



Original: English

No.: ICC-01/05-01/08

Date: 4 May 2009

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova (Single Judge)

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

Public Document

**Prosecution's Observations on the Treatment of Documents filed in the Records of
the Situation and the Case**

with

Under Seal, *Ex Parte*, Prosecution and VWU Only Annex A

and

Under Seal, *Ex Parte*, Prosecution and VWU Only Annexes B1-B20

Source: The Office of the Prosecutor

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

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Other

In response to the order of the Single Judge dated 3 April 2009¹ (hereinafter referred to as “3 April 2009 Order”), the Office of the Prosecutor (hereinafter referred to as “OTP or Prosecution”) in consultation with Victims and Witnesses Unit (hereinafter referred to as “VWU”)² respectfully submits its proposed treatment of documents filed in the record of the situation and the case.

Request for the receipt of Annexes A and B1-B20 as Under Seal, *Ex Parte*, Prosecution and VWU Only

1. The Prosecution requests that Annexes A and B1-B20, appended to this submission be received as Under Seal, *Ex Parte*, Prosecution and VWU Only, as they relate to documents, some of which are currently classified as Under Seal, *Ex Parte*. Additionally, these Annexes contain proposed treatment as well as the justification for such proposed treatment, communication of which would defeat the object and purpose of the submission.

Update of proposed treatment of documents

2. In compliance with the Single Judge’s 3 April 2009 Order, the Prosecution has undertaken a review of its submissions, transcripts and other documents, to determine whether it is appropriate to request continued confidentiality of its documents currently classified as Under Seal, Confidential *Ex Parte* and Confidential. In doing so, particular attention has been paid to the issue of protection of victims, witnesses and persons at risk on account of the Court’s activities (in accordance with Articles 68 and 54(3)(f) of the Rome Statute (hereinafter referred to as “Statute”) and Rule 81(4) of the Rules of Procedure and Evidence (hereinafter referred to as “Rules”), and information impacting on ongoing investigations and the witness

¹ ICC-01/05-01/08-398

² *Ibid*, p. 6. The Single Judge’s order mandates the Prosecution to consult with VWU before submitting proposed treatment to its documents.

specific operational means by which the said witnesses are protected (in accordance with Rule 81(2) of the Rules). At the conclusion of its review, the Prosecution submitted its proposed treatment to VWU for the latter's review.

3. As a result, the Prosecution submits for the Chamber's review proposed treatment of its submissions, transcripts and other documents which are currently classified as Under Seal, Confidential *Ex Parte* and Confidential. A chart summarizing the proposed treatment of each document currently classified as Under Seal, Confidential *Ex Parte* and Confidential is annexed hereto as Annex A. The chart identifies:

- Each submission or transcript emanating from the OTP listed in chronological order by date of the document;
- The number of each document assigned by the Registry;
- The treatment of the document submitted for the Chamber's consideration (remains sealed, unseal, unseal with redactions, disclose to the defence, disclose to the defence with redactions);
- A specification of any proposed redaction and/or the relevant page to be redacted; and
- The reasons for the proposed treatment and redactions to content.

4. Exhibits B1-B20, also being filed Under Seal, *Ex Parte*, consists of copies of those documents identified in Annex A which the Prosecution either proposes should be disclosed to the Defence in redacted form (in accordance with Rules 81(2) and (4) of the Rules) or be unsealed to the public in redacted form. For the Chamber's convenience, the Prosecution has applied **blue** highlights depicting redactions proposed under Rule 81(2) of the Rules and **red** highlights identifying redactions proposed under Rule 81(4) of the Rules. At the same time, the highlights have been

applied in such a manner as to allow the Single Judge to see the text the Prosecution is proposing to redact.³

5. The Prosecution draws the Single Judge's attention to four (4) documents or groups of documents referred to in Annex A. The first relates to a Prosecution submission filed in confidential proceedings before the Appeals Chamber.⁴ The Prosecution respectfully submits that pursuant to Regulation 42(3) of the Regulations of the Court (hereinafter referred to as "the Regulations"), the Appeals Chamber is the competent Chamber to determine the classification of that document⁵. In any event, the Prosecution has no objection to the unsealing of that document in redacted form, as proposed in its submission to the Appeals Chamber.⁶

6. The second relates to the referral⁷ submitted by the Central African Republic (hereinafter referred to as "CAR") authorities. The Prosecution has proposed this document for unsealing to the public, and it has received the consent of the CAR Authorities to do so.

