

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 16 December 2008

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Single Judge

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

Confidential

Decision on Re-classification of Monitoring Reports

Decision, to be notified in accordance with regulation 31 of the *Regulations of the Cour*, to:

The Office of the Prosecutor

Fatou Bensouda, Deputy Prosecutor
Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Nkwebe Liriss
Karim A. A. Khan
Aimé Kilolo-Musamba

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

Detention Section

**Victims Participation and Reparations
Section**

Other

1. Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber III (the “Chamber”) of the International Criminal Court (the “Court”),¹ is seised of the matter of the re-classification of monitoring reports in the case *The Prosecutor v. Jean-Pierre Bemba Gombo* (the “Case”).

2. On 22 September 2008, Judge Fatoumata Dembele Diarra, the then Single Judge acting on behalf of the Chamber,² ordered the Registrar to monitor the telephone conversations of Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”) and to further communicate the related monitoring reports to the Chamber and the Prosecutor (the “Decision of 22 September 2008”).³ The Registrar then filed *ex parte* “Registrar only” the first and second monitoring reports on 6 October⁴ and 28 October 2008⁵ respectively (the “First and Second Monitoring Reports”).

3. On 12 November 2008 the Registrar issued a decision on the monitoring of the non-privileged communications and visits of Mr Jean-Pierre Bemba⁶ (the “Registrar’s Decision”) in which it is stated that “unless otherwise decided by the Chamber, (...) the decision of the Single Judge of 22 September 2008 remains applicable”. Consequently, the Chief Custody Officer was ordered to continue monitoring the non-privileged communications of Mr Jean-Pierre Bemba. In addition, the Registrar ordered *inter alia* the Chief Custody Officer to monitor all visits to the detained person. The Registrar’s Decision, taken for a period of time of 14 calendar days, was renewed on 24 November⁷ and 8 December 2008.⁸ As a result of the Registrar’s Decision, a third and a fourth monitoring report were filed *ex parte* “Registrar only”

¹ “Decision Designating a Single Judge”, ICC-01/05-01/08-293.

² ICC-01/05-01/08-86.

³ ICC-01/05-01/08-118-Conf.

⁴ “First report of the Registrar on the results of the monitoring of the non-privileged communication of Mr Jean-Pierre Bemba Gombo”, ICC-01/05-01/08-142-US-Exp and Annexes.

⁵ “Second report of the Registrar on the results of the monitoring of the non-privileged communication of Mr. Jean-Pierre Bemba Gombo”, ICC-01/05-01/08-191-US-Exp. and Annexes.

⁶ ICC-01/05-01/08-231-Conf-Corr.

⁷ ICC-01/05-01/08-279-Conf.

⁸ ICC-01/05-01/08-313-Conf.

on 14 November⁹ and 8 December 2008¹⁰ respectively (the “Third and Fourth Monitoring Reports”).

4. On 17 November 2008 the Chamber issued a “Decision Requesting the Prosecutor, the Victims and Witnesses Unit and the Registry to Submit Observations on the Re-Classification of Certain Documents” in which *inter alia* the Registry was ordered to submit proposals on the communication to the Defence and the Prosecutor of documents filed originally *ex parte* “Registrar only”, including, where appropriate, proposals for redactions.¹¹

5. On 24 November 2008 the Registrar filed her observations (the “Registrar’s Observations”)¹² on the current level of confidentiality of certain documents and, where appropriate, provided the Chamber with reasons why certain information contained in some documents should be redacted before being communicated to the Defence and the Prosecutor. To this end, the Registrar proposed redactions on the First and Second Monitoring Reports which were originally filed *ex parte* “Registrar only”. She also recommended a treatment with regard to the level of confidentiality for the transcripts of the telephone conversations of Mr Jean-Pierre Bemba annexed to the monitoring reports.

6. On 28 November 2008 the Prosecutor requested that an “effective system of communication” be established so he could “receive all relevant reports and/or communications on a timely manner in order to assist the Prosecution to take prompt and well-informed actions for the protection of witnesses and victims”.¹³

⁹“Third report of the Registrar on the results of the monitoring of the Non-Privileged Communication of Mr Jean-Pierre Bemba Gombo”, ICC-01.05-01/08-247-US-Exp and Annexes

¹⁰ ICC-01/05-01/08-314-US-Exp and Annexes.

