

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 6 December 2013

**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**

**Order on the reclassification of documents**

**Order 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

**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**

Mr Xavier-Jean Keïta

**States Representatives**

**Amicus Curiae**

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**Registrar**

Mr Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

Mr Patrick Craig

**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 Order on the reclassification of documents.

1. On 26 April 2013, the Chamber issued its confidential *ex parte* – Office of the Prosecutor ("prosecution") and Registry only - "Decision on the prosecution's request relating to Article 70 investigation" ("Decision 2606-Conf-Exp").<sup>1</sup> This decision was preceded by a number of confidential *ex parte* decisions and documents:
  - a. ICC-01/05-01/08-2412-Conf-Exp ("Document 2412-Conf-Exp");<sup>2</sup>
  - b. ICC-01/05-01/08-2421-Conf-Exp ("Decision 2421-Conf-Exp");<sup>3</sup>
  - c. ICC-01/05-01/08-2441-Conf-Exp ("Document 2441-Conf-Exp");<sup>4</sup>
  - d. ICC-01/05-01/08-2461-Conf-Exp ("Decision 2461-Conf-Exp");<sup>5</sup>
  - e. ICC-01/05-01/08-2462-Conf-Exp ("Document 2462-Conf-Exp");<sup>6</sup> and
  - f. ICC-01/05-01/08-2548-Conf-Exp ("Document 2548-Conf-Exp").<sup>7</sup>
2. In addition, a confidential *ex parte* - prosecution and Registry only – status conference was held on 9 April 2013, in order to address issues raised in Document 2548-Conf-Exp (Transcript T-303-Conf-Exp).<sup>8</sup>

<sup>1</sup> Decision on the prosecution's request relating to Article 70 investigation, 26 April 2013, ICC-01/05-01/08-2606-Conf-Exp.

<sup>2</sup> Prosecution's Request for Record of Payments made by the Registry to Witnesses called by the Defence of Mr. Jean-Pierre Bemba Gombo, 15 November 2012, ICC-01/05-01/08-2412-Conf-Exp.

<sup>3</sup> Decision requesting the Registry's observations on the prosecution's request relating to Article 70 investigation, 19 November 2012, ICC-01/05-01/08-2421-Conf-Exp.

<sup>4</sup> Registry's Observations relating to the "Decision requesting the Registry's observations on the prosecution's request relating to Article 70 investigations", 26 November 2012, ICC-01/05-01/08-2441-Conf-Exp and confidential *ex parte* annexes 1 to 6. Annex 1 is classified as confidential *ex parte* – VWU only. A redacted version of annex 1 was provided to the prosecution on 14 December 2012, ICC-01/05-01/08-2441-Conf-Exp-Anx1-Red. Annexes 2 to 6 are classified as confidential *ex parte* – Registry only.

<sup>5</sup> Decision on the Registry's observations on the prosecution's request relating to Article 70 investigations, 03 December 2012, ICC-01/05-01/08-2461-Conf-Exp.

<sup>6</sup> Victims and Witnesses Unit's Complementary Information to the "Registry's Observations relating to the 'Decision requesting the Registry's observations on the prosecution's request relating to Article 70 investigation' (ICC-01/05-01/08-2421-Conf-Exp)", 3 December 2012, ICC-01/05-01/08-2462-Conf-Exp and confidential *ex parte* Annex 1.

<sup>7</sup> Notice to the Trial Chamber of Article 70 Investigation and Request for Judicial Assistance to Obtain Evidence, 20 March 2013, ICC-01/05-01/08-2548-Conf-Exp and confidential *ex parte* Annex A.

3. The prosecution's submissions (Documents 2412-Conf-Exp and 2548-Conf-Exp) were classified as confidential *ex parte* – prosecution and Registry only - on the basis that they contained “sensitive information that, if disclosed, would compromise an ongoing investigation.”<sup>9</sup> Consequently, the related submissions from the Registry (Documents 2441-Conf-Exp and 2462-Conf-Exp) as well as the Chamber's decisions (Decisions 2421-Conf-Exp, 2461-Conf-Exp and 2606-Conf-Exp) were filed with the same classification. In addition, the Registry submitted that Documents 2441-Conf-Exp and 2462-Conf-Exp contained information that had never been shared with the parties and therefore requested - in the event that the Chamber decides to provide the parties with these documents - to be granted sufficient time to propose redactions for the Chamber's consideration.<sup>10</sup>
4. The Chamber, in line with its duty under Article 64(2) of the Rome Statute (“Statute”) to ensure that the trial is fair and conducted with full respect of the rights of the accused, invited the prosecution to inform the Chamber when Decision 2606-Conf-Exp could be issued in redacted form.<sup>11</sup> At the public status conference held on 28 November 2013, convened by the Chamber in order to address the impact of case ICC-01/05-01/13 on the *Bemba* case,<sup>12</sup> the prosecution informed the Chamber that Decision 2606-Conf-Ex could be reclassified as confidential without redactions.<sup>13</sup>

