

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 10 December 2008

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Mauro Politi

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

**Confidential
Ex parte only available to the Registrar
URGENT**

**Addendum to the "Observations of the Registrar on the Re-Classification of the
Documents listed in ICC-01/05-01/08-257-Conf-Exp-Anx2" submitted on 24
November 2008**

Source: Registrar

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

The Office of the Prosecutor

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

Amicus Curiae

REGISTRY

Registrar
Silvana Arbia

Defence Support Section
Esteban Peralta-Losilla

Deputy Registrar
Didier Preira

Victims and Witnesses Unit
Simo Vaatainen

Detention Section
Anders Backman

**Victims Participation and Reparations
Section**
Fiona McKay

THE REGISTRAR of the International Criminal Court ("the Court");

NOTING the "*Decision Requesting the Prosecutor, the Victims and Witnesses Unit and the Registry to Submit Observations on the Re-Classification of Certain documents*"¹ ("the Decision of 17 November 2008") issued by the Chamber on 17 November 2008;

NOTING the "*Observations of the Registrar on the Re-Classification of the Documents listed in ICC-01/05-01/08-257-Conf-Exp-Anx2*" ("the Registrar's Observations") submitted on 24 November 2008;²³

NOTING articles 43(6), 67 and 68 of the Rome Statute; rules 17 to 19 and 89(1) of the Rules of Procedure and Evidence; Regulations 23*bis*, 24*bis*, 86(5) and 92 of the Regulations of the Court, and Regulation 14 and 189 of the Regulations of the Registry;

CONSIDERING that the Chamber requested the Registrar to make observations on the reclassification of documents listed in Annex 2 of the Decision of 17 November 2008 in order to make them accessible to the Defence, to the Prosecutor or to both parties;

CONSIDERING that, for security and protection reasons and in order to secure the success of future judicial cooperation, all information related to the identity of ICC staff members shall remain accessible to the Registry only or shall maintain the initial level of confidentiality;

¹ ICC-01/05-01/08-257

² ICC-01/05-01/08-282-Conf-Exp.

³ ICC-01/05-01/08-314-Conf-Exp.

CONSIDERING that, in the Decision of 17 November 2008, the Chamber ordered the Registrar to submit her proposals in a document classified confidential *ex parte* Registrar only;

CONSIDERING that the Registrar wishes to provide complementary information to the Chamber to that submitted in the Registrar's Observations. In particular, the Registrar wishes to elaborate on her views pertaining to access to information vis-à-vis the detention record maintained by the Registry pursuant to Regulation 92 of the Regulations of the Court and Regulation 189 of the Regulations of the Registry;

SUBMITS, therefore, the present document confidential *ex parte* Registrar only;

RESPECTFULLY SUBMITS the present addendum to the Registrar's Observations:

I- THE DETENTION FILE

1. The detention file of a person detained at the ICC Detention Centre contains all relevant information pertaining to the custody of persons detained pursuant to Article 58 of the Rome Statute.
2. The detention file is composed of two main categories of information. The first category (*Category A*) entails information which falls directly under information which together composes what is known as the detention record maintained by the Registrar pursuant to Regulation 92 of the Regulations of the Court and Regulation 189 of the Regulations of the Registry. The second category (*Category B*) entails information which does not fall under the said detention record.

3. The specifics for each category are briefly provided below. In this regard, it is worth to emphasize that the information presented herein is complementary to the list of items belonging to the detention record that are provided in Regulation 189, and which, due to the evolving nature of the detention environment, is not exhaustive.

Category A – The detention record – Regulation 92

4. *Category A – Subcategory 1, Information pertaining to the detention record/not confidential:* This pertains to information not of a confidential nature which can be made accessible to the detained person, his or her counsel and other persons. Such information is, in general, public information for which no specific redactions are generally required.
5. Information pertaining to *Category A – Subcategory 1*, includes, *inter alia*, the warrant of arrest, the document containing the charges, the date and time of admission and the name of the person's counsel [Regulation 189 (b) (d) and (e) of the Regulations of the Registry].
6. *Category A – Subcategory 2, Information pertaining to the detention record/Confidential-sensitive information:* This entails information which can be made accessible to the detained person, his or her counsel and other persons as authorized by the Registrar; or which can be disclosed pursuant to an order by the Chamber or the Presidency in specific cases. However, should it be determined that access to specific information would be detrimental for the proper management of the ICC Detention Centre, this information is to be withheld. This approach is consistent with Regulation 92 (2) of the Regulations of the Court.

