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PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

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

Public Document

**Observations of the OPCV
regarding the classification of its documents filed in the record of the case**

Source: Office of Public Counsel for Victims

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

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I. Procedural History

1. On 3 April 2009, the Single Judge of Pre-Trial Chamber II issued a “Decision Requesting Observations on Re-classification and Unsealing of Documents”¹ (the “Decision”), asking the participants and the Registry to submit their observations detailing the treatment of their respective documents filed in the records of the situation and of the case, including, where appropriate, proposals for redactions.

2. In the Decision, the Single Judge requests the participants to submit the reasons why their documents may not be the subject of a decision on unsealing or re-classification, and when need be, to consult with the Victims and Witnesses Unit (the “VWU”) regarding the possibility seek additional redactions².

3. Consequently, the Principal Counsel of the Office of Public Counsel for Victims (the “OPCV” or the “Office”), acting as Legal Representative of victims a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08 and a/0467/08, respectfully submits the following observations.

II. Observations regarding the classification of the documents filed in the record of the case

4. The Principal Counsel submits that, to date, she filed two different kinds of documents in the record of the case: on the one hand, supplementary information to victims’ applications which were filed confidential *ex parte* only available to the OPCV and the Victims’ Participation and Reparation Section (the “VPRS”), and on

¹ See the “Decision Requesting Observations on Re-classification and Unsealing of Documents” (Single Judge, Pre-Trial Chamber II), No. ICC-01/05-01/08-398, 03 April 2009.

² *Idem*, p. 6.

the other hand, documents within the framework of the confirmation of the charges hearing which were filed public.

1. Documents filed in the record of the case as public

5. Documents submitted within the framework of the confirmation of the charges hearing were filed by the OPCV as public. Being written in a way that protects the security and well-being of the victims represented, the Principal Counsel thus notes that no change in their classification is needed and that the classification of these documents can remain unchanged. The following documents are concerned:

- "Demande du BCPV aux fins de comparaître devant la Chambre conformément à la norme 81-4 du Règlement de la Cour"³ ;
- "Request of the OPCV concerning the issue of legal representation of victims"⁴ ;
- "Questions liées à la participation des victimes a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08 et a/0467/08"⁵ ;
- "Déclarations écrites du Représentant légal des victimes a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08 et a/0467/08"⁶ ;
- "Observations conjointes des Représentants légaux des victimes sur le Document amendé contenant les charges déposé le 30 mars 2009"⁷ ;
- "Requête du Représentant légal des victimes a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08 et a/0467/08"⁸ ;

³ No. ICC-01/05-01/08-172, 20 October 2008.

⁴ No. ICC-01/05-01/08-340, 31 December 2008.

⁵ No. ICC-01/05-01/08-347, 7 January 2009.

⁶ No. ICC-01/05-01/08-376, 26 January 2009.

⁷ No. ICC-01/05-01/08-400, 09 April 2009, filed jointly with Ms Marie Edith Douzima-Lawson.

⁸ No. ICC-01/05-01/08-407, 20 April 2009.

- “Corrigendum à la Requête du Représentant légal des victimes a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08 et a/0467/08”⁹ ;

6. Finally, the Principal Counsel notes that on 31 December 2008, she filed the “Request of the OPCV concerning the issue of legal representation of victims”¹⁰ in the record of the case, as public, although accompanied by an Annex classified confidential *ex parte* only available to the OPCV and the VPRS. The Principal Counsel, underlining that this Annex contains an internal work document, requests the Single Judge to maintain such a classification.

2. Documents originally filed in the record of the case as confidential *ex parte* only available to the OPCV and the VPRS

7. The Principal Counsel notes that all supplementary information to victims’ applications were filed in the record of the case as confidential *ex parte* only available to the OPCV and the VPRS.

8. As underlined by the Chamber itself, in its different decisions¹¹, the Principal Counsel submits that the protection and privacy of victims (who sometimes enjoy the dual status of victims and witnesses) command the level of confidentiality given to these documents which contain identifying information of her clients. The Principal Counsel specifically refers to the reasons she gave in the submissions pertaining to the filings of supplementary information to justify their classification and submits that no change intervened in the meantime, either with respect to the victims

⁹ No. ICC-01/05-01/08-407-Corr, 20 April 2009.

¹⁰ No. ICC-01/05-01/08-340-Conf-Exp-Anx, 31 December 2008.

