

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/05-01/08 OA 3
Date: 25 October 2010**

THE 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 document

**Order
to consult with the authorities of the Central African Republic**



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
Mr Fabricio Guariglia

Counsel for the Defence

Mr Liriss Nkwebe
Mr Aimé Kilolo-Musamba

Legal Representatives of Victims

Ms Marie-Edith Douzima Lawson

The Office of Public Counsel for Victims

Ms Paolina Massida

States Representatives

The Government of the Central African
Republic

REGISTRY

Registrar

Ms Silvana Arbia



The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III entitled “Decision on the Admissibility and Abuse of Process Challenges” of 24 June 2010 (ICC-01/05-01/08-802),

Unanimously,

Issues the following

ORDER

The Registrar is ordered to consult with the authorities of the Central African Republic concerning whether documents ICC-01/05-01/08-944-Conf-AnxC, ICC-01/05-01/08-944-Conf-AnxD and ICC-01/05-01/08-951-Conf-AnxA, or any information therein, can be reclassified as public, and to report to the Appeals Chamber on the results of these consultations by 16h00 on 8 November 2010.

REASONS

1. On 8 October 2010, the Appeals Chamber issued the “Order on the classification of documents”.¹
2. On 11 October 2010, the Prosecutor filed the “Prosecution’s Response to Appeals Chamber Order on the Classification of Documents” with confidential annexes A, C and D, and public annex B.²
3. On 14 October 2010, the Appeals Chamber issued the “Order on the reasons for the classification of documents”, instructing the Prosecutor to state the factual and legal basis for classifying ICC-01/05-01/08-944-Conf-AnxC and ICC-01/05-01/08-

¹ ICC-01/05-01/08-931.

² ICC-01/05-01/08-944.



944-Conf-AnxD as confidential, and to file CAR-OTP-0062-0203 to 0205 in an accompanying annex.³

4. On 14 October 2010, the Prosecutor filed the “Prosecution’s Response to the Appeals Chamber Order on the reasons for the classification of documents” with confidential annex A.⁴ The Prosecutor stated that ICC-01/05-01/08-944-Conf-AnxC, ICC-01/05-01/08-944-Conf-AnxD, and ICC-01/05-01/08-951-Conf-AnxA were treated as confidential on the basis that (i) they were part of the record of the national judicial proceedings of the Central African Republic (hereinafter: the “CAR”) which had not, to the Prosecutor’s knowledge, been made public; and (ii) the “standard practice” is to accord restricted access to documents received from States unless indicated otherwise.⁵ The Prosecutor noted, however, that these three documents were provided by the CAR with no conditions attached.⁶

5. However, the Appeals Chamber notes that some of the information contained in these documents has already been made public. In respect of ICC-01/05-01/08-944-Conf-AnxC, information in this document has been made public as follows:

Thereafter, on 11 December 2004, Mr Nganatouwa Goungaye Wanfiyo, counsel acting on behalf of President Bozizé, sent a letter to the Bangui Court of Appeal in the ‘*Etat Centrafricain / Patassé et Autres*’ case, submitting, on behalf of the CAR, a request to refer war crimes committed on CAR territory in 2002 to the ICC, under Article 14 of the Rome Statute (“Statute”). The letter proposed severing the proceedings, referring the crimes of rape, murder, destruction of movable and immovable property and pillaging during the events of 2002 to the ICC. It was suggested that if the ICC Prosecutor initiated an investigation, it would be conducted using means not available to the CAR.⁷

6. In respect of ICC-01/05-01/08-944-Conf-AnxD, information in this document has been made public as follows:

³ ICC-01/05-01/08-948.

⁴ ICC-01/05-01/08-951.

⁵ ICC-01/05-01/08-951, para. 5.

⁶ ICC-01/05-01/08-951, para. 5.

⁷ Trial Chamber III, “Decision on the Admissibility and Abuse of Process Challenges”, 24 June 2010, ICC-01/05-01/08-802, para. 11. *See also* para. 225 and “Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 24 June 2010 entitled ‘Decision on the Admissibility and Abuse of Process Challenges’”, 19 October 2010, ICC-01/05-01/08-962 (OA 3), para. 41.

The 2nd Advocate-General before the Bangui Court of Appeal lodged a '*pourvoi en cassation*' (appeal on points of law) on 20 December 2004, against the Appeals Judgment of 16 December 2004.⁸

7. In respect of ICC-01/05-01/08-951-Conf-AnxA, information in this document has been made public as follows:

However, at the hearing on the following day, 24 November 2004, the extract from the official record of the hearing, which Trial Chamber III failed to take into account, reflects the fact that the CAR judicial authorities [...] requested once again that the Accused not be prosecuted:

[TRANSLATION] As regards these proceedings, the Court should comply with the terms of our submission, and commit all the other accused persons for trial before the *Cour Criminelle*, **except for Mr Bemba** [emphasis added], given his status as Vice President of the DRC.⁹

8. In addition, the Appeals Chamber recalls the Prosecutor's submission that the information contained in these documents "does not in and of itself require maintaining the confidential status".¹⁰

9. The Appeals Chamber therefore instructs the Registrar to consult with the relevant authorities of the CAR to ascertain whether the above-mentioned documents, or the information contained therein, can be reclassified as public and to report to the Appeals Chamber accordingly. After having received this report, the Appeals Chamber will decide whether the documents should be reclassified as public under

⁸ Trial Chamber III, "Decision on the Admissibility and Abuse of Process Challenges", 24 June 2010, ICC-01/05-01/08-802, para. 13. See also para. 227, and "Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 24 June 2010 entitled 'Decision on the Admissibility and Abuse of Process Challenges'", 19 October 2010, ICC-01/05-01/08-962 (OA 3), para. 43.

⁹ "Corrigendum to Document in Support of the Defence Appeal Against the Decision of Trial Chamber III of 24 June 2010 Entitled *Decision on the Admissibility and Abuse of Process Challenge*", 30 July 2010, ICC-01/05-01/08-841-Conf-Corr-tENG, para. 18. Although ICC-01/05-01/08-841-Conf-Corr-tENG is a confidential document, the quoted excerpt has been made public (except for the name of the public prosecutor), in the French public redacted version, see ICC-01/05-01/08-841-Corr-Red, para. 18. See also "Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 24 June 2010 entitled 'Decision on the Admissibility and Abuse of Process Challenges'", 19 October 2010, ICC-01/05-01/08-962 (OA 3), para. 40.

¹⁰ ICC-01/05-01/08-951, para. 6.

regulation 23 *bis* (3) of the Regulations of the Court, or whether public redacted versions should be filed.

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



Judge Anita Ušacka
Presiding Judge

Dated this 25th day of October 2010

At The Hague, The Netherlands