

**Cour
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**International
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ICC-01/05-01/08-140 23-09-2009 1/6 IO PT

Pursuant to Decision ICC-01/05-01/08-528 of 18/09/2009, this document is reclassified "Public"

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PRE-TRIAL CHAMBER III

Before: Judge Fatoumata Dembele Diarra, Presiding Judge
Judge Hans-Peter Kaul
Judge Ekaterina Trendafilova

**SITUATION IN CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
*v. Jean Pierre BEMBA GOMBO***

Confidential

Ex parte only available to The Registry

Transmission of redacted applications to participate in the proceedings

Source: Victims Participation and Reparations Section

ICC-01/05-01/08-140 23-09-2009 2/6 IO PT
Pursuant to Decision ICC-01/05-01/08-528 of 18/09/2009, this document is reclassified "Public"

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

Registrar
Silvana Arbia

Division of Victims and Counsel
Didier Preira

**Victims Participation and Reparations
Section**
Fiona McKay

Victims and Witness Unit
Simo Vaatainen

1. In its Decision dated 12 September 2008 on participation of victims,¹ the Single Judge ordered the Victims Participation and Reparations Section (VPRS) to propose any redactions that it considers necessary for the protection of victims, and that the Victims and Witnesses Unit (VWU) should be involved in determining what redactions might be necessary.
2. In accordance with 89 of the Rules of Procedure and Evidence, the Registrar shall provide copies of applications to the Prosecutor and the defence, subject to the provisions of the Statute, in particular article 68 paragraph 1, which provides that the Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. At the same time, these measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
3. Following consultations between the VPRS and the VWU, the Registry submits the following recommendations in relation to the protection of applicants who have submitted applications to participate in proceedings relating to the case *The Prosecutor v. Jean-Pierre Bemba Gombo*.

a) As regards the question of whether applications should be redacted

4. The Registry currently has no credible information indicating that the threat to applicants to participate in the proceedings would increase to an unacceptable level as a result of the disclosure of their identities to the defence team of Mr. Bemba, or to the Prosecution at this stage of the proceedings, provided that both parties ensure that information relating to the identities of applicants is handled confidentially.

¹ Décision relative à la participation des victimes, ICC-01/05-01/08-103

5. However, where two factors are present, the Registry recommends that redacted versions of the applications should be transmitted to the parties.
6. First, where an applicant indicates in his or her application form that he or she does not wish his or her identity to be disclosed to the parties in the proceedings, the Registry would propose that this should be respected, or, if the identity of the applicant is to be disclosed, this should be done only after receiving the consent of the applicant. This is consistent with rule 87 paragraph 1 of the Rules of Procedure and Evidence, which provides that a Chamber shall seek to obtain, wherever possible, the consent of the person in respect of whom a protective measure is sought. Whilst the Registry is not aware, in general terms, of information indicating that disclosure of the identities of applicants to the Prosecution and the defence would increase threats to an unacceptable level, it is not in a position to assess the individual circumstances of each applicant who has requested non-disclosure. The Registry would draw to the Chamber's attention the fact that this is still an early stage of the proceedings, and persons submitting application forms are still applicants; no determination has yet been made on their status as victims. If some or all of the applicants are accepted and granted the status of victim entitled to participate at a particular stage in the proceedings, the question of whether or not their identities should be revealed can be reviewed, taking into account the role that they will be afforded at that stage of the proceedings.
7. Among the 24 applicants that are filed today, 13 have requested in their application form that their identities not be disclosed either to the Prosecution or to the defence, or to both. Since this is primarily a question linked to the issue of equality of arms, it will be a matter for the Chamber to determine whether those applications containing a request of non-disclosure only to the defence should also be transmitted in redacted form to the Prosecutor.

8. Second, where applicants relate not only to the Bemba case but partly or exclusively point to others as responsible for the alleged crimes, the Registry believes that the risk would be significantly higher, and consequently would propose that the identities of those applicants not be disclosed to the defence or the Prosecution at this stage, or not without the consent of the applicant. The reason for this is that while Mr Bemba himself is in detention, in relation to other persons, the Registry does not have the same possibility to take measures to deal with incidents such as attempts to intimidate or threaten applicants or victims.
9. Among the 24 applicants that are filed today, at least 20 allege in their application forms that in addition to Jean-Pierre Bemba, others are also responsible for the alleged harm.
10. Since 22 out of the 23 applicants fall within either one or other of the above categories, or both, the Registry is also annexing a redacted version of the one that did not fall under either category, application a/0297/08, in case the Chamber might consider ordering that all of the applications to be transmitted in redacted form. Given the fact that this is still an early stage in the proceedings, and given that neither the VPRS nor the Office of Public Counsel for Victims (OPCV) has staff based in the CAR or has been able to conduct many informational and training activities to date, it is possible that applicants do not have a full understanding of the implications of the transmission of their applications, and in the time available since the applications were presented to the Registry it has not been possible to take steps to ascertain this.

11. The Registry recommends that none of the applications should in any event be made public at this stage.

b) As regards the extent and scope of redactions proposed

12. The purpose of redacting applications is to prevent the identity of the applicant from being disclosed. Consequently, in the proposed redactions annexed to this report, the name and other personal details that could serve to identify the applicant have been redacted, as well as specific information regarding the alleged harm that could serve to identify the person. The approach that has been taken is to redact only such information as is necessary for the purpose of ensuring that the identity is not revealed.²

c) Other protective measures proposed

13. In order to preserve the confidentiality of the applications, the Registry recommends that the Chamber orders that all applicants be referred to in any public filings only by their reference number.



Didier Preira
on behalf of
Silvana Arbia, Registrar

Dated this 3 October 2008

At The Hague, Netherlands

² In paragraph 33 of the Judgment issued by the Appeals Chamber on 14 December 2006 [ICC-01/04-01/06-773], reference is made to rule 81 (4) of the Rules of Procedure and Evidence which states that a Chamber shall only take "necessary steps" to protect witnesses and members of their families. PTC I refers to a prior clarification of the use of the word "necessary" and concludes by stating that "*if less restrictive protective measures are sufficient and feasible, a Chamber must choose those measures over more restrictive measures.*"