



Original: **French**

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

Date: **20 June 2008**

PRE-TRIAL CHAMBER III

Before: Judge Fatoumata Dembele Diarra, Presiding Judge
Judge Hans-Peter Kaul
Judge Ekaterina Trendafilova

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
*THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO***

Public document

**ORDER REQUESTING THE PROSECUTOR AND THE VICTIMS AND
WITNESSES UNIT TO SUBMIT OBSERVATIONS REGARDING THE
UNSEALING OF CERTAIN DOCUMENTS AND THE RECLASSIFICATION
THEREOF**

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
Ms Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Mr Simo Vaatainen

Detention Section

**Victims Participation and Reparations
Section**

Other

1. **PRE-TRIAL CHAMBER III** (“the Chamber”) of the International Criminal Court (“the Court”) convened a status conference on 19 June 2008 with the aim of preparing the initial appearance and confirmation of charges hearings and taking any appropriate decision.

2. In its decision convening the status conference, the Chamber asked the Prosecutor if he had already begun to prepare a redacted version of the following documents, to be submitted for approval to the Chamber:

- i) the Prosecution’s Application for Warrant of Arrest under article 58 of the Rome Statute (“the Statute”) and its annexes;¹
- ii) the Prosecutor’s Submission of Further Information and Materials and its annexes.²

The Prosecutor responded to this question in the affirmative.³

3. The Chamber recalls that it was seized of a request by the Prosecutor on 9 May 2008 entitled “Application for Warrant of Arrest under article 58 of the Rome Statute” (“the Prosecutor’s Application”)⁴ and its annexes, for Mr Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”).

4. On 21 May 2008, the Chamber rendered a decision calling on the Prosecutor to provide further information as part of his application for the issuance of a warrant of arrest under article 58 of the Rome Statute.⁵

¹ ICC-01/05-13-US-Exp.

² ICC-01/05-16-US-Exp.

³ Transcript of the status conference of 19 June 2008, ICC-01/05-01/08-T-2-CONF-ENG, pp. 17 and 18. While this was raised during an *ex parte* status conference in closed session, the Chamber is of the view that the disclosure of this information is not inconsistent with the confidential nature of said transcripts.

⁴ ICC-01/05-13-US-Exp.

⁵ ICC-01/05-14-US-Exp.

5. On 27 May 2008, the Prosecutor submitted further information and materials together with supporting annexes (“the Prosecutor’s Submission of Further Information and Materials”)⁶ in response to the decision rendered by the Chamber on 21 May 2008.

6. Having considered the Prosecutor’s Application and the Prosecutor’s Submission of Further Information and Materials, the Chamber issued a warrant of arrest on 10 June 2008.

7. The Chamber notes articles 43(6), 57(3)(c), 67 and 68 of the Statute, rules 17 to 19, 81, 87 and 88 of the *Rules of Procedure and Evidence* (“the Rules”) and regulation 41 of the *Regulations of the Court*.

8. The Chamber notes that, under article 57(3)(c) of the Statute, it must ensure the protection and privacy of victims and witnesses and that, pursuant to article 68(1) of the Statute, “the Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of the victims and witnesses”.

9. The Chamber notes that, under article 68(4) of the Statute, the Victims and Witnesses Unit (“the VWU”) may advise the Prosecutor and the Court on protective measures, security arrangements, counselling and assistance as referred to in article 43(6) of the Statute.

10. The Chamber recalls the importance of article 43(6) of the Statute, which states that the mandate and role of the VWU is to: “provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses.”

⁶ ICC-01/05-16-US-Exp.

11. In addition, regulation 41 of the *Regulations of the Court* states that: “the Victims and Witnesses Unit may, pursuant to article 68, paragraph 4, draw any matter to the attention of a Chamber where protective or special measures under rules 87 and 88 require consideration”.

12. The Chamber considers that, although proceedings before the Court have to abide by the principle of public hearings, the need to protect victims and witnesses may, however, require redactions to be made prior to certain documents being released to the public, and that it is one of the roles of the Chamber to make redactions in order to protect victims and witnesses under articles 57(3)(c) and 68(1) of the Statute, as well as rule 87 of the Rules.

13. Accordingly, the Chamber is of the view that the Prosecutor and the VWU should set out in their respective observations to the Chamber the reasons why the Prosecutor’s Application and Prosecutor’s Submission of Further Information and Materials may not, at present, be the subject of a decision to unseal or reclassify them.

FOR THESE REASONS, THE CHAMBER

A – Regarding the Prosecutor’s Application and the Prosecutor’s Submission of Further Information and Materials:

- 1) **orders** the Prosecutor to submit, no later than 30 June 2008, a proposal for handling the Prosecutor’s Application and the Prosecutor’s Submission of Further Information and Materials together with the reasons in support of the proposal.
- 2) **orders** the Prosecutor to comply with the official numbering of the case record, to include all the proposals in a single document and to file these proposals under seal, *ex parte*, Office of the Prosecutor and the VWU only.

- 3) **orders** the Registrar to forward to the VWU the relevant proposal and documents, i.e. the Prosecutor's Application and the Prosecutor's Submission of Further Information and Materials, in order that the VWU, in light of the Prosecutor's proposals, may submit its own observations on the handling of said documents and the possibility of unsealing them, no later than 04 July 2008, including the potential necessity to maintain the redactions proposed by the Prosecutor prior to the unsealing, as well as the scope of said redactions or the need for further redactions.
- 4) **orders** the Prosecutor to file his observations, if any, no later than 9 July 2008, regarding the observations submitted by the VWU and that his observations in response should be filed under seal, *ex parte*, VWU and Office of the Prosecutor only.

B – Regarding the annexes to the Prosecutor's Application and the annexes to the Prosecutor's Submission of Further Information and Materials:

- 1) **orders** the Prosecutor to submit, no later than 16 July 2008, a proposal for handling the annexes to the Prosecutor's Application and the annexes to the Prosecutor's Submission of Further Information and Materials together with the reasons in support of the proposal.
- 2) **orders** the Prosecutor to comply with the official numbering of the case record, to include all proposals in a single document and to file these proposals under seal, *ex parte*, Office of the Prosecutor and the VWU only.
- 3) **orders** the Registrar to forward to the VWU the relevant proposal and documents, i.e. the Prosecutor's Application and the Prosecutor's Submission of Further Information and Materials, in order that the VWU, in light of the Prosecutor's proposals, may submit its own observations on the handling of said documents and the possibility of unsealing them, no later than 31 July

2008, including the potential necessity to maintain the redactions proposed by the Prosecutor prior to the unsealing, as well as the scope of said redactions or the need for further redactions.

- 4) **orders** the Prosecutor to file his observations, if any, no later than 07 August 2008, regarding the observations submitted by the VWU, and that his observations in response be filed under seal, *ex parte*, VWU and Office of the Prosecutor only.

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

[signed]

Judge Fatoumata Dembele Diarra
Presiding Judge

[signed]

Judge Hans-Peter Kaul

[signed]

Judge Ekaterina Trendafilova

Dated this 20 June 2008

At The Hague, The Netherlands