7. Information pertaining to *Category A- Subcategory 2* includes information which, in essence, relates to the privacy of certain aspects of the detention regime of a detained person. This includes, *inter alia*: Matters related to spiritual welfare, health and safety, including the medical record maintained in accordance with Regulation 156 of the Regulations of the Registry, log of privileged visits and correspondence, and any measures related to cell monitoring as per Regulation 196 of the Regulations of the Registry.

Category B – Other information not falling under Regulation 92

8. *Category B – Subcategory 1: Information not pertaining to the detention record/under seal*: This pertains to information classified under seal and which is not accessible to the detained person, his or her counsel and other persons, in the interests of the proper management of the detention centre, including good order and security. This information is accessible to the Registrar, to the Director of the Division of Court Services, to limited staff of the ICC Detention Centre and to the Presidency.
9. Information pertaining to *Category B – Subcategory 1* includes, *inter alia*: Possible security breaches including escape attempts, reports from the inspecting authority appointed in accordance with Regulation 94 (2) of the Regulations of the Court, specific security measures at the Host Prison, information derived from any type of communications regime in place and which may reveal certain information related to the staff of the ICC Detention Centre and of the Registry.
10. *Category B – Subcategory 2: Information not pertaining to the detention record/confidential*: This entails information classified as confidential, which can be made accessible to persons authorized by the Registrar; or which can be disclosed pursuant to an order by the Chamber or the Presidency in specific

cases. Any decisions related to access are to be made on a case by case basis upon assessment of need and with due consideration for the good order and security of the ICC Detention Centre.

11. Information pertaining to *Category B – Subcategory 2* includes *inter alia*: Specific information related to non-privileged visits and communications and information relating to the monitoring of communications which does not reveal sensitive information about the management of the ICC detention centre, custodial staff or Registry staff, or which might relate to the 'private life' of a detained person.

II- ACCESS TO THE DETENTION RECORD

12. In the Registrar's Observations, and bearing in mind the Registry's neutral role, the Chamber was provided with an overview of the position of the Registrar regarding access to the documents listed by the Chamber in its Decision of 17 November 2008, and in particular with respect to the Registry reports referred to therein.⁴ In light of the categorization provided in paragraph 2 of the present submission, it can be said that the information contained in the relevant reports provided to the Chamber to date, fall into categories *A and B*.

13. This means that for reclassification purposes in relation to the relevant reports as referred to above, it is the view of the Registrar that any reclassification is to be examined, *inter alia*, in terms of the categorization hereby presented and with full consideration for Regulation 92 of the Regulations of the Court and any other relevant provisions, as appropriate.

⁴ ICC-01/05-01/08-142-US-Exp, ICC-01/05-01/08-142-US-Exp-Anxl-3, ICC-01/05-01/08-191-US-Exp, ICC-01/05-01/08-191-US-Exp-Anxl-2.

14. In relation to information belonging to *Category A* and *Category B*, in assessing their category allocation, the Registry makes a clear distinction between items that constitute part of the 'private life' or 'sensitive information' related to a person's detention, and those which can be considered to be of a less sensitive nature, as well as a distinction between those which are of a public nature and those which are extremely confidential. Naturally, the information might be deeply interrelated across categories.

15. Consequently, in relation to the information provided to the Chamber through the relevant reports, the Registrar is of the view that information contained therein falling under *Category A, subcategory 2* can be made available to the Defence and that information falling under *Category B, subcategory 2* could be made available to the Defence, and even to the Office of the Prosecutor should the Chamber deem it appropriate. In this respect it is worth noting that, with a view to preserving its neutral role, the Registry would not, as a general practice, provide the Office of the Prosecutor information pertaining to the detention record under *Category A, subcategory 2* or other information not part of the detention record, but belonging to *Category B, subcategory 2*, save under a specific order by the Chamber. In respect of information pertaining to *Category A, subcategory 2*, specific exceptions may be encountered as is the case with the medical record of a detained person,⁵ where the detained person is to provide his or her consent.

