

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 October 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
THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

Public Document

URGENT

Confidential Annex 1

***Ex parte* confidential Annex 2 – available to the Prosecutor and the Victims and
Witnesses Unit only**

**Decision on the Implementation of the Second Decision on the Prosecutor's
requests for redactions**

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 for

Nkwebe Liriss
Tjarda E. 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

Simo Vaatainen

Detention Section

**Victims Participation and Reparations
Section**

Other

1. **Pre-Trial Chamber III** (the “Chamber”) of the International Criminal Court (the “Court”) is reviewing the accurate implementation of the “Second Decision on the Prosecutor’s requests for redactions” (the “Second Decision on Redactions”) issued on 1 October 2008.¹

2. On 1 October 2008 the Chamber issued the Second Decision on Redactions authorising redactions in twelve witness statements annexed to the “Prosecutor’s Application for Warrant of Arrest under Article 58”² and the “Prosecutor’s Submission on Further Information and Materials”³.

3. On 3 October 2008 the Prosecutor filed the “Prosecution’s Communication of disclosure of incriminating evidence pursuant to the Second Decision on the Prosecutor’s requests for redactions dated 1 October 2008” (the “Communication of Disclosure of Incriminating Evidence”).⁴ By this communication the Prosecutor notified the disclosure of twelve witness statements in redacted form and two summaries of witness statements to the Defence.

4. On 7 October 2008 the Prosecutor filed a corrigendum to the “Communication of Disclosure of Incriminating Evidence”.⁵

¹ ICC-01/05-01/08-135-Conf.

² ICC-01/05-01/08-26-US-Exp.

³ ICC-01/05-01/08-29-US-Exp.

⁴ ICC-01/05-01/08-139-Conf.

⁵ ICC-01/05-01/08-139-Conf-Corr.

5. The Chamber notes articles 43(6), 57(3)(c), 67, 68(1) and 68(4) of the Statute and rules 17 to 19, 81(2), 81(4) and 121 of the Rules of Procedure and Evidence (the “Rules”).

6. The Chamber recalls its principal responsibility related to redactions prior to the confirmation hearing in ensuring that the proceedings are fair and expeditious and that they are conducted with full respect for the rights of the Defence and with due regard to the protection of victims and witnesses.⁶

7. In order to fulfil its obligations, the Chamber reviewed the implementation of the Second Decision on Redactions by the Prosecutor with regard to the twelve witness statements for which redactions had been authorized by the Chamber. In the course of this review, some inconsistencies were identified which need to be addressed immediately.

8. On the one hand, the Chamber notices that the Prosecutor redacted more information than was initially authorised by the Chamber. In some instances the Prosecutor redacted information without having requested its redaction from the Chamber. A compilation of identified inconsistencies of this kind is annexed to this decision (Annex 1).

9. On the other hand, the Chamber regrettably notes that with regard to redactions ordered by the Chamber *proprio motu*, the Prosecutor did not accurately implement the Chamber’s Second Decision on Redactions by redacting less information than ordered by the Chamber. The Chamber is thus concerned that identifying information of some witnesses has been disclosed

⁶ ICC-01/05-01/08-85-Conf, para. 12 and ICC-01/05-01/08-121-US-Exp, para. 17.

to the Defence and may have put those witnesses at risk. A compilation of identified inconsistencies of this kind is annexed to this decision (see Annex 2).

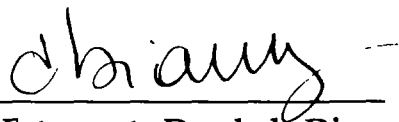
10. In conclusion, the Chamber deems it necessary that the Prosecutor properly implement the Second Decision on Redactions as set out in Annex 1 and immediately re-disclose to the Defence the witness statements which were redacted inconsistent with the Chamber's Second Decision on Redactions. In addition, the Prosecutor shall, in consultation with the Victims and Witnesses Unit, carry out a risk assessment with regard to the witnesses mentioned in Annex 2.

FOR THESE REASONS, THE CHAMBER

a) orders the Prosecutor to re-disclose no later than 22 October 2008 at 16h00 the statements of witnesses 0022 (CAR-OTP-0007-0500), 0023 (CAR-OTP-0008-0033), 0029 (CAR-OTP-0010-0022), 0009 (CAR-OTP-0010-0120; CAR-OTP-0010-0170; CAR-OTP-0010-0192), 0015 (CAR-OTP-0006-0491), and 0031 (CAR-OTP-0007-0192) as set out in Annex 1 and in compliance with the Chamber's Second Decision on Redactions.

b) orders the Prosecutor to carry out a risk assessment in consultation with the Victims and Witnesses Unit with regard to those witnesses mentioned in Annex 2 and to provide this risk assessment to the Chamber no later than 27 October 2008.

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



Judge Fatoumata Dembele Diarra
Presiding Judge



Judge Hans-Peter Kaul



Judge Ekaterina Trendafilova

Dated this Tuesday, 21 October 2008

At The Hague, The Netherlands