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<sup>8</sup> Transcript of hearing on 9 April 2013, ICC-01/05-01/08-T-303-CONF-EXP-ENG ET *See also* Order convening a confidential *ex parte* prosecution and Registry only status conference, 22 March 2013, ICC-01/05-01/08-2560-Conf-Exp. A public redacted version was filed on 8 April 2013: Public redacted version of “Order convening a confidential *ex parte* prosecution and Registry only status conference” of 22 March 2013, 8 April 2013 ICC-01/05-01/08-2560-Red.

<sup>9</sup> ICC-01/05-01/08-2548-Conf-Exp, paragraph 6; *See also* ICC-01/05-01/08-2412-Conf-Exp, paragraph 4.

<sup>10</sup> ICC-01/05-01/08-2441-Conf-Exp, paragraphs 6 and 14 ; ICC-01/05-01/08-2462-Conf-Exp, paragraphs 1 and 5.

<sup>11</sup> ICC-01/05-01/08-2606-Conf-Exp, paragraph 22(ii).

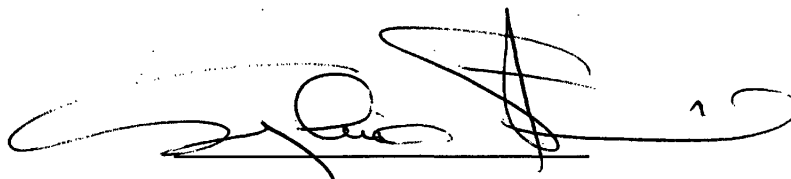
<sup>12</sup> Order convening a status conference, 27 November 2013, ICC-01/05-01/08-2907.

<sup>13</sup> Transcript of hearing on 28 November 2013, ICC-01/05-01/08-T-359-ENG ET, page 12, line 9 to page 13, line 3. The prosecution informed the Chamber that “it would appear that the current circumstances would justify this document being made available to the parties and that it [...] could be reclassified confidential”.


5. In view of this information and considering the existence of other related decisions and underlying documents, the Chamber considers that the same approach should be followed in relation to Decisions 2421-Conf-Exp, 2461-Conf-Exp and 2606-Conf-Exp. In addition, the Chamber considers that Documents 2412-Conf-Exp, 2441-Conf-Exp, 2462-Conf-Exp and 2548-Conf-Exp, as well as Transcript T-303-CONF-EXP should be made available to all parties and participants, subject to the application of any necessary redactions.
6. In view of the above, and in accordance with Articles 64(2) and 64(6)(f) of the Statute, Rule 137(2) of the Rules of Procedure and Evidence and Regulations 23*bis*(3) and 34(a) of the Regulations of the Court, the Chamber hereby:
  - (a) ORDERS the Registry to implement the reclassification of Decisions 2421-Conf-Exp, 2461-Conf-Exp, and 2606-Conf-Exp as confidential;
  - (b) ORDERS the Registry to submit for the Chamber's approval proposed confidential redacted versions of Documents 2441-Conf-Exp and 2462-Conf-Exp, including annexes, and Transcript T-303-CONF-EXP. These proposals shall be communicated to the Chamber by email by 13 December 2013;
  - (c) ORDERS the prosecution to submit for the Chamber's approval proposed confidential redacted versions of Documents 2412-Conf-Exp and 2548-Conf-Exp, including the annex to the latter. These proposals shall be communicated to the Chamber by email by 13 December 2013; and

(d) ORDERS the prosecution and the Registry to coordinate on the proposed redactions to ensure consistency.

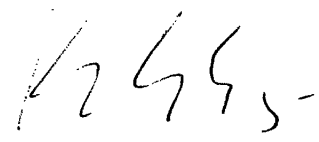
Done in both English and French, the English version being authoritative.



**Judge Sylvia Steiner**



**Judge Joyce Aluoch**



**Judge Kuniko Ozaki**

Dated this 6 December 2013

At The Hague, The Netherlands