¹¹ ICC-01/05-01/08-257

¹²“Observations of the Registrar on the Re-classification of the Documents listed in ICC-01.05-01.08-257-Anx2”, ICC-01/05-01/08-282-Conf-Exp.

¹³ ICC-01/05-01/08-300-Conf.

7. On 1 December 2008 the Single Judge issued the “Decision on Re-classification and Unsealing of Certain Documents” and decided to reserve, until further order, any decision on the re-classification and un-sealing of documents filed in the record of both the situation and the Case which may be necessary *inter alia* for the effective exercise of the rights of Mr Jean-Pierre Bemba.¹⁴

8. On 10 December 2008 the Registrar filed an “Addendum to the ‘Observations of the Registrar on the Re-Classification of the Documents listed in ICC-01/05-01/08-257-Exp-Anx2’ submitted on 24 November 2008” (the “Addendum”)¹⁵ in which she provided a more detailed explanation on the appropriate level of confidentiality of the information contained in the four monitoring reports (the “Four Monitoring Reports”) as well as their annexes containing the transcripts of telephone conversations and visits. She also stated that the monitoring reports and the related transcripts are part of the detention file and not of the detention record.

9. The Single Judge notes articles 57(3)(c), 67 and 68(1) of the Rome Statute (the “Statute”), rule 15 of the Rules of Procedure and Evidence (the “Rules”), regulation 92 of the Regulations of the Court (the “Regulations”) and regulations 14 and 189 of the Regulations of the Registry.

10. While the Single Judge notes her obligation to provide for the protection and privacy of victims and witnesses in accordance with articles 57(3)(c) and 68(1) of the Statute, she also observes the rights of Mr Jean-Pierre Bemba under article 67 of the Statute. In particular, the Single Judge recalls the principle according to which the suspect should be in a position to properly prepare his defence. The Single Judge is also aware of her duty to ensure that the confirmation hearing is fair and conducted with full respect for the rights of the suspect. Finally, the Single Judge notes the

¹⁴ ICC-01/05-01/08-301, letter f) of the operative part.

¹⁵ ICC-01/05-01/08-315-Conf-Exp.

principle of equality of arms which requires giving access to both parties, to the extent possible, to all documents contained in the record of the Case.

11. In applying these principles, the Single Judge recalls that the Registrar filed documents *ex parte* "Registrar only" and considers that such documents should be accessible, to the extent possible, to both parties.

12. The Single Judge notes that the First and Second Monitoring Reports and the transcripts of the telephone conversations of Mr Jean-Pierre Bemba annexed thereto were filed *ex parte* "Registrar only". The Single Judge also observes the Registrar's finding 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 and to a greater extent confidential information which is not of a sensitive nature*" (emphasis added).¹⁶

13. The Single Judge also recalls the Decision of 22 September 2008 ordering the Registrar to communicate the First and Second Monitoring Reports to the Chamber *and* the Prosecutor and underlines the Registrar's responsibility to properly apply the judicial decisions.

14. To this end, the Single Judge finds it appropriate to establish a system of communication of the monitoring reports and their related transcripts in order for the Prosecutor to fulfill his duty with regard to victim and witness protection.

¹⁶ ICC-01/05-01/08-315-Conf-Exp., para 16.

15. Therefore, the Single Judge establishes a system of communication of the monitoring reports and the transcripts of telephone conversation and visits annexed thereto whereby the Prosecutor and the Defence will be provided with these documents in principle in an un-redacted form, unless the Registrar assesses that some information should be redacted because of its sensitive nature as it would relate: (i) to the proper management of the Court detention centre and should be withheld in this regard pursuant to regulation 92(2) of the Regulations or (ii) to the privacy of the detained person and thus would be part of the detention record as confidential information under regulation 92(1) of the Regulations.

16. The Single Judge emphasises that this system of communication applies to the communication to the Defence and the Prosecutor of the forthcoming monitoring reports and the transcripts of telephone conversations as well as visits. The Single Judge is of the view that, unless otherwise ordered, future redactions made by the Registrar in accordance with the guidelines set above shall not be submitted to the Chamber.

