



Original: **English**

No.: **ICC-01/05-01/08 OA3**

Date: **11 October 2010**

APPEALS CHAMBER

Before: Judge Anita Ušacka, Presiding Judge
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Daniel David Ntanda Nsereko

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF**

THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO

PUBLIC

**with Confidential Annexes A, C and D
and Public Annex B**

**Prosecution's Response to Appeals Chamber Order on the Classification of
Documents**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

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Mr Nkwebe Liriss

Mr Aimé Kilolo-Musamba

Legal Representatives of Victims

Ms Marie-Edith Douzima Lawson

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massida

**The Office of Public Counsel for the
Defence**

States Representatives

Competent authorities of
the Central African Republic

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 24 June 2010, Trial Chamber III issued the “Decision on the Admissibility and Abuse of Process Challenge” (the “Decision”).¹ In the Decision, the Chamber found the case admissible before this Court and dismissed the challenge to the admissibility of the case and the abuse of process challenge presented by the Defence for Jean-Pierre Bemba Gombo (“the Appellant”). On 28 June 2010 the Appellant appealed the Decision pursuant to Article 82(1)(a) and Rule 154(1),² and on 26 July 2010 he filed his Document in Support of Appeal.³ The Prosecution responded on 17 August 2010.⁴
2. On 8 October 2010 the Appeals Chamber ordered the Prosecution to state the appropriate classification of, and to file in accompanying annexes, four documents.⁵
3. The Prosecution herewith complies with the Chamber's Order and provides specific explanations pertaining to each particular document.⁶

(i) CAR-OTP-0005-0099 to 0118

4. This document is a witness statement taken by the Prosecution and was originally cited and quoted by the Appellant in his Appeal Brief.⁷
5. The Prosecution communicated this document to Trial Chamber III, the Appellant, victims authorized to participate in the proceedings and OPCV on

¹ ICC-01/05-01/08-802.

² ICC-01/05-01/08-804OA3-Corr2-tENG; the Accused filed two corrigenda on 28 and 29 June 2010 respectively (ICC-01/05-01/08-804OA3-Corr and ICC-01/05-01/08-804-Corr2-tENG).

³ ICC-01/05-01/08-841-ConfOA3. The following day he filed a corrigendum: ICC-01/05-01/08-841-Corr-RedOA3 (“Appeal Brief”).

⁴ ICC-01/05-01/08-855-RedOA3 (“Prosecution's Response”).

⁵ ICC-01/05-01/08-931.

⁶ Annex A is filed as Confidential but available to the Prosecution, Defence, OPCV and victims authorised to participate; and Annexes C and D are Confidential but available to the Prosecution, Defence, OPCV, Victims and authorities of the Central African Republic (“CAR”) as they have been awarded such level of confidentiality in the record of this case. Regulation 23*bis*, paragraph 2 of the Regulations of the Court provides that “[u]nless otherwise ordered by a Chamber, any response, reply or other document referring to a document, decision or order marked [...] ‘confidential’ shall be filed with the same classification.”

⁷ Appeal Brief, para.11, footnote 9. The Appellant gave the ERN number of the page he was quoting, and the EVD number: EVD-P-00098. In E-court, the corresponding ERN to this document is CAR-OTP-0005-0099-R_01.

several occasions.⁸ The latest transmission took place on 20 July 2010⁹ pursuant to a decision issued by the Trial Chamber on 7 July 2010.¹⁰ The Prosecution subsequently asked CMS to release the latest version of the document to the legal representatives of victims authorized to participate in the proceedings and OPCV in an email dated 21 July 2010.¹¹

6. The document can be found in E-court. Different ERNs and EVDs were assigned to the different versions that have been filed. The latest version communicated to the Chamber and Appellant on 20 July 2010 has ERN CAR-OTP-0005-0099_R03. It appears that CMS did not assign an EVD number to this version until Monday 11 October 2010 (EVD-P-04260).¹²
7. With respect to its level of confidentiality, this document is confidential, available to the Prosecution, Defence, victims authorized to participate in the proceedings and OPCV. The Prosecution attaches a copy of this document as Confidential Annex A.

