

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 25 September 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***

Under Seal

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

**Decision requesting further information on the security situation of certain
witnesses**

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

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**

Other

PRE-TRIAL CHAMBER III (the “Chamber”) of the International Criminal Court (the “Court”) has received several applications of the Prosecutor for redactions under rules 81(2) and 81 (4) of the Rules of Procedure and Evidence (the “Rules”) with regard to the witness statements annexed to the “Prosecutor’s Application for Warrant of Arrest under Article 58” (the “Prosecutor’s Application”)¹ against Jean-Pierre Bemba Gombo and the “Prosecutor’s Submission on Further Information and Materials” (the “Prosecutor’s Further Submission”)².

I. Procedural history

1. On 16 July 2008 the Prosecutor first filed the “Prosecution’s Application for Redaction Pursuant to Rules 81(2) and 81(4)”³ concerning information contained in witness statements annexed to the Prosecutor’s Application and the Prosecutor’s Further Submission.

2. Thereafter, the Chamber issued on 23 July 2008 the “Decision concerning the Prosecutor’s proposals for redactions”⁴ ordering the Prosecutor, *inter alia*, to re-submit by 31 July 2008 his proposals for redactions with regard to the witness statements concerned lacking sufficient factual information and explanations, and ordered him to substantiate his requests properly with the applicable standards as summarized and developed in that decision.

3. On 31 July 2008 the Chamber issued the decision on the evidence disclosure system and set a calendar for disclosure.⁵ It was ordered that the Prosecutor disclose to the defence all evidence in the Prosecutor’s possession or control under article 67(2) of the Rome Statute (the “Statute”) as soon as practicable and on a continuous

¹ ICC-01/05-13-US-Exp.

² ICC-01/05-01/08-16-US-Exp.

³ ICC-01/05-01/08-44-US-Exp.

⁴ ICC-01/05-01/08-48-US-Exp.

⁵ “Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties”, ICC-01/05-01/08-55.

basis. Furthermore, disclosure of evidence falling under rules 76 and 77 of the Rules was ordered to be conducted as soon as possible and no later than 3 October 2008.

4. On 1 August 2008 the Prosecutor submitted the "Prosecutor's Decision concerning the Prosecutor's proposals for redactions".⁶

5. On 18 August 2008 the Victims and Witnesses Unit (the "VWU") submitted the "Victims and Witnesses Unit's observations on the protection measures available in relation to the individuals concerned by the Prosecutor's proposals for redaction".⁷

6. On 26 August 2008 Judge Hans-Peter Kaul, acting as Single Judge on behalf of the Chamber,⁸ decided to convene a status conference *ex parte* and *in camera* with the Prosecutor and the VWU⁹ on the Prosecutor's proposals for redactions with a view to receive further relevant information and clarifications which was held on 28 August 2008. On 29 August 2008 the Prosecutor submitted further information - media articles - as requested by the Single Judge during the status conference of 28 August 2008.¹⁰

7. On 31 August 2008 the Single Judge issued the "First decision on the Prosecutor's request for redactions"¹¹ authorizing partially redactions of information contained in the Prosecutor's Application and the Prosecutor's Further Submission.

8. On 4 September 2008 the Prosecutor shared with VWU the individual risk assessments for all fourteen witnesses.¹²

⁶ ICC-01/05-01/08-58-US-Exp.

⁷ ICC-01/05-01/08-72-US-Exp.

⁸ ICC-01/05-01/08-53.

⁹ "Decision convening a status conference", ICC-01/05-01/08-79-Conf-Exp.

¹⁰ ICC-01/05-01/08-82-US-Exp.

¹¹ ICC-01/05-01/08-85-Conf.

¹² See para. 28 of the Prosecutor's submission, ICC-01/05-01/08-114-US-Exp.

9. On 10 September 2008 the Single Judge decided to convene a second status conference *ex parte* and *in camera* with the Prosecutor and the VWU seeking further clarifications with regard to the redactions proposed.¹³

10. On 15 September 2008 the Single Judge requested the Prosecutor to re-submit after consultation with the VWU his proposals for redactions concerning six witnesses whose names and identifying information had been authorized to be redacted on a temporary basis ("part I witnesses").¹⁴

11. On 17 September 2008 the status conference was held before the Single Judge during which she ordered the Prosecutor to re-submit his proposal for redactions concerning the other eight witnesses whose names had been ordered to be disclosed¹⁵ to the defence as soon as possible ("part II witnesses").¹⁶

12. On 22 September 2008 the Prosecutor submitted the "Prosecution's Amended Application for Proposed Redactions Pursuant to rules 81(2) and 81(4)"¹⁷. At the same time, the Prosecutor requested that the Chamber extend the temporary redactions for the part I witnesses beyond 3 October 2008.

