



Original: **English**

No.: **ICC-ICC-01/05-01/-8**

Date: **14 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
Motion to unseal certain documents and decisions**

Source: Defence

Document 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
Massimo Scaliotti, Trial Lawyer

Counsel for the Defence

Tjarda Eduard van der Spoel
Aime Kilolo Musamba

Legal Representatives of Victims

[1 name per team maximum]

Legal Representatives of Applicants

[1 name per team maximum]

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

[2 names maximum]

**The Office of Public Counsel for the
Defence**

[2 names maximum]

States Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On the application for warrant of arrest submitted by the Prosecutor on the 9th of May 2008¹ Pre-Trial Chamber III issued a Warrant of Arrest on the 23rd of May 2008. ²

After the assurance of a Warrant of Arrest on 23 May 2008³, and the provisional arrest of Jean-Pierre Bemba pursuant to article 92 of the Statute, the Prosecutor submitted further information and materials on 27 May 2008⁴. Based on the entirety of information received, the Pre-Trial Chamber III issued a new Warrant of Arrest under article 58 of the Statute on 10 June 2008 which replaced the Warrant of Arrest dated 23 May 2008. ⁵

2. Jean-Pierre Bemba was arrested by the Belgium authorities on the 24th of May 2008 and he was transferred and surrendered to the ICC detention center in The Hague on the 3rd of July 2008.

3. During the initial appearance before Pre-Trial Chamber III on the 4th of July 2008 the Defence notified the Pre-Trial Chamber, the Prosecutor and the Registry that the Defence would file a motion for conditional release in the near future.

At the same time the Defence invited the Prosecutor to disclose information which the Prosecutor relied on that the conditions of article 58 of the Rome Statute paragraph 1 under b were met. ⁶

¹ ICC-01/05-13-US-Exp.

² ICC-01-05-01-08-1

³ ICC-01/05-01/08-1

⁴ ICC-01/05-16-US-Exp.

⁵ ICC-01/05-01/08-15.

⁶ Transcript of the initial appearance on 4 July 2008 ICC-01-05-01-08-T3, p.4, lines 6-15.

4. During the same initial appearance the Defence drew the Court's attention to the provisions of article 55 of the Rome Statute which he believed had been violated which signifies that the procedures should be null and void.⁷

The Defence elaborated on the issue after which Judge Diarra suggested that the submission be made in writing.⁸

5. The Defence confirms in this motion that it will in the near future file motions challenging the arrest warrants and requesting interim release.

However the Defence feels prejudiced that it does not possess the same information as which the Court and the Prosecutor does.

It is true that Pre-Trial Chamber III has unsealed and reclassified documents and decisions in the ruling of the 20th of June 2008.⁹

But the material relevant for the motions that the Defence desires to file has not been unsealed.

⁷ T-p.4, line 20-25.

⁸ T-p.8, line 8-11

⁹ ICC-01-05-01-08, "decision on unsealing and re-classification documents and decisions

The Defence refers to paragraph c) of the operative part of the decision mentioning the follow documents:

ICC-01/05-10-US-Exp, entitled "Notification to Pre-Trial Chamber III and request for Extension of Page Limit and Expedited Consideration";

ICC-01/05-12-US-Exp, entitled "Decision on the Prosecutor's Notification to Pre-Trial Chamber III and Request for Extension of Page Limit and Expedited Consideration" ;

ICC-01/05-13-US-Exp, entitled "Prosecutors Application for Warrant of Arrest under Article 58" and Annexes 1-14;

ICC-01/05-14-US-Exp, entitled "Decision Requesting Additional Information in Respect of the Prosecutor's Application for Warrant of Arrest under Article 58" ;

ICC-01/05-15-US-Exp, entitled "Prosecutor's Application for Request for Provisional Arrest under Article 92";

ICC-01/05-16-US-Exp, entitled "Prosecutor's Submission on Further Information and Materials" and Annexes 1-18.

6. Regulation 23 bis of the Regulations of the Court paragraph 3 permits the Defence to request the Chamber to re-classify a document and the Defence has given good cause that it is in the Defence's interest to do so.

7. For these reasons the Defence respectfully requests the Pre-Trial Chamber III to unseal and re-classify the following documents in order that Defence can have these documents at their disposal:

ICC-01/05-10-US-Exp, entitled "Notification to Pre-Trial Chamber III and request for Extension of Page Limit and Expedited Consideration";

ICC-01/05-12-US-Exp, entitled "Decision on the Prosecutor's Notification to Pre-Trial Chamber III and Request for Extension of Page Limit and Expedited Consideration" ;

ICC-01/05-13-US-Exp, entitled "Prosecutors Application for Warrant of Arrest under Article 58" and Annexes 1-14;

ICC-01/05-14-US-Exp, entitled "Decision Requesting Additional Information in Respect of the Prosecutor's Application for Warrant of Arrest under Article 58" ;

ICC-01/05-15-US-Exp, entitled "Prosecutor's Application for Request for Provisional Arrest under Article 92";

ICC-01/05-16-US-Exp, entitled "Prosecutor's Submission on Further Information and Materials" and Annexes 1-18.

Respectfully submitted on 14th July 2008

Tjarda Eduard van der Spoel, Defence counsel

Aime Kilolo Musamba, Defence counsel

[
on behalf of
[Enter name and title of person on behalf of whom the document is signed, if
applicable]

Dated this

At [place, country]