

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 26 October 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**

Confidential

**Decision on the "Request for reclassification of documents filed by the OPCV
in the record of the case" and on reclassification of related submissions**

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

The Office of the Prosecutor

Ms Fatou Bensouda, 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

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 ("Chamber") of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("*Bemba case*"), issues the following Decision on the "Request for reclassification of documents filed by the OPCV in the record of the case" and on reclassification of related submissions.

I. Background and submissions

1. On 24 April 2012, the Office of Public Counsel for Victims ("OPCV") filed its "Request for reclassification of documents filed by the OPCV in the record of the case" ("OPCV Request"),¹ in which it requested the Chamber to reclassify several documents that had been filed by the OPCV in the context of the proceedings in the *Bemba* case.

(a) The OPCV requested the Chamber to reclassify as public:²

(i) the "Observations des victimes demanderesses sur la Requête de mise en liberté provisoire déposée par la Défense de M. Bemba le 3 mai 2011" ("ICC-01/05-01/08-1433-Conf");³ and

(ii) the "Observations des victimes demanderesses sur la Demande d'autorisation de sortie sous le bénéfice de l'extrême urgence déposée par la Défense de M. Bemba le 10 juin 2011" ("ICC-01/05-01/08-1540-Conf").⁴

¹ Request for reclassification of documents filed by the OPCV in the record of the case, 24 April 2012, ICC-01/05-01/08-2194-Conf and 19 confidential *ex parte* annexes.

² ICC-01/05-01/08-2194-Conf, paragraphs 3 to 5.

³ Observations des victimes demanderesses sur la Requête de mise en liberté provisoire déposée par la Défense de M. Bemba le 3 mai 2011, 23 May 2011, ICC-01/05-01/08-1433-Conf.

⁴ Observations des victimes demanderesses sur la Demande d'autorisation de sortie sous le bénéfice de l'extrême urgence déposée par la Défense de M. Bemba le 10 juin 2011", 17 June 2011, ICC-01/05-01/08-1540-Conf.

- (b) The OPCV requested the Chamber to reclassify as confidential:⁵
- (i) the "Transmission de la liste des demandeurs visés par la Décision de la Chambre de première instance III du 14 janvier 2011 dans le cadre de l'enquête menée par le Greffe eu égard à certaines demandes de participation de victimes" ("ICC-01/05-01/08-1133-Conf-Exp");⁶
 - (ii) the "Information to the Chamber following the "Decision on the Registry's "Report on issues concerning intermediaries' involvement in completion of applications for participation"" ("ICC-01/05-01/08-1755-Conf-Exp");⁷ and
 - (iii) the confidential *ex parte* Annex to the "Request for the conduct of the testimony of Witness CAR-OTP-WWWW-0108 by video-link" ("ICC-01/05-01/08-905-Conf-Exp-AnxA").⁸
- (c) The OPCV requested the Chamber to reclassify as confidential redacted, in line with the redactions proposed in the annexes to the OPCV Request:⁹
- (i) the "Observations on the Registry's Report drawing to the Chamber's attention an issue regarding an

⁵ ICC-01/05-01/08-2194-Conf, paragraphs 8, 10 and 12.

⁶ Transmission de la liste des demandeurs visés par la Décision de la Chambre de première instance III du 14 janvier 2011 dans le cadre de l'enquête menée par le Greffe eu égard à certaines demandes de participation de victimes, 18 January 2011, ICC-01/05-01/08-1133-Conf-Exp.

⁷ Information to the Chamber following the "Decision on the Registry's "Report on issues concerning intermediaries' involvement in completion of applications for participation", 16 September 2011, ICC-01/05-01/08-1755-Conf-Exp.

⁸ Annex A to Request for the conduct of the testimony of witness CAR-OTP-WWWW-0108 by video-link, 27 September 2010, ICC-01/05-01/08-905-Conf-Exp-AnxA.

⁹ ICC-01/05-01/08-2194-Conf, paragraphs 6 to 7, 9 and 11; ICC-01/05-01/08-2194-Conf-Exp-Anxs1-19.