¹¹ See the “Second Decision on the question of victims’ participation requesting observations from the parties” (Pre-Trial Chamber III), No. ICC-01/05-01/08-184, 23 October 2008; the “Third Decision on the Question of Victim’s Participation Requesting Observations from the Parties” (Single Judge, Pre-Trial Chamber III), No. ICC-01/05-01/08-253, 17 November 2008; and the “Fourth Decision on Victims’ Participation” (Single Judge, Pre-Trial Chamber III), No. ICC-01/05-01/08-320, 12 December 2008.

themselves, or with respect to the security risks encountered. Therefore the original classification of the documents shall be maintained. The following documents are concerned:

- “Informations supplémentaires concernant la demande de participation du demandeur a/0292/08”¹² ;
- “Informations supplémentaires concernant la demande de participation du demandeur a/0293/08”¹³ ;
- “Informations supplémentaires concernant la demande de participation du demandeur a/0297/08”¹⁴ ;
- “Informations concernant la demande de participation des demandeurs a/0279/08 et a/0291/08”¹⁵ ;
- “Informations supplémentaires concernant la demande de participation du demandeur a/0278/08”¹⁶ ;
- “Informations supplémentaires concernant la demande de participation du demandeur a/0280/08 avec Annexe Confidentielle *ex parte* réservée au BCPV et à la SPVR”¹⁷ ;
- “Informations supplémentaires concernant la demande de participation du demandeur a/0296/08 avec Annexe Confidentielle *ex parte* réservée au BCPV et à la SPVR”¹⁸ ;
- “Informations supplémentaires concernant la demande de participation du demandeur a/0298/08”¹⁹ ;
- “Informations supplémentaires additionnelles concernant les demandes de participation des demandeurs a/0455/08; a/0456/08; a/0457/08; a/0458/08;

¹² No. ICC-01/05-01/08-143-Conf-Exp and No. ICC-01/05-01/08-143-Conf-Exp-Anx, 7 October 2008.

¹³ No. ICC-01/05-01/08-144-Conf-Exp and No. ICC-01/05-01/08-144-Conf-Exp-AnxA, 7 October 2008.

¹⁴ No. ICC-01/05-01/08-145-Conf-Exp and No. ICC-01/05-01/08-145-Conf-Exp-AnxA, 7 October 2008.

¹⁵ No. ICC-01/05-01/08-146-Conf-Exp, 7 October 2008.

¹⁶ No. ICC-01/05-01/08-150-Conf-Exp and No. ICC-01/05-01/08-150-Conf-Exp-AnxA, 13 October 2008.

¹⁷ No. ICC-01/05-01/08-151-Conf-Exp and No. ICC-01/05-01/08-151-Conf-Exp-AnxA, 13 October 2008.

¹⁸ No. ICC-01/05-01/08-152-Conf-Exp and No. ICC-01/05-01/08-152-Conf-Exp-AnxA, No. ICC-01/05-01/08-152-Conf-Exp-AnxB and No. ICC-01/05-01/08-152-Conf-Exp-AnxC, 13 October 2008.

¹⁹ No. ICC-01/05-01/08-153-Conf-Exp and No. ICC-01/05-01/08-153-Conf-Exp-AnxA, 13 October 2008.

a/0459/08; a/0460/08; a/0461/08; a/0462/08; a/0463/08; a/0464/08; a/0465/08; a/0466/08; a/0467/08 avec 14 Annexes”²⁰;

- “Informations supplémentaires additionnelles concernant les demandes de participation des demandeurs a/0278/08; a/0279/08; a/0280/08; a/0291/08; a/0292/08; a/0293/08; a/0296/08; a/0297/08 et a/0298/08”²¹ ;

- “Informations supplémentaires concernant les demandes de participation des demandeurs a/0456/08; a/0457/08; a/0458/08 ; a/0459/08 ; a/0460/08 ; a/0461/08 ; a/0462/08 ; a/0463/08 ; a/0464/08 ; a/0465/08 ; a/0466/08 ; a/0467/08 avec 25 Annexes Confidentielles”²²;

- “Informations supplémentaires concernant la demande de participation du demandeur a/0455/08 avec 2 Annexes Confidentielles ex parte réservées au BCPV et à la SPVR”²³.

3. Documents re-classified confidential and already bearing redactions

9. The Principal Counsel further notes that for the purpose of rule 89(1) of the Rules of Procedure and Evidence, and in accordance with three decisions of the Chamber²⁴, the victims’ applications together with the supplementary information

²⁰ See No. ICC-01/05-01/08-255-Conf-Exp and No. ICC-01/05-01/08-255-Conf-Exp-Anx1 to 7 and 10 to 13, 17 November 2008. See also the “Fourth Decision on victims’ participation” (Single Judge, Pre-Trial Chamber III), No. ICC-01/05-01/08-320, 12 December 2008, in which the Single Judge decided, on an exceptional basis, to take these additional information into consideration, even if submitted after the deadline established by the Chamber and mindful of the fact that the parties will not have had an opportunity to provide their observations on them specifically (paras. 21-23). The Office thus understood that these documents had been given the same re-classification as the other supplementary information, being transmitted to the Prosecution and the Defence confidential with redactions. See however the exception made for Annexes 8, 9 and 14 which were transmitted to the Prosecution and the Defence, on a confidential basis *without* redacted information (p. 38).

²¹ No. ICC-01/05-01/08-265-Conf-Exp and No. ICC-01/05-01/08-265-Conf-Exp-Anx1 to 12, 20 November 2008. See also the “Fourth Decision on victims’ participation” (Single Judge, Pre-Trial Chamber III), No. ICC-01/05-01/08-320, 12 December 2008, in which the Single Judge decided on an exceptional basis to take these additional information into consideration, even if submitted after the deadline established by the Chamber and mindful of the fact that the parties will not have had an opportunity to provide their observations on them specifically (paras. 21-23). The Office thus understood that these documents had been given the same re-classification as the other Supplementary Information, being confidential with redactions.

