

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original English

No.: ICC-01/05-01/08 OA 2
Date 2 September 2009

THE APPEALS CHAMBER

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Sang-Hyun Song
Judge Erkki Kourula
Judge Anita Ušacka
Judge Daniel David Ntanda Nseroko

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF THE PROSECUTOR

v.

JEAN-PIERRE BEMBA GOMBO

Confidential

**Order on the Reclassification as Confidential of the Response to the Document in
Support of the Appeal and on the Filing of a Public Redacted Version**

Decision/Order/Judgment to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Latou Bensouda, Deputy Prosecutor

Counsel for the Defence of Mr Jean-Pierre

Bemba Gombo
Mr Nkwebe LIRISS
Mr Karim A A Khan

REGISTRY

Registrar

Ms Silvana Arbia

The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor dated 14 August 2009 and entitled “Prosecution’s Appeal against ‘Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa’” (ICC-01/05-01/08-476) against the decision of Pre-Trial Chamber II dated 14 August 2009 entitled “Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic and the Republic of South Africa” (ICC-01/05-01/08-475),

Having before it the ‘Réponse de la Défense à l’acte d’appui d’appel du Procureur ainsi que sa demande de l’effet suspensif’ dated 31 August 2009 (ICC-01/05-01/08-493),

Pursuant to regulation 29 (1) of the Regulations of the Court,

Issues unanimously the following

ORDER

- 1) The Registrar shall reclassify the “Réponse de la Défense à l’acte d’appui d’appel du Procureur ainsi que sa demande de l’effet suspensif” as confidential
- 2) Mr Bemba shall file, by 4 pm on Friday, 4 September 2009, a public redacted version of the “Réponse de la Défense à l’acte d’appui d’appel du Procureur ainsi que sa demande de l’effet suspensif”, in which all references to confidential information, notably those contained in paragraph 40 of the document, are redacted

REASONS

1 On 31 August 2009, Mr Bemba filed, classified as public, the “Réponse de la Défense à l’acte d’appui d’appel du Procureur ainsi que sa demande de l’effet suspensif” dated 31 August 2009 (ICC-01/05-01/08-493, hereinafter ‘Response to the Document in Support of the Appeal’), it was registered on 1 September 2009

2 The Appeals Chamber notes that in the Response to the Document in Support of the Appeal, Mr Bemba refers to information that is contained in documents that are currently classified as “confidential” Notably, in paragraph 40 of the Response to the Document in Support of the Appeal, Mr Bemba discloses information contained in the observations on his request for release made by States These observations are currently classified as confidential¹

3 Regulation 23*bis* (2) of the Regulations of the Court provides that “[u]nless otherwise ordered by a Chamber, any response, reply or other document referring to a document, decision or order marked ‘*ex parte*’, ‘under seal’ or ‘confidential’ shall be filed with the same classification” The Appeals Chamber understands this regulation to cover not only references to the titles or document numbers of confidential documents, decisions or orders, but also to references to information contained in such documents, decisions or orders Accordingly, the public filing of the Response to the Document in Support of the Appeal did not comply with regulation 23*bis* (2) of the Regulations of the Court

4 In case of non-compliance with a provision of the Regulations of the Court, the Chamber may issue any order that it deems necessary in the interests of justice (regulation 29 (1) of the Regulations of the Court) In the present case, the Chamber considers it necessary to instruct the Registrar to reclassify the Response to the Document in Support of the Appeal and to order the filing of a public redacted version

¹ See ICC-01/05-01/08-448-Conf-Anx1, ICC-01/05-01/08-Conf-Anx2, ICC-01/05-01/08-461-Conf-Anx2, ICC-01/05-01/08-465-Conf-Anx2, ICC-01/05-01/08-472-Conf-Anx1

Done in both English and French the English version being authoritative



Judge Akua Kuenyehia
Presiding Judge

Dated this 2nd day of September 2009

At The Hague, The Netherlands