- application for participation in the proceedings" ("ICC-01/05-01/08-978-Conf-Exp");¹⁰
- (ii) the Annex to the "Transmission de la liste des demandeurs visés par la Décision de la Chambre de première instance III du 14 janvier 2011 dans le cadre de l'enquête menée par le Greffe eu égard à certaines demandes de participation de victimes" ("ICC-01/05-01/08-1133-Conf-Exp-Anx");¹¹ and
- (iii) the Annexes to the "Information to the Chamber following the "Decision on the Registry's "Report on issues concerning intermediaries' involvement in completion of applications for participation"" ("ICC-01/05-01/08-1755-Conf-Exp-Anxs1to17").¹²

II. Analysis and Conclusions

2. In deciding on the OPCV Request, 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, Rules 81(3) and (4) and 87 of the Rules of Procedure and Evidence ("Rules") and Regulations 23*bis* and 42(1), (3) and (4) of the Regulations of the Court. In addition, the Chamber has assessed the OPCV Request in the context of documents submitted by the parties and the legal representatives of victims and decisions issued by the Chamber that are connected to the OPCV submissions listed in paragraph 1 above.
3. The OPCV Request covers submissions related to three separate issues; the Chamber will address each in turn.

¹⁰ Observations on the Registry's Report drawing to the Chamber's attention an issue regarding an application for participation in the proceedings, 28 October 2010, ICC-01/05-01/08-978-Conf-Exp.

¹¹ ICC-01/05-01/08-1133-Conf-Exp-Anx.

¹² ICC-01/05-01/08-1775-Conf-Exp-Anxs1-17.

Observations on defence applications for interim release

4. In relation to the OPCV's observations on the defence's applications for interim release, the Chamber notes that the defence's underlying applications,¹³ as well as the related observations submitted by the Office of the Prosecutor ("prosecution")¹⁴ and the legal representatives of victims,¹⁵ are still classified as confidential. The Chamber is therefore of the view that the defence should first file public redacted versions of its applications or inform the Chamber that the applications can be reclassified as public without redactions. Thereafter, the prosecution, the legal representatives of victims and the OPCV shall file public redacted versions of their observations, or, as the case may be, confirm or inform the Chamber that their observations may be reclassified as public without redactions.

¹³ Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo, 3 May 2011, ICC-01/05-01/08-1387- Conf and five confidential annexes and corrigendum, ICC-01/05-01/08-1387-Conf-Corr with confidential annex filed on 4 May 2011. An English translation of the Application was filed on 6 May 2011: Corrigendum to Application for the interim release of Mr Jean-Pierre Bemba Gombo, ICC-01/05-01/08-1387-Conf-Corr-tENG with five confidential annexes; Demande d'autorisation de sortie sous le bénéfice de l'extrême urgence pour permettre à M. Jean-Pierre Bemba Gombo d'accomplir ses devoirs civiques en République Démocratique du Congo, 10 June 2011, ICC- 01/05-01/08-1501-Conf with three confidential annexes. An English translation of the application was filed on 23 June 2011: Extremely urgent application for an exeat from the detention centre to allow Mr Jean-Pierre Bemba Gombo to perform his civic duties in the Democratic Republic of the Congo, ICC-01/05-01/08-1501-Conf-tENG with a confidential annex.

¹⁴ Prosecution's observations on the Defence Application for the interim release of Mr Jean-Pierre Bemba Gombo, 19 May 2011, ICC-01/05-01/08-1423-Conf; Prosecution's Response to the Defence 'Demande d'autorisation de sortie sous le bénéfice de l'extrême urgence pour permettre à M. Jean-Pierre Bemba Gombo d'accomplir ses devoirs civiques en République Démocratique du Congo', 17 June 2011, ICC-01/05-01/08-1542-Conf with confidential annex.

