

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 22 July 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

**Decision on the "Motion to unseal certain documents and decisions" of 14 July
2008**

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

The Office of the Prosecutor

Fatou Bensouda, Deputy Prosecutor
Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Tjarda Eduard Van der Spoel
Aimé Kilolo-Musamba

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

Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER III (the “Chamber”) of the International Criminal Court (the “Court”) is seized of a motion¹ of 14 July 2008 to unseal certain documents and decisions (the “Motion for unsealing”) in the case of the *Prosecutor v. Jean-Pierre Bemba Gombo* (the “Case”).

1. On 20 June 2008 the Chamber took a decision² to unseal and reclassify as public certain documents and decisions in the record of the situation in the Central African Republic (the “Situation”) and in the Case and to transfer some of the unsealed and reclassified documents and decisions from the record of the Situation (ICC-01/05) to the record of the Case (ICC-01/05-01/08).

2. The documents and decisions that were unsealed and reclassified comprised the “Notification to Pre-Trial Chamber III and request for Extension of Page Limit and Expedited Consideration”³, the “Decision on the Prosecutor’s Notification to Pre-Trial Chamber III and Request for Extension of Page Limit and Expedited Consideration”⁴, the “Decision Requesting Additional Information in Respect of the Prosecutor’s Application for Warrant of Arrest under Article 58”⁵ and the “Prosecutor’s Application for Request for Provisional Arrest under Article 92”⁶.

3. The documents and decisions mentioned in the previous paragraph, as well as the “Prosecutors Application for Warrant of Arrest under Article 58”⁷ (the “Prosecutor’s Application”) with Annexes 1-14 and the “Prosecutor’s Submission on Further

¹ ICC-01/05-01/08-42.

² ICC-01/05-01/08-20.

³ ICC-01/05-10-US-Exp, transferred to the record of the case and re-registered as ICC-01/05-01/08-24.

⁴ ICC-01/05-12-US-Exp, transferred to the record of the case and re-registered as ICC-01/05-01/08-25.

⁵ ICC-01/05-14-US-Exp, transferred to the record of the case and re-registered as ICC-01/05-01/08-27.

⁶ ICC-01/05-15-US-Exp, transferred to the record of the case and re-registered as ICC-01/05-01/08-28.

⁷ ICC-01/05-13-US-Exp.

Information and Materials”⁸ (the “the Prosecutor’s Further Submission”) with Annexes 1-18, were at the same time transferred to the record of the Case. They were subsequently given new reference numbers.

4. For the sake of completeness, the Chamber notes that the unsealing and reclassification pursuant to the decision of 20 June 2008 also concerned annexes 6, 9-A, 9-B, 9-C and 14 to the Prosecutor’s Application and annexes 4, 6-A, 6-B, 7, 8, 9, 10, 11, 18-A and 18-B to the Prosecutor’s Further Submission.

5. On 30 June 2008 the Prosecutor filed an application⁹ requesting redactions pursuant to rules 81(2) and 81(4) of the Rules of Procedure and Evidence with regard to the Prosecutor’s Application and the Prosecutor’s Further Submission. The Prosecutor later filed a similar application¹⁰ in respect of the annexes to the Prosecutor’s Application and the Prosecutor’s Further Submission, which had not been unsealed and reclassified before. Both applications for redactions are pending.

6. On 3 July 2008 Messrs Tjarda Eduard Van der Spoel and Aimé Kilolo-Musamba were appointed duty counsel to Mr Jean-Pierre Bemba Gombo for the purposes of his initial appearance before the Chamber.

7. On 4 July 2008 the Registry notified to Messrs Tjarda Eduard Van der Spoel and Aimé Kilolo-Musamba all Non-Ex parte Court Records at that time in the record of the Case as well as the report registered under file number ICC-01/05-01/08-34 in the

⁸ ICC-01/05-16-US-Exp.

⁹ ICC-01/05-01/08-32-US-Exp. Although this submission has been classified as “under seal, *ex parte*”, the Chamber is of the view that lifting the restriction on this particular quotation is not inconsistent with the under seal nature of the submission.

¹⁰ ICC-01/05-01/08-44-US-Exp. Although this submission has been classified as “under seal, *ex parte*”, the Chamber is of the view that lifting the restriction on this particular quotation is not inconsistent with the under seal nature of the submission.

record of the Situation (see the “Copy Control List” attached as annex to this decision).

8. On 14 July 2008 the Chamber received the Motion for unsealing. It was submitted by Messrs Tjarda Eduard Van der Spoel and Aimé Kilolo-Musamba, but was neither signed nor dated, as envisaged in standard templates of the Court. The Motion for unsealing was aimed at unsealing and reclassification of all the documents and decisions mentioned above.