(ii) CAR-OTP-0019-0189 to 0190

8. Trial Chamber III referred to this document in the Decision,¹³ as did the Appellant in his Appeal Brief to which he annexed the document.¹⁴ The Prosecution communicated the document to the Trial Chamber and the Appellant on 18 December 2009.¹⁵

⁸ The Prosecution transmitted this document to the Trial Chamber and Appellant on 3 October 2008 (ICC-01/05-01/08-139), 9 November 2009 (ICC-01/05-01/08-606) and 20 July 2010 (ICC-01/05-01/08-838). OPCV and the Legal Representatives were also granted access to this document on 15 March 2010 (ICC-01/05-01/08-722), and 8 July 2010 and 21 July 2010 through emails sent to CMS requesting the release of this document.

⁹ ICC-01/05-01/08-838.

¹⁰ ICC-01/05-01/08-813. See Confidential Ex parte Prosecution and VWU only Annex B, pp.2-7, where the redactions lifted are explained.

¹¹ Pursuant to decision ICC-01/05-01/08-55 and the annexed Protocol, the Chamber has to be informed of all the documents disclosed *inter partes* that will be introduced in E-court by the Registry and given an EVD number.

¹² However, the same document (either unredacted or with other redactions) could be found before this date through other EVD numbers: EVD-P-00098 (ERN: CAR-OTP-0005-0099-R_01) transmitted to the Defence in filing ICC-01/05-01/08-139; EVD-P-02512 (ERN: CAR-OTP-0005-0099) transmitted to the Defence in filing ICC-01/05-01/08-606; and EVD-P-04188 (ERN: CAR-OTP-0005-0099-R_02) transmitted to OPCV and victims only in ICC-01/05-01/08-722 .

¹³ Decision, paragraph 10, footnote 14.

¹⁴ Appeal Brief, para.15, fn.15, and latter filed in ICC-01/05-01/08-721-Anx17, pp.3-4.

¹⁵ ICC-01/05-01/08-659.

9. The document can be found in E-court either through its ERN number (CAR-OTP-0019-0189) or its EVD number (EVD-P-04119). The document is public and the Prosecution attaches it as Public Annex B.¹⁶

(iii) CAR-OTP-0019-0169 to 0170

10. This document, also referred to by the Trial Chamber in the Decision,¹⁷ was communicated by the Prosecution to the Trial Chamber and the Appellant on 14 April 2010.¹⁸ The Prosecution asked CMS to release this document to the legal representatives of victims and OPCV and to the CAR authorities in emails dated 14 April and 22 April 2010, respectively.

11. The document can be found in E-court either through its ERN number (CAR-OTP-0019-0169) or EVD number (EVD-P-04191), and is confidential, available to the Prosecution, the Defence, victims authorized to participate, OPCV and competent CAR authorities. The Prosecution attaches it as Confidential Annex C.

(iv) CAR-OTP-0019-0199

12. This document was also referred to by Trial Chamber III in the Decision.¹⁹ The Prosecution communicated the document to the Trial Chamber and Appellant on 18 December 2009.²⁰ The Prosecution asked CMS to release this document to the legal representatives of victims authorized to participate and to OPCV, and to the CAR authorities in emails dated 11 March and 22 April 2010, respectively.

13. The document can be found in E-court either through its ERN number (CAR-OTP-

¹⁶ ICC-01/05-01/08-721-Anx17, pp.3-4. The Prosecution notes that the Trial Chamber stated in the Decision that they did not rely on this document as it was incomplete (Decision, para.10). As the Prosecution explained in its Response to the Appeal Brief, it requested a complete version to the Central African Authorities, which was provided to the Legal Officer of the Trial Chamber the day before the Decision was issued and uploaded into E-Court. See Prosecution's Response, paras.38-39. This version bears ERN CAR-OTP-0062-0203 and EVD-P-04250. OPCV and the legal representatives were granted access to this document through an email sent to CMS on 23 June 2010.

¹⁷ Decision, para.11, footnote 17.

¹⁸ ICC-01/05-01/08-753.

¹⁹ Decision, paragraph 13, footnote 20.

²⁰ ICC-01/05-01/08-659.

0019-0199) or its EVD number (EVD-P-04127). With respect to its level of confidentiality, the document is confidential, available to the Prosecution, the Defence, victims authorized to participate, OPCV and competent CAR authorities. The Prosecution attaches it as Confidential Annex D.



Luis Moreno-Ocampo, Prosecutor

Dated this 11th day of October 2010

At The Hague, The Netherlands