¹⁵ Observations de Maître Zarambaud Assingambi, Représentant légal des victimes, relatives à la "Requête de mise en liberté provisoire déposée par la défense le 3 mai 2011, 23 May 2011 (notified on 24 May 2011), ICC-01/05-01/08-1435-Conf. An English translation of Mr Zarambaud's observations was filed on 27 May 2011: Observations of Mr Zarambaud Assingambi, Legal Representative of Victims, on the "Application for the interim release of Mr Jean-Pierre Bemba Gombo filed by the Defence on 3 May 2011", ICC-01/05-01/08-1435-Conf-tENG; Observations de Maître Douzima-Lawson à la requête de mise en liberté provisoire de Mr. Jean-Pierre Bemba Gombo, 24 May 2011 (notified on 25 May 2011), ICC-01/05-01/08-1440-Conf. An English translation of Ms Douzima-Lawson's observations was filed on 30 May 2011: Ms Douzima-Lawson's observations on the application for the interim release of Mr Jean-Pierre Bemba Gombo, ICC-01 /05 -01/08-1440-Conf-tENG. Observations sur la requête de la Défense du 10 juin 2011 aux fins d'autorisation de sortie sous le bénéfice de l'extrême urgence pour permettre à Jean-Pierre Bemba Gombo d'accomplir ses devoirs civiques en République démocratique du Congo, 16 June 2011 (notified on 17 June 2011), ICC-01/05-01/08-1539-Conf; an English translation of Mr Zarambaud's observations was filed on 23 June 2011: Observations on the Extremely Urgent Defence Application of 10 June 2011 for an exeat from the Detention Centre to allow Mr Jean-Pierre Bemba Gombo to perform his civic duties in the Democratic Republic of the Congo, ICC-01/05-01/08-1539-Conf-tENG; Observations de la Représentante légale de victimes relative à la demande d'autorisation de sortie sous le bénéfice de l'extrême urgence pour permettre à Jean-Pierre Bemba Gombo d'accomplir ses devoirs civiques en République démocratique du Congo, 17 June 2011, ICC-01/05 01/08-1541-Conf.

5. As a related matter, the Chamber notes that the OPCV has filed a redacted version of its observations on a further defence application for provisional release¹⁶ that was ruled upon in the same decision as the two applications referred to above.¹⁷ However, the defence's underlying application¹⁸ as well as the observations submitted by the prosecution¹⁹ and the legal representatives of victims²⁰ are only available in confidential versions. In light of the principle of publicity, the Chamber therefore orders the defence, the prosecution and the legal representatives of victims to file redacted versions of these submissions.

Submissions related to the issue of intermediaries' involvement in the completion of applications for participation

6. The Chamber notes that the issue of intermediaries' involvement in the completion of applications for participation was addressed in the Chamber's confidential "Decision on the Registry's "Report on issues concerning intermediaries' involvement in completion of applications for participation" ²¹ and the confidential "Decision on the Tenth and Seventeenth Transmissions".²² In view of the information communicated

¹⁶ Version publique expurgée de la soumission No. ICC-01/05-01/08-1552-Conf, Observations des victimes demandereses sur la Requête ampliative de mise en liberté provisoire sur le territoire de [EXPURGÉ] déposée par la Défense de M. Bemba le 6 juin 2011, 9 March 2012 (notified on 12 March 2012), ICC-01/05-01/08-1552-Red.

¹⁷ Public Redacted Version of the "Decision on Applications for Provisional Release" of 27 June 2011, 16 August 2011, ICC-01/05-01/08-1565-Red.

¹⁸ Requête ampliative de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo suite à la lettre de garantie étatique émanant de la République du Sénégal, 6 June 2011, ICC-01/05-01/08-1479-Conf and confidential annexes. An English translation was filed on 7 July 2011, ICC-01/05-01/08-1479-Conf-tENG and confidential annexes.

¹⁹ Prosecution's Response to Defence "Requête ampliative de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo suite à la lettre de garantie étatique émanant de la République du Sénégal", 20 June 2011, ICC-01/05-01/08-1555-Conf.

²⁰ Observations sur la requête de la Défense du 6 juin 2011 aux fins de mise en liberté provisoire de Mr. Jean-Pierre Bemba Gombo suite à la garantie étatique de la République du Sénégal, ICC-01/05-01/08-1543-Conf, 17 June 2011; Observations de la Représentante légale des victimes relatives à requête ampliative de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo suite à la lettre de garantie étatique émanant de la République du Sénégal, 20 June 2011, ICC-01/05-01/08-1553-Conf.