7. The third relates to a group of documents emanating from the Belgian Authorities in the arrest of the suspect, and which were referred to by the Prosecution in its First Response to the suspect's application for interim release⁸. The Prosecution has proposed the redaction of references to this subject, believing that the Registry, in consultation with the Belgian authorities which submitted these documents, would be better placed to propose treatment.

³ In one instance, document ICC-01/05-01/08-113-Conf; the document simply would not permit highlighting to the text. Thus, the Prosecution has drawn a blue box around the small portion of text for which it seeks redactions.

⁴ ICC-01/05-01/08-289 and confidential annex containing a proposed redaction

⁵ The document was filed confidentially to protect references to states. The Prosecution submits that any variation to re-classification amounts to a variation to protective measure and therefore falls within the purview of Regulation 42(3)

⁶ See ICC-01/05-01/08-289.

⁷ ICC-01/05-01/08-29-Conf-Anx1B

⁸ ICC-01/05-01/08-65-Conf, and annexes obtained from documents submitted by the Registry

8. The last group of documents concerns the Prosecution's Redacted Versions of its Arrest Warrant Application and Further Submissions,⁹ which the Prosecution believes should be unsealed to the public, with redactions. To ensure that victims and witnesses are protected, the Prosecution has proposed additional redactions to the existing confidential redacted versions of the referred documents.

Justification for continued sealing and proposed redaction

9. When the Prosecution has proposed that documents remain under seal or that they be disclosed to the Defence or public in redacted form, the reason for the continued sealing or redaction falls into one or both of the following categories:

- Continued confidentiality for the purposes of protecting victims, witnesses, their families and limited persons at risk on account of the Court's activities (in accordance with Articles 68(1), 54(3)(f) of the Statute and Rule 81(4) of the Rules), identified by **red** highlights; and
- Continued confidentiality because disclosure would undermine ongoing investigations and/or witness specific operational matters relating to the protection of victims and witnesses identified by **blue** highlights (in accordance with Rule 81(2) of the Rules).

10. In addition to these rationales for continued sealing, the Prosecution notes that the suspect does not suffer impairments of the right to fair trial. The suspect has already received the evidence and documents material to the preparation of his defence in conformity with both Article 67(1) of the Statute and the various decisions on disclosure of evidence and other material, issued by the Chamber.¹⁰

⁹ ICC-01/05-01/08-32-US-Exp-AnxA1, ICC-01/05-01/08-32-US-Exp-AnxA2, ICC-01/05-01/08-32-US-Exp-AnxB.

¹⁰ ICC-01/05-01/08-135-Conf ; ICC-01/05-01/08-215-Conf

11. In carrying out this review, the Prosecution has been particularly guided by the provisions of Articles 67(1), 68(1), and 57(3)(c) of the Statute and Regulation 8 of the Regulations. For this reason, the Prosecution sought to ensure to the greatest extent possible that documents which do not impact on witness protection, the witness specific operational means by which said witnesses are protected, or the integrity of ongoing investigations and cooperation are disclosed to the public.

Conclusion

12. For all the above explained reasons, the Prosecution respectfully: (i) submits for the consideration of the Single Judge the Prosecution's proposed treatment of its submissions, transcripts and documents that are currently classified as Under Seal, Confidential *Ex Parte* and Confidential; and (ii) requests the Chamber to continue the classification of other documents as Under Seal, Confidential *Ex Parte* and Confidential on the basis of witness and victim protection, as well as the protection of ongoing investigations and witness specific operational methods of protection. The Prosecution also respectfully requests that before the Single Judge re-classifies and unseals, or makes public any of its submissions, transcripts or documents in a manner different from that proposed herein, the Prosecution be afforded notice of the Chamber's preferred method of treatment in order that it may submit additional requests, consistent with its obligations under Article 68(1) of the Statute.



Luis Moreno-Ocampo, Prosecutor

Dated this 4th day of May 2009

At The Hague, The Netherlands