediate steps to return the document and all copies to the Court Management Section as soon as practical;
3. The Defence team and the Defendant, in the event that the document has been shared with the latter, shall not disclose information referred to in the document to any other person;
4. In case the Defence team has already shared information with any other person or entity the Defence shall immediately notify the Trial Chamber III in full about the details and identities of the persons or entities to whom the information was disclosed;
5. The Defence shall be instructed to neither share nor use the information contained in the document in the future in any way;
6. In case the Defence team has already shared information with any other person or entity the Defence shall advise [sic] them to not share, use or reveal the information in any way;
7. Any other orders that the Trial Chamber III deems appropriate in these circumstances.

Further, the Prosecution requests that the Legal Representatives of Victims being reminded of the proper classification of documents and the proper treatment of sensitive - in particular security related - matters.

II. Relevant provisions

5. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber has considered Article 68 of the Statute, Rule 87 of the Rules of Procedure and Evidence ("Rules") and Regulation 23bis(3) of the Regulations of the Court ("Regulations").

III. Analysis

6. The Chamber notes as an initial matter that the appropriate manner in which to request a Chamber's intervention is to file a formal motion, not to send

an email. Nevertheless, the Chamber will consider the prosecution's application due to the urgency of the matter raised and the need for its prompt resolution.

7. Turning to the merits of the prosecution's application, the Chamber recalls its duties under Article 68 of the Statute to "take appropriate measures" to ensure the safety of witnesses. It is also mindful of Rule 87 of the Rules, which permits the Chamber to order measures to protect witnesses and others who are at risk on account of testimony before the Court, and to limit the dissemination of information that may identify witnesses or others at risk.

8. With the above provisions in mind, the Chamber is of the view that the Letter should not have been disseminated as broadly as it was. The information in the Letter with respect to the VWU's procedures in the field and [REDACTED] is usually available only to the VWU and the prosecution. This is because the more broadly this information is disseminated, the more difficult it is to ensure that witnesses' identities remain confidential, when confidential treatment is requested.

9. Moreover, at the *ex parte* status conference held on 26 August – which the legal representatives and defence did not attend – the Chamber was informed that since July, prosecution witnesses [REDACTED]. Indeed, the Letter suggests that the fact of [REDACTED]. This is of particular concern given that [REDACTED]. Against this backdrop, the Chamber considers that extreme caution needs to be taken with regard to the dissemination of information regarding the identity, safety and location of protected witnesses.

10. For the above reasons, the Chamber will grant the prosecution's request to reclassify filing ICC-01/05-01/08-1660-Conf-Anx1, pursuant to Regulation 23bis(3) of the Regulations. It shall be reclassified as *Confidential, Ex Parte*, prosecution and VWU only.

11. The Chamber considers that the same rationale should apply to filing ICC/01/05-01/08-1704-Conf-Anx2. However, that document is pending before the Appeals Chamber, not this Chamber, and therefore the Appeals Chamber is the appropriate body to rule on that issue.

12. While the Chamber believes that the reclassification of the Letter is warranted as a security measure, it is not persuaded that the defence and legal representatives should be denied access to all of the information contained therein. In particular, the representations in the Letter regarding payments, allegedly received and promised, may be relevant to the defence if it intends to challenge the credibility of Witness 169. For this reason, the defence and legal representatives are to be provided with a redacted version of the Letter, which removes all sensitive information related to the security of witnesses and to VWU procedures. The VWU, in consultation with the prosecution, shall provide the Chamber with proposed redactions.

13. Finally, the Chamber is persuaded that in the circumstances, and for the reasons described above, it is appropriate for measures to be taken to ensure the return of any copies of the Letter, limit its further dissemination, and determine to whom it has been provided. To this end, the Chamber ORDERS the legal representatives and the defence to:

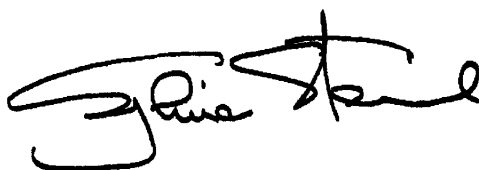
- a. Return all copies of the Letter in their possession or, in the case of the defence, the accused's possession, to the Registry. This shall be done no later than 17:00 on Monday, 12 September 2011;
- b. Not disclose the Letter, or any information contained therein, to anyone who has not yet seen the Letter or had its contents communicated to them. This applies to the accused if he has not yet been provided with the Letter or informed of its contents;

- c. Provide the Chamber with a list of all persons, both inside and outside their teams, to whom (i) the Letter or a copy thereof has been provided; or (ii) the contents of the Letter have been disclosed. The list shall include the address and telephone number of all such persons and shall be provided to the Chamber no later than 17:00 on Thursday, 15 September 2011; and
- d. Contact any persons to whom they have provided the Letter or a copy thereof and (i) request the return of the Letter or the copy; and (ii) inform the person or persons that they are not to communicate the contents of the Letter to any other person. This shall be completed as soon as possible.

14. For these reasons, the Chamber hereby ORDERS:

- (a) The Registry to immediately reclassify filing ICC-01/05-01/08-1660-Conf-Anx1 as *Confidential, Ex Parte*, prosecution and VWU only;
- (b) The VWU, in consultation with the prosecution, to provide the Chamber with a proposed redacted version of the Letter that removes all sensitive information related to the security of witnesses and to VWU proceedings on the field, which can be provided to the legal representatives and defence. The proposed redactions shall be submitted to the Chamber no later than 10:00 on Tuesday, 13 September 2011; and
- (c) The legal representatives and the defence to take the steps specified in paragraph 13, within the time limits set down in that paragraph.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 11 December 2014

At The Hague, The Netherlands