²¹ Decision on the Registry's "Report on issues concerning intermediaries' involvement in completion of applications for participation", 11 July 2011, ICC-01/05-01/08-1593-Conf.

²² Decision on the tenth and seventeenth transmissions of applications by victims to participate in the proceedings, 19 July 2012, ICC-01/05-01/08-2247-Conf and four confidential *ex parte* annexes. A public

to the parties and participants in the context of these decisions, the Chamber agrees that the OPCV's submissions referred to in paragraph 1(b)(i) and (ii) may be reclassified as confidential.

7. The Chamber further notes that the submissions referred to in paragraph 1(c) contain references to, *inter alia*, the identities of intermediaries and victims. Since this information has not been communicated to the parties, the Chamber finds that the redactions proposed by the OPCV are appropriate and therefore the submissions may be reclassified with the redactions proposed by the OPCV.

*Annex to the Request for the conduct of the testimony of Witness CAR-OTP-
WWWW-0108 by video-link*

8. The OPCV submits that since the information previously redacted in the confidential version of the annex has become known to the parties and participants, the annex may be reclassified as confidential without redactions. The Chamber agrees that the witness's position as set out in the email signature line can be communicated to the parties and participants. However, the Chamber is of the view that the witness's email address, telephone and fax numbers are not relevant for the parties and participants. Accordingly, the Chamber orders the OPCV to file a second redacted version of submission ICC-01/05-01/08-905-Conf-Exp-AnxA, in which only the witness's email address and telephone numbers shall be redacted.

9. For these reasons, the Chamber hereby:

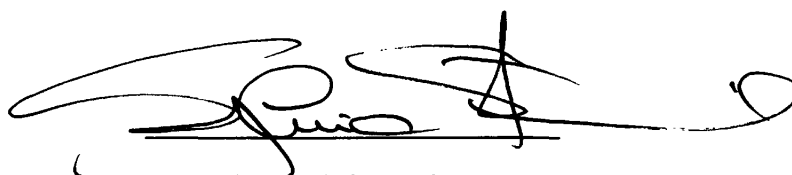
(a) INSTRUCTS the defence, by 5 November 2012, to file public redacted

redacted version of the decision was filed on the same day: Public redacted version of "Decision on the tenth and seventeenth transmissions of applications by victims to participate in the proceedings", 19 July 2012, ICC-01/05-01/08-2247-Red.

versions of its applications for interim release referred to in paragraph 4 above or to inform the Chamber that these submissions can be reclassified as public without redactions;

- (b) INSTRUCTS the prosecution, the legal representatives of victims and the OPCV, by 12 November 2012, to file public redacted versions of their observations on the defence's applications, or, as the case may be, to confirm or inform the Chamber that their observations may be reclassified as public without redactions;
- (c) INSTRUCTS the defence, by 5 November 2012, to file a public redacted version of its application for interim release referred to in paragraph 5 above;
- (d) INSTRUCTS the prosecution and the legal representatives of victims, by 12 November 2012, to file public redacted versions of their observations on the defence's application referred to in paragraph 5;
- (e) GRANTS the OPCV's request for reclassification as confidential of submissions ICC-01/05-01/08-1133-Conf-Exp and ICC-01/05-01/08-1755-Conf-Exp and instructs the Registry to implement the reclassifications as soon as practicable;
- (f) GRANTS the OPCV's request for reclassification with redactions of submissions ICC-01/05-01/08-978-Conf-Exp, ICC-01/05-01/08-1133-Conf-Exp-Anx and ICC-01/05-01/08-1755-Conf-Exp-Anxs1to17 and instructs the OPCV to file confidential redacted versions of the submissions along with the redactions proposed in annexes 1 to 19 to the OPCV Request; and
- (g) ORDERS the OPCV to file a second redacted version of submission ICC-01/05-01/08-905-Conf-Exp-AnxA, in accordance with the instructions set out in paragraph 8 above.

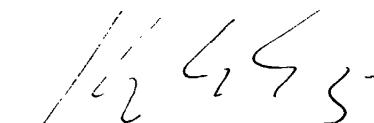
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 26 October 2012

At The Hague, The Netherlands