

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

No.: **ICC-01/05-01/08**
Date: **15 September 2008**

PRE-TRIAL CHAMBER III

Before: Judge Fatoumata Dembele Diarra, Single Judge

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

**Confidential
URGENT**

***Ex parte* only available to the Prosecutor and the Victims and Witnesses Unit**

**Decision on the Prosecutor's Request for Redactions for Witnesses 0009, 0033,
0038, 0022, 0023 and 0029**

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, Trial Lawyer

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of 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

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Defence Support Section

Victims and Witnesses Unit

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Detention Section

**Victims Participation and Reparations
Section**

Other

1. **Judge Fatoumata Dembele Diarra**, judge at the International Criminal Court ("the Court"), acting as single judge¹ on behalf of Pre-Trial Chamber III ("the Chamber"), recalls that on 1 August 2008, Judge Hans-Peter Kaul,² the then Single Judge from 1 to 31 August 2008, received a request from the Prosecutor for proposed redactions ("the Prosecutor's Request for Redactions")³ to be granted. These proposals for redactions pertain to the "Prosecutor's Application for Warrant of Arrest under Article 58"⁴ and the "Prosecutor's Submission on Further Information and Materials"⁵ and to the annexes thereto.
2. The Single Judge further recalls that on 18 August 2008, the Victims and Witnesses Unit ("the VWU") provided Judge Hans-Peter Kaul with additional information about the Prosecutor's proposed redactions.⁶
3. Since the Prosecutor's and the VWU's proposals appear contradictory on some points, Single Judge Hans-Peter Kaul scheduled an *ex parte* status conference in closed session which was held on 28 August 2008.⁷
4. On 31 August 2008, Single Judge Hans-Peter Kaul rendered the *First decision on the Prosecutor's request for redactions* ("the Decision of 31 August 2008"),⁸ a decision which has become final and by which he partially allowed certain redactions which pertained only to the "Prosecutor's Application for Warrant of Arrest under Article 58" and the "Prosecutor's Submission on Further Information and Materials".

¹ ICC-01/05-01/08-86.

² ICC-01/05-01/08-53.

³ ICC-01/05-01/08-58-US-Exp.

⁴ ICC-01/05-01/08-26-US-Exp.

⁵ ICC-01/05-01/08-29-US-Exp.

⁶ ICC-01/05-01/08-72-US-Exp.

⁷ ICC-01/05-01/08-T-4-Conf-Exp-ENG ET.

⁸ ICC-01/05-01/08-85-Conf.

5. The Single Judge recalls that the Decision of 31 August 2008 has implications for the six witnesses⁹ statements contained in the annexes to the "Prosecutor's Application for Warrant of Arrest under Article 58" and the "Prosecutor's Submission on Further Information and Materials". In his Decision of 31 August 2008, Single Judge Hans-Peter Kaul provisionally accepted the redaction of the names of six (6) of the fourteen (14) witnesses whose statements had been presented to the Chamber to date. However, the decision states that the names of the six witnesses should be disclosed to the Defence no later than thirty (30) days before the date of the confirmation hearing.
6. On 10 September 2008, the Single Judge convened two status conferences, one on Friday 19 September 2008 for the purpose of clarifying certain requests for redactions to the six witness statements in question proposed by the Prosecutor on 1 August 2008.¹⁰
7. The Single Judge notes articles 21, 43(6), 54(3)(f), 57(3)(c), 64(2), 67 and 68(1) of the *Rome Statute* ("the Statute") and rules 16 to 19, 81(2), 81(4), 87 and 88 of the *Rules of Procedure and Evidence* ("the Rules").
8. Pursuant to article 68 of the Statute, the Single Judge must take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. The Single Judge must also ensure the fairness and expeditiousness of proceedings at the pre-trial phase of the trial, with respect for the rights of the prosecuted person as set out in article 67 of the Statute.

⁹ The six witnesses in question are witnesses 0009, 0033, 0038, 0022, 0023 and 0029 (see decisions ICC-01/05-01/08-85-Conf., ICC-01/05-01/08-85-Conf-Anx and ICC-01/05-01/08-85-Conf-Anx2).

¹⁰ ICC-01/05-01/08-99-Conf-Exp.

9. With respect to the statements of witnesses 0009, 0033, 0038, 0022, 0023 and 0029 whose identities must be disclosed to the Defence no later than thirty (30) days before the date of the confirmation hearing, the Single Judge observes that the requests for redactions made on 1 August 2008 are extensive since they concern not only the names of the said witnesses but also any identifying information.
10. In order to implement the Decision of 31 August 2008, the Single Judge is of the opinion that the Prosecutor's requests for redactions filed on 1 August 2008 currently need to be amended, with due consideration given to this decision. She considers that it is appropriate for the Prosecutor to propose redactions based on the possibility that the names of the six witnesses in question and any identifying information will be disclosed to the Defence no later than thirty (30) days before the date of the confirmation hearing. The Single Judge has taken note of the fruitful cooperation between the Prosecutor and the Victims and Witnesses Unit¹¹ and considers that the new proposals for redactions are to be made in consultation with the said Unit.
11. For the purpose of clarification, the Single Judge considers that it is appropriate to hold the status conference as scheduled for Friday, 19 September in order to review the proposals of the eight other witnesses, namely witnesses 0036, 0006, 0025, 0015, 0007, 0037, 0031 and 0026, in order to take the necessary time to clarify some of the proposals made by the Prosecutor and to obtain the Victim and Witnesses Unit's opinion on those clarifications, if any.

FOR THESE REASONS, THE SINGLE JUDGE

requests the Prosecutor, after consultation with the Victims and Witnesses Unit, to submit a new request for redactions to the statements of witnesses 0009, 0033, 0038,

¹¹ ICC-01/05-01/08-55-58-US-Exp., paras. 7 and 14.

0022, 0023 and 0029 no later than 22 September 2008, taking into account the Decision of 31 August 2008.

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

[signed]

Judge Fatoumata Dembele Diarra

Single Judge

Dated this 15 September 2008

The Hague, the Netherlands