

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 1 December 2008

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Single Judge

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

Public

Decision on Re-classification and Unsealing 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
Karim A. A. Khan
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

1. Judge Ekaterina Trendafilova, acting as Single Judge¹ on behalf of Pre-Trial Chamber III (the “Chamber”) of the International Criminal Court (the “Court”) is seized of the matter of re-classification and unsealing of documents in the case *The Prosecutor v. Jean-Pierre Bemba Gombo* (the “Case”) in view of the hearing on the confirmation of charges scheduled from 8 to 12 December 2008.²

2. On 17 November 2008 the Chamber issued a “Decision Requesting the Prosecutor, the Victims and Witnesses Unit and the Registry to Submit Observations on the Re-Classification of Certain Documents” in which both the Prosecutor, in consultation with the Victims and Witnesses Unit (“VWU”), and the Registry were ordered to submit proposals on the communication to the Defence of a list of documents not yet available to the latter, including, where appropriate, proposals for redaction.³

3. On 24 November 2008 the Prosecutor, in consultation with VWU, and the Registrar filed their observations (the “Observations”)⁴ on the current level of confidentiality of their respective documents and where appropriate, provided the Chamber with reasons why certain information contained in some documents should be redacted before being communicated to the Defence.

4. The Single Judge notes articles 57(3)(c), 64, 67, 68(1) of the Rome Statute (the “Statute”), rules 15, 81 and 87 of the Rules of Procedure and Evidence (the “Rules”), regulation 8(c) of the Regulations of the Court and regulation 14 of the Regulations of the Registry.

¹ ICC-01/05-01/08-293.

² ICC-01/05-01/08-199.

³ ICC-01/05-01/08-257.

⁴ “Prosecutor’s Observations on the Re-classification of the Documents Listed in Annex I of the Pre-Trial Chamber III’s Decision dated November 17, 2008”, ICC-01/05-01/08-277-Conf-Exp and “Observations of the Registrar on the Re-classification of the Documents listed in ICC-01/05-01/08-257-Anx2”, ICC-01/05-01/08-282-Conf-Exp.

5. While the Single Judge notes her 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, she also notes the rights of Mr Jean-Pierre Bemba Gombo ("Mr Jean-Pierre Bemba") under article 67 of the Statute. In particular, the Single Judge recalls the principle according to which the suspect should be in a position to properly prepare his defence. The Single Judge is also aware of her duty to ensure that the confirmation hearing is fair and conducted with full respect for the rights of the suspect. Finally, the Single Judge notes the principle of publicity of proceedings.

6. The Single Judge reviewed the Observations in light of these principles, and first notes that information contained in certain documents filed by the Prosecutor is either of public knowledge or does not refer to any victims or witnesses such as photographs of Mr Jean-Pierre Bemba, NGO reports and other documents available on the Internet.

7. The Single Judge thus considers that the basis for the initial "under seal" or "confidential" classification of the documents concerned filed by the Prosecutor, no longer exists and therefore, these documents should be made public.

8. Second, having examined the Observations, the Single Judge is of the view that certain documents filed by the Prosecutor and the Registry should be re-classified as confidential and thus available to the Defence as the information contained in these documents (1) does not reveal the identity or identifying information of protected victims and witnesses pursuant to previous decisions of the Chamber,⁵ (2) is of relevance for the preparation of the Defence in view of the forthcoming confirmation

⁵ First Decision on the Prosecutor's request for redactions, ICC-01/05-01/08-85, Second Decision on the Prosecutor's request for redactions ICC-01/05-01/08-135 and Third Decision on the Prosecutor's Requests for Redactions and Related Request for the Regulation of Contacts of Jean-Pierre Bemba Gombo, ICC-01/05-01/08-215-Conf.

hearing beginning on 8 December 2008 and (3) is already known by the Defence through the disclosure process.

9. The Single Judge, however, mindful of her obligation to protect victims and witnesses pursuant to article 68(1) of the Statute, reviewed each document and noted that the Prosecutor made proposals to redact certain information.

10. Having carefully assessed the said proposals, the Single Judge considers that, in limited instances, some information contained in documents filed by the Prosecutor, if known to the Defence, would reveal the identity or identifying information of protected victims and witnesses and of persons at risk on account of the activities of the Court or would give indications as to the modalities of their protection. Therefore, the Single Judge is of the view that the related information should remain redacted at this stage pursuant to rules 81(4) and 87 of the Rules.

11. The Single Judge concurs with the proposals for redaction made by the Prosecutor, and considers that they were made with due regard for the protection of victims and witnesses. Thus, the Single Judge is of the view that the documents concerned should be communicated to the Defence in a redacted form following the said proposals for redaction.

12. Finally, the Single Judge reserves her power to take further decisions on the reclassification and unsealing of other documents in the record of the situation and the Case with a view to ensuring that they have been given the correct and appropriate treatment.

