

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 17 November 2008

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Mauro Politi

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

Public Document

URGENT

**With Confidential Annex I *ex parte* Prosecutor and VWU only and Confidential
Annex II *ex parte* Registry only**

**Decision Requesting the Prosecutor, the Victims and Witnesses Unit and the
Registry to Submit Observations on the Re-classification of Certain Documents**

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

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**

Fiona McKay

Other

1. **Pre-Trial Chamber III** (the “Chamber”) of the International Criminal Court (the “Court”) has scheduled the hearing on the confirmation of charges from 8 to 12 December 2008 for which both parties, the Prosecutor and the Defence, should be properly prepared.¹
2. The Chamber notes articles 43(6), 57(3)(c), 64, 67 and 68 of the Rome Statute (the “Statute”), rules 17 to 19 of the Rules of Procedure and Evidence (the “Rules”), regulations 23*bis* and 24*bis* of the Regulations of the Court (the “Regulations”) and regulation 14 of the Regulations of the Registry.
3. The Chamber firstly notes the rights of Mr Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”) under article 67 of the Statute. In particular, it recalls the principle that the suspect should be in a position to properly prepare his defence.
4. The Chamber also recalls its duty at the pre-trial stage to ensure that the confirmation of charges hearing is fair, conducted with full respect of the rights of the suspect and with due regard for the protection of victims and witnesses concerned by the present case.
5. In this regard, the Chamber recalls its obligation to provide for the protection and privacy of victims and witnesses in accordance with articles 57(3)(c) and 68(1) of the Statute and is of the view that protection of victims and witnesses may render redactions necessary prior to any change of classification of certain documents.
6. Mindful of these principles and in view of the forthcoming confirmation of charges hearing starting on 8 December 2008, the Chamber considers that *ex parte*

¹ ICC-01/05-01/08-199.

documents emanating from the Prosecutor or the Registry should be made available to the Defence.

7. With regard to documents emanating from the Prosecutor as set out in Annex I, the Chamber notes that certain documents currently classified as *ex parte* may be of importance to the Defence. However, prior to any decision on re-classification pursuant to regulation 23*bis*(3) of the Regulations, the Chamber deems it appropriate to seek observations from the Prosecutor on making the documents and the transcripts referred to in Annex I available to the Defence. The Chamber considers that the treatment of the said documents should be reviewed by the Prosecutor in consultation with the Victims and Witnesses Unit (the "VWU"). The VWU may advise, pursuant to article 68(4) of the Statute, the Prosecutor and the Court on protective measures as referred to in article 43(6) of the Statute, including proposals for redactions when appropriate. In reviewing the documents, the Prosecutor and VWU should determine whether the original classification is still warranted, and should it not be the case, whether proposals for redactions would be appropriate in order to share at least a redacted version of these documents with the Defence.

8. With regard to documents emanating from the Registry as set out in Annex II, the Chamber also notes that certain *ex parte* documents and transcripts may be of relevance to the Defence as well as the Prosecutor. Prior to any decision on re-classification pursuant to regulation 23*bis*(3) of the Regulations, the Chamber deems it appropriate to seek observations from the Registry on making available to the Defence only, to the Prosecutor only or to both parties, the documents referred to in Annex II. As set out in the paragraph above, the Chamber is of the view that the said documents should be reviewed in order to determine whether the original classification is still warranted. In doing so, the Registry should pay particular attention to the content of the documents filed *ex parte* "Registrar only" pursuant to regulation 24*bis*(2) of the Regulations and should propose to review their level of

classification if the knowledge by the parties of the content of these documents would not defeat their purpose.

9. Finally, the Chamber requests that in their respective observations the Prosecutor, in consultation with VWU, as well as the Registry submit to the Chamber the reasons why their respective documents listed in Annexes I and II, may not, at this stage, be the subject of a decision on re-classification.

FOR THESE REASONS, THE CHAMBER

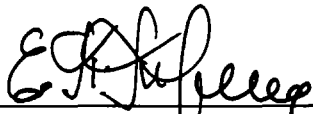
a) orders the Prosecutor, in consultation with the Victims and Witnesses Unit, to submit, no later than 24 November 2008, a proposal on the communication to the Defence of all documents listed in Annex I of the present order, including, where appropriate, proposals for redactions before such communication;

b) orders the Registrar to submit, no later than 24 November 2008, a proposal on the communication to the Defence, to the Prosecutor or to both of all documents listed in Annex II of the present order, including, where appropriate, proposals for redactions before such communication;

c) orders the Prosecutor and the Registrar to follow the official case record numbers of the filings and to include all their proposals respectively, in one single document;

d) orders that the said proposals by the Prosecutor and by the Registrar be submitted in a document confidential *ex parte*, respectively available only to the Prosecutor or the Registrar.


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



Judge Ekaterina Trendafilova
Presiding Judge



Judge Hans-Peter Kaul



Judge Mauro Politi

Dated this Monday, 17 November 2008

At The Hague, the Netherlands