13. On the same day, the Single Judge ordered that the Prosecutor submit all risk assessments undertaken relating to the fourteen witnesses on which he intends to rely at the confirmation of charges hearing.¹⁸

14. On 23 September 2008 the Prosecutor filed the "Prosecution's Response to "Ordonnance relative à la protection des témoins et au rapport d'évaluation des

¹³ ICC-01/05-01/08-99-Conf-Exp

¹⁴ See letter (a) of the operative part in, and the annex to the "First decision on the Prosecutor's request for redactions", ICC-01/05-01/08-85-Conf-Exp.

¹⁵ See letter (a) of the operative part in, and the annex to the "First decision on the Prosecutor's request for redactions", ICC-01/05-01/08-85-Conf-Exp.

¹⁶ ICC-01/05-01/08-T-5-CONF-EXP-FRA, p. 91, lines 11 and 12.

¹⁷ ICC-01/05-01/08-114-US-Exp.

¹⁸ "Ordonnance relative à la protection des témoins et au rapport d'évaluation des risques", ICC-01/05-01/08-111-US-Exp.

risques”¹⁹ in which he provided all the risk evaluations relating to the fourteen witnesses.

The Law

15. The Chamber notes articles 21, 57(3)(c), 64(2), 67 and 68(1) of the Statute and rules 81(2), 81(4), 87 and 121 of the Rules.

16. The Chamber first wishes to recall the relevant law which is to be applied in determining the issue of authorization of proposed redactions. To this end, the Chamber reiterates its commitment to follow standards established by jurisprudence of the Appeals Chamber²⁰

17. The Chamber recalls that the Chamber’s principal responsibility related to redactions prior to the confirmation hearing is to ensure that the proceedings are fair and expeditious and that they are conducted with full respect for the rights of the defence and with due regard to the protection of victims and witnesses.

18. The Chamber further emphasizes the overriding principle that full disclosure should be made and that non-disclosure is an exception to this general rule which requires prior authorization of the Chamber pursuant to rule 81 of the Rules. Furthermore the Chamber stresses that any case of non-disclosure will require a *careful* assessment by the Chamber on a *case-by-case basis* (emphasis added).

¹⁹ ICC-01/05-01/08-119-US-Exp.

²⁰ Appeals Chamber, “Judgement on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled ‘Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence’”, ICC-01/04-01/06-568; Appeals Chamber, “Judgement on the appeal of Mr Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled ‘First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81’”, ICC-01/04-01/06-773; Appeals Chamber, “Judgement on the appeal of Mr Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled ‘Second Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81’”, ICC-01/04-01/06-774; Appeals Chamber, “Judgement on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled ‘First Decision on the Prosecution Request for Authorisation to Redact Witness Statements’”, ICC-01/04-01/07-475; Appeals Chamber, “Judgement on the appeal of Mr Germain Katanga against the decision of Pre-Trial Chamber I entitled ‘First Decision on the Prosecution Request for Authorisation to Redact Witness Statements’”, ICC-01/04-01/07-476.

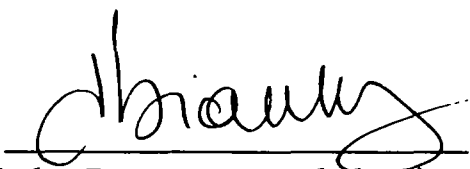
19. The Chamber equally recalls once again the criteria in respect of non-disclosure of identifying information of victims, witnesses, their family members and other persons at risk on account of the activities of the Court, which comprise: (i) the danger caused by disclosure of their identity and whether non-disclosure could reduce that danger; (ii) the “necessity” of non-disclosure in the sense that less intrusive protective measures are not available; and (iii) proportionality of non-disclosure in view of the prejudice caused thereby to the rights of the accused and a fair and impartial trial. The danger must involve an objectively justifiable risk to the safety of the person concerned and must arise from disclosing the particular information to the defence, as opposed to the information to the public at large.

19. Against the background that the Chamber needs to apply this test for each redaction proposed in order to authorize it, the Chamber requires *further additional* information at the disposal of the Prosecutor which demonstrates the existence of an objectively justifiable risk which could lead to the non-disclosure of the names and identifying information of part I witnesses beyond 3 October 2008.

FOR THESE REASONS, THE CHAMBER

Orders the Prosecutor to submit by 26 September 2008 any further available information concerning the existence of an objectively justifiable risk to which part I witnesses are exposed which would justify his request to redact their names and identifying information beyond the 3 October 2008.

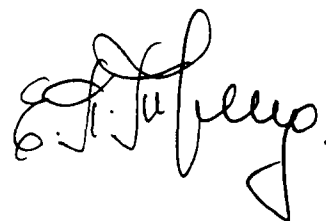
Done in both English and French, the English version being authoritative.



Judge Fatoumata Dembele Diarra
Presiding Judge



Judge Hans-Peter Kaul



Judge Ekaterina Trendafilova

Dated this 25 September 2008

At The Hague, The Netherlands