17. Having reviewed the Registrar's Observations and the Addendum and taking into consideration the system of communication established above, the Single Judge considers that information contained in the monitoring reports filed *ex parte* "Registrar only" should be re-classified as confidential and thus available to the Defence and the Prosecutor as the information contained in these documents: (i) does not reveal the identity or identifying information of protected victims and witnesses pursuant to previous decisions of the Chamber,¹⁷ (ii) is of relevance for the preparation of the Defence and the Prosecutor in view of the forthcoming

¹⁷ First Decision on the Prosecutor's request for redactions, ICC-01/05-01/08-85, Second Decision on the Prosecutor's request for redactions ICC-01/05-01/08-135 and Third Decision on the Prosecutor's Requests for Redactions and Related Request for the Regulation of Contacts of Jean-Pierre Bemba Gombo, ICC-01/05-01/08-215-Conf.

confirmation hearing and (iii) is already known by the Defence since it concerns the monitoring of telephone conversations and visits of Mr Jean-Pierre Bemba himself.

18. The Single Judge, however, recalls that the Registrar made proposals to redact certain information contained in those reports. The Single Judge notes in particular that the Registrar proposed that the First and Second Monitoring Reports, filed *ex parte* "Registrar only", can be communicated to the Defence and the Prosecutor provided that some information is redacted from the documents. The reasons for the proposed redactions were given in detail in the Registrar's Addendum.

19. Having carefully assessed the said proposals for redactions and the reasons supporting them, the Single Judge considers that, in limited instances, some information contained in the monitoring reports filed by the Registrar, if known to the Defence or the Prosecutor, would reveal sensitive information about the proper management of the Court detention centre or which might relate to the privacy of the detained person. Therefore, the Single Judge is of the view that the related information should remain redacted at this stage pursuant to regulations 92(1) and 92(2) of the Regulations.

20. The Single Judge thus concurs with the proposed redactions made by the Registrar and concludes that the First and Second Monitoring Reports and the transcripts annexed thereto can be communicated to the Defence and the Prosecutor in a redacted form following the redactions as proposed by the Registrar.

21. However, with regard to Annex 1 to the first monitoring report,¹⁸ the Registrar has not substantiated her request to not communicate the list of persons who were given access to the information extracted from the monitoring of Mr Jean-Pierre

¹⁸ ICC-01/05-01/08-142-US-Exp-Anx1.

Bemba and has not stated the relevant basis for such a request. Thus, the Single Judge is of the view that this request cannot be granted.

22. As for the Third and Fourth Monitoring Reports, the Registry will assess the said documents and the transcripts annexed thereto and apply the system of communication described by the Single Judge in the present decision.

23. Finally, the Single Judge reserves her power to take further decisions on the re-classification and unsealing of other documents in the record of the situation and the Case with a view to ensuring that they have been given the correct and appropriate level of confidentiality.

FOR THESE REASONS, THE SINGLE JUDGE

a) decides to re-classify as confidential the below documents:

- (i) ICC-01/05-01/08-142-US-Exp-Anx1.;
- (ii) ICC-01/05-01/08-191-US-Exp-Anx2., pages 3 to 6.

b) orders the Registrar to file in the record of the Case a confidential redacted version of the below documents following her proposals for redaction :

- (i) ICC-01/05-01/08-142-US-Exp.;
- (ii) ICC-01/05-01/08-142-US-Exp-Anx2.;
- (iii) ICC-01/05-01/08-191-US-Exp.;

- (iv) ICC-01/05-01/08-191-US-Exp-Anx1.;
- (v) ICC-01/05-01/08-247-US-Exp.;
- (vi) ICC-01/05-01/08-314-US-Exp.

c) orders the Registrar to file in the record of the Case a confidential redacted version of the below documents following the system of communication and where appropriate, the guidelines established in paragraphs 15 and 16 of the present decision:

- (i) ICC-01/05-01/08-247-US-Exp-Anx1.;
- (ii) ICC-01/05-01/08-314-US-Exp-Anx1.;
- (iii) ICC-01/05-01/08-314-US-Exp-Anx2.;
- (iv) ICC-01/05-01/08-314-US-Exp-Anx3.;

d) decides to reserve, until further order, any decision on the re-classification and un-sealing of documents filed in the record of both the situation and the Case which may be necessary for the effective exercise of the rights of Jean-Pierre Bemba Gombo and the preparation of the confirmation of charges hearing.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Tuesday 16 December 2008

At The Hague, The Netherlands