9. On 15 July 2008 the Chamber received the “Enregistrement des déclarations de Maitre Tjarda E. Van der Spoel et Maitre Aimé Kilolo-Musamba acceptant l’extension de leur mandat comme conseil de permanence de M. Jean-Pierre Bemba Gombo”. Annexed to this filing, there were declarations by Messrs Tjarda Eduard van der Spoel and Aimé Kilolo Musamba signed on 14 July 2008 and accepting extension of their mandate to represent Mr Jean-Pierre Bemba Gombo by one month as from 5 July 2008.

10. On 18 July 2008 the Prosecutor filed the “Prosecutor’s Response to Defence ‘Motion to unseal certain documents and decisions’”¹¹. He submitted that the Motion for unsealing could not be allowed since it in part concerned documents and decisions that had already been unsealed and reclassified and in the remaining part documents in respect of which a proposal for redactions had been made.

11. The Chamber recalls at the outset that pursuant to regulation 23(1)(a) of the Regulations of the Court, a document filed with the Court “shall, as far as practicable, state the identity of the person filing the document”. The Chamber considers that a person filing a document should normally append his or her

¹¹ ICC-01/05/01/08-46.

signature to the document as a certification of the provenance of the document. This has not been the case in respect of the Motion for unsealing. Nevertheless, the provenance of the Motion for unsealing is clear from its content. Therefore, in light of the jurisprudence of the Appeals Chamber on the matter¹², the Chamber concludes that the absence of signatures on the Motion for unsealing by the legal representatives of Mr Jean-Pierre Bemba Gombo does not render the filing inadmissible and that, in the circumstances, the Motion for unsealing is to be considered as being validly made on his behalf.

12. The Chamber further considers that, in so far as the Motion for unsealing concerns the "Notification to Pre-Trial Chamber III and request for Extension of Page Limit and Expedited Consideration", the "Decision on the Prosecutor's Notification to Pre-Trial Chamber III and Request for Extension of Page Limit and Expedited Consideration", the "Decision Requesting Additional Information in Respect of the Prosecutor's Application for Warrant of Arrest under Article 58" and "Prosecutor's Application for Request for Provisional Arrest under Article 92", annexes 6, 9-A, 9-B, 9-C and 14 to the Prosecutor's Application and annexes 4, 6-A, 6-B, 7, 8, 9, 10, 11, 18-A and 18-B to the Prosecutor's Further Submission, the motion cannot be granted as these documents and decisions have already been unsealed and reclassified, by virtue of the decision of 20 June 2008. Furthermore, it is to be noted that these documents and decisions were notified by the Registry to Messrs Tjarda Eduard van der Spoel and Aimé Kilolo Musamba on 4 July 2008. In this respect, the Chamber would remind the defence that these documents and decisions have been transferred to the record of the Case and that their reference numbers have been changed accordingly.


¹² "Decision on Victim Participation in the appeal of the Office of Public Counsel for the Defence against Pre-Trial Chamber I's Decision of 3 December 2007 and in the appeals of the Prosecutor and the Office of Public Counsel for the Defence against Pre-Trial Chamber I's Decision of 6 December 2007", the Appeals Chamber, ICC-02/05-138, paras 29 and 30.


13. To the extent that the Motion for unsealing concerns the Prosecutor's Application, the Prosecutor's Further Submission and those of their respective annexes that have not been unsealed and re-classified under the decision of 20 June 2008, the motion can equally not be granted at the present time as the Prosecutor's applications for redactions are under consideration and will be decided upon in due course.

FOR THESE REASONS, THE CHAMBER

rejects the motion of 14 July 2008.

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


 Judge Fatoumata Dembele Diarra
 Second Vice-President



Judge Hans-Peter Kaul

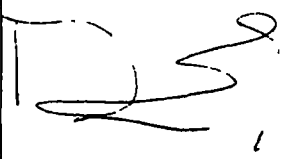


Judge Ekaterina Trendafilova

Dated this 22 July 2008

At The Hague, The Netherlands

CLASSIFIED DOCUMENT – COPY CONTROL LIST**04/07/2008**

Document Number		Name of the Recipient	Signature
1	<ul style="list-style-type: none">• ICC-01/05-01/08-34-Conf• Non-Ex parte Court Records in ICC-01/05-01/08	Mr. Tjarda van der Spoel	
2	<ul style="list-style-type: none">• ICC-01/05-01/08-34-Conf• Non-Ex parte Court Records in ICC-01/05-01/08	Mr. Aime Kilolo Musamba Lubemba	