²² No. ICC-01/05-01/08-234-Conf-Exp and No. ICC-01/05-01/08-234-Conf-Exp-Anx1 to 25, 11 November 2008.

²³ No. ICC-01/05-01/08-240-Conf-Exp and No. ICC-01/05-01/08-240-Conf-Exp-Anx1 and 2, 12 November 2008.

²⁴ See the “Second Decision on the question of victims’ participation requesting observations from the parties” (Pre-Trial Chamber III), No. ICC-01/05-01/08-184, 23 October 2008; the “Third Decision on the

referred to under point II.2. were transmitted to the Prosecution and to the Defence on a confidential basis, in a redacted form.

10. Firstly, in its 23 October 2008 Decision²⁵, Pre-Trial Chamber III decided to re-classify as confidential some of the supplementary information filed by the OPCV in the record of the case, and ordered the Registrar to provide the Defence and the Prosecution with redacted copies of both the victims' applications concerned and their Annexes, namely the supplementary information. In its decision, the Chamber authorised the redactions suggested by the VPRS and the VWU, having reviewed their extent and having concluded that they didn't appear to "*exceed what is strictly necessary*"²⁶.

11. Moreover, in his 17 November 2008 Decision²⁷, the Single Judge ordered the Registrar to transmit to the Defence and to the Prosecution others supplementary information together with the application concerned in a redacted form in order to protect the victims concerned. The Single Judge authorized the redactions suggested by the VPRS and the VWU, having reviewed their extent and having concluded that they didn't appear to "*exceed what is strictly necessary*"²⁸. As a consequence, the supplementary information were *de facto* re-classified as confidential.

12. The Principal Counsel is not in a position to provide the Chamber with the numbers of the documents concerned since she has not been notified and/or informed of the confidential redacted versions of her previous filings. However, the Principal Counsel has no objection to maintain the same classification as well as the

Question of Victim's Participation Requesting Observations from the Parties" (Single Judge, Pre-Trial Chamber III), No. ICC-01/05-01/08-253, 17 November 2008; and the "Fourth Decision on Victims' Participation" (Single Judge, Pre-Trial Chamber III), No. ICC-01/05-01/08-320, 12 December 2008.

²⁵ See the "Second Decision on the question of victims' participation requesting observations from the parties" (Pre-Trial Chamber III), No. ICC-01/05-01/08-184, 23 October 2008, p. 7.

²⁶ *Idem*.

²⁷ See the "Third Decision on the Question of Victim's Participation Requesting Observations from the Parties" (Single Judge, Pre-Trial Chamber III), No. ICC-01/05-01/08-253, 17 November 2008, p. 8.

²⁸ *Idem*.

redactions as authorised by the Chamber. Should the Chamber consider that some of the redactions be lifted, the Principal Counsel respectfully requests to be consulted beforehand.

4. Documents already re-classified confidential and already transmitted without redactions

13. The Principal Counsel underlines that following a decision of the Single Judge responsible for victims' issues, the following documents, previously filed confidential *ex parte* only available to the OPCV and the VPRS, were transmitted on a confidential unredacted basis to the Prosecution and to the Defence²⁹: Annexes 8, 9 and 14 to the "Informations supplémentaires additionnelles concernant les demandes de participation des demandeurs a/0455/08; a/0456/08; a/0457/08; a/0458/08; a/0459/08; a/0460/08; a/0461/08; a/0462/08; a/0463/08; a/0464/08; a/0465/08; a/0466/08; a/0467/08 avec 14 Annexes".

14. Consequently, these documents were reclassified confidential by the Single Judge. In his decision, this latter indeed highlighted that in order to ensure the protection of victims, such documents shall be kept by the Defence and the Prosecutor with the obligation to ensure that it is not passed on to the public³⁰.

15. The Principal Counsel is not in the position to provide the Chamber with the numbers of the documents concerned since she has not been notified and/or informed of the confidential unredacted versions of her previous filings. However, the Principal Counsel has no objection to maintain the same classification and these 3 Annexes can remain confidential unredacted³¹.

²⁹ See the "Fourth Decision on Victims' Participation" (Single Judge, Pre-Trial Chamber III), No. ICC-01/05-01/08-320, 12 December 2008, p. 38. See the reasons justifying this re-classification in the decision.

³⁰ *Idem*, p. 38.

³¹ The level of confidentiality of the others annexes to the same documents remain confidential with redactions, as mentioned in paragraph 10 and footnote 18 of the current Submission.

FOR THE FOREGOING REASONS, the Principal Counsel respectfully requests the Single Judge to maintain the current classification of the documents filed to date in the record of the case in order to protect the security and well-being of the victims concerned.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style with a horizontal line underneath the name.

Ms Paolina Massidda,
Principal Counsel
Office of Public Counsel for Victims

Dated this 4th day of May 2009

At The Hague, The Netherlands