FOR THESE REASONS, THE SINGLE JUDGE

a) decides to re-classify as public the following documents in both English and French :

- (i) ICC-01/05-01/08-26-US-Exp-Anx1., "Photographs of Jean-Pierre Bemba";
- (ii) ICC-01/05-01/08-26-US-Exp-Anx12., "Chapitre de la création du siège";
- (iii) ICC-01/05-01/08-29-US-Exp-Anx2A., "Refugees flee amid ethnic discrimination as perpetrators go unpunished";
- (iv) ICC-01/05-01/08-29-US-Exp-Anx2B., "République Centrafricaine: Réfugiés en fuite, discrimination ethnique et coupables impunis";
- (v) ICC-01/05-01/08-56-US-Exp., "Motion on extension of time limit".

b) decides to re-classify as confidential the following documents filed by the Prosecutor in both English and French :

- (i) ICC-01/05-01/08-29-US-Exp-Anx1A.;
- (ii) ICC-01/05-01/08-29-US-Exp-Anx1B.;
- (iii) ICC-01/05-01/08-29-US-Exp-Anx.;
- (iv) ICC-01/05-01/08-41-US-Exp.;
- (v) ICC-01/05-01/08-41-US-Exp-AnxA. ;
- (vi) ICC-01/05-01/08-44-US-Exp-Anx.;
- (vii) ICC-01/05-01/08-82-US-Exp.;
- (viii) ICC-01/05-01/08-82-US-Exp-Anx.;

- (ix) ICC-01/05-01/08-82-US-Exp-Anxl-25.;
- (x) ICC-01/05-01/08-114-US-Exp-Anx.;
- (xi) ICC-01/05-01/08-211-US-Exp.;
- (xii) ICC-01/05-01/08-211-US-Exp-Anx.;

c) decides to re-classify as confidential the following documents filed by the Registry in both English and French :

- (i) ICC-01/05-01/08-6-US-Exp. ;
- (ii) ICC-01/05-01/08-6-US-Exp-Anxl. ;
- (iii) ICC-01/05-01/08-6-US-Exp-Anx2. ;
- (iv) ICC-01/05-01/08-6-US-Exp-Anx3. ;
- (v) ICC-01/05-01/08-12-US-Exp. ;
- (vi) ICC-01/05-01/08-12-US-Exp-Anxl.;
- (vii) ICC-01/05-01/08-12-US-Exp-Anx2. ;
- (viii) ICC-01/05-01/08-22-US-Exp. ;
- (ix) ICC-01/05-01/08-22-US-Exp-Anxl. ;
- (x) ICC-01/05-01/08-22-US-Exp-Anx2. ;
- (xi) ICC-01/05-01/08-37-US-Exp. ;
- (xii) ICC-01/05-01/08-37-US-Exp-Anxl. ;
- (xiii) ICC-01/05-01/08-38-Conf-Exp.;
- (xiv) ICC-01/05-01/08-38-Conf-Exp-Anxl-9.;
- (xv) ICC-01/05-01/08-39-US-Exp.;
- (xvi) ICC-01/05-01/08-72-US-Exp.;
- (xvii) ICC-01/05-01/08-72-US-Exp-Anxl-2.;
- (xviii) ICC-01/05-01/08-76-Conf-Exp-Anx2-6. ;
- (xix) ICC-01/05-01/08-140-Conf-Exp.;
- (xx) ICC-01/05-01/08-168-Conf-Exp-Anx2.;
- (xxi) ICC-01/05-01/08-177-Conf-Exp.

d) decides to re-classify as confidential the transcripts of the following *ex parte* hearing :

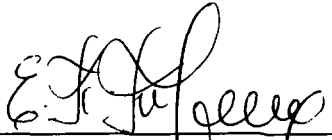
- (i) ICC-01/05-01/08-T-1-CONF-EXP-FRA ET 26-05-2008 1-8 NB PT,
- (ii) ICC-01/05-01/08-T-1-CONF-EXP-ENG ET 26-05-2008 1-7 NB PT.

e) orders the Prosecutor to file in the record of the Case a confidential redacted version of the below documents following his proposals for redaction :

- (i) ICC-01/05-01/08-32-US-Exp.;
- (ii) ICC-01/05-01/08-32-US-Exp-AnxC.;
- (iii) ICC-01/05-01/08-44-US-Exp.;
- (iv) ICC-01/05-01/08-91-US-Exp.;
- (v) ICC-01/05-01/08-114-US-Exp.;
- (vi) ICC-01/05-01/08-122-US-Exp.

f) decides to reserve, until further order, any decision on the re-classification and un-sealing of documents filed in the record of both the situation and the Case which may be necessary for the effective exercise of the rights of Jean-Pierre Bemba Gombo and insurance of the publicity of proceedings.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Monday, 1 December 2008

At The Hague, the Netherlands