⁵ Regulation 156 of the Regulations of the Registry stipulates, *inter alia*, that: "At the request of the Chamber and with the written consent of the detained person, the medical officer shall provide the Registrar with the sealed medical record of the detained person. The Registrar shall then provide the Chamber with the medical record".

III- CONCLUSION

16. Overall, it can be said that the information contained in the relevant Registry reports including its annexes, falls for the most part under *Category A, subcategory 2 and Category B, subcategory 2*. However, the Registrar finds that the majority of this information, while belonging to the detention file, falls outside the scope of the detention record as such, since there is no information which can be considered of a sensitive-confidential nature, and can therefore be considered to a small part as under seal information (*Category B, subcategory 1* information) and to a greater extent confidential information which is not of a sensitive nature (*Category B, subcategory 2* information).

17. Considering all of the above, the Registrar respectfully provides the Chamber with her views concerning the reclassification of particular documents listed by the Chamber in its Decision of 17 November 2008:

- a) In respect of document ICC-01/05-01/08-142-US-Exp, the Registrar maintains her views on its reclassification as submitted to the Chamber in its 24 November submission;⁶
- b) In respect of document ICC-01/05-01/08-142-US-Exp-Anx 1-3, and in consideration of the above submissions, the Registrar maintains her view that Annex 1 should not be communicated to either party; and that Annex 2 can be made available to the Defense and the Prosecution in redacted form (the proposed redaction

⁶ ICC-01/05-01/08-282-Conf-Exp, p. 11, para. 26

being the categorization of the five fields created by the Registry);⁷

- c) In respect of document ICC-01/05-01/08-191-US-Exp, the Registrar maintains her views that the report can be communicated to the parties in redacted form, as proposed in its 24 November submission;⁸
- d) With respect to ICC-01/05-01/08-191-US-Exp-Anx1-2, the Registrar maintains her view that Annex 1 can be communicated to the Defense with the proposed redaction as submitted on 24 November. With respect to Annex 2, the Registrar maintains her view that the Annex shall not be communicated to the Defence. In respect of the Prosecution, the Registrar hereby informs the Chamber that she is of the view that both annexes can be provided to the Prosecution; annex 1 can be communicated with the proposed redaction related to the categorization of the five fields created by the Registry; and Annex 2 can be communicated in full;⁹
- e) In terms of access to others, for instance, to potential victim participants and to the public, the Registrar does not consider that such information should be made available to either of these two groups;

18. Should the Chamber wish to communicate the aforementioned reports to the parties, the Registry would recommend their partial redaction as herein

⁷ ICC-01/05-01/08-282-Conf.-Exp, p. 12, para. 27.

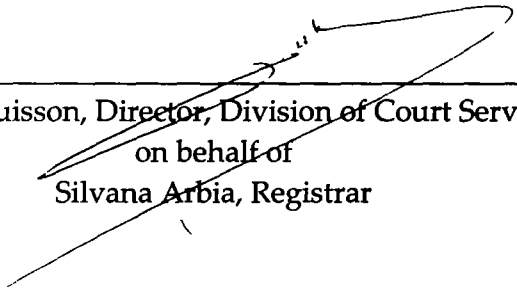
⁸ ICC-01/05-01/08-282-Conf-Exp, p. 16, para. 31.

⁹ ICC-01/05-01/08-282-Conf-Exp, p. 16, para. 32.

presented, taking into consideration the categorization outlined in the present submission;

19. The Registry remains available to the Chamber to provide any assistance in this regard, as the Chamber may deem appropriate.

RESPECTFULLY SUBMITTED,



Marc Dubuisson, Director, Division of Court Services
on behalf of
Silvana Arbia, Registrar

Dated this 10 December 2008

At The Hague in The Netherlands