

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 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
With Confidential Ex Parte Annexes**

Observations of the Registrar on the "Decision Requesting Observations on Re-classification and Unsealing of Documents"

Source: Registrar

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

Legal Representatives of Victims

Edith Douzima Lawson

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massida

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Deputy Registrar

Didier Preira

Victims and Witnesses Unit

Simo Vaatainen

Defence Support Section

Esteban Peralta-Losilla

Detention Section

Anders Backman

**Victims Participation and Reparations
Section**

Fiona McKay

Other

THE REGISTRAR of the International Criminal Court (the “Court”);

NOTING the “*Observations of the Registrar on the Re-classification of the Documents listed in ICC-01/05-01/08-257-Conf-Exp-Anx2*”¹ submitted on 24 November 2008;

NOTING the “*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*”² submitted on 10 December 2008;

NOTING the “*Decision on Re-classification of Monitoring Reports*”³ issued by the Pre-Trial Chamber III (the “Chamber”) on 16 December 2008;

NOTING the “*Decision Requesting Observations on Re-classification and Unsealing of Documents*”⁴ (“Decision of 3 April 2009”) issued by the Single Judge on 3 April 2009;

NOTING the “*Request from the Registrar for Extension of Time for the Submission of Observations on Re-Classification and Unsealing of Documents*”⁵ submitted on 1 May 2009;

NOTING the “*Decision on the Registry’s Request for Extension of Time for the Submission of Observations on Re-Classification and Unsealing of Documents*”⁶ issued on 1 May 2009;

¹ ICC-01/05-01/08-282-Conf-Exp

² ICC-01/05-01/08-315-Conf-Exp

³ ICC-01/05-01/08-325-Conf

⁴ ICC-01/05-01/08-398

⁵ ICC-01/05-01/08-415

⁶ ICC-01/05-01/08-416

NOTING articles 43(6), 57(3)(c), 64(2), 67(1) and 68(1) of the Rome Statute; rules 15, 17 to 19, 87 and 88 of the Rules of Procedure and Evidence; regulations 8, 23*bis*, 24*bis*, 42(3) and 92 of the Regulations of the Court and regulations 14, 171 and 189 of the Regulations of the Registry;

CONSIDERING that in her Decision of 3 April 2009, the Single Judge considers that *“the parties, the legal representatives of victims, as well as the Registry should make a general review of the level of confidentiality of their respective documents contained in the records of the situation and the Case in order to make them available to the public, bearing in mind, however, the protection of victims and witnesses”*⁷ and that the Registry *“should pay particular attention to the content of the documents filed ex parte “Registrar only”, pursuant to regulation 24 bis (2) of the Regulations”*⁸;

CONSIDERING that, pending a decision by the Single Judge to reclassify, reference to confidential, under seal or *ex parte* documents in a public submission of the Registry requires to be redacted before reclassification, be it in the body of the submission or in the footnotes;

CONSIDERING that pursuant to regulation 23*bis*(2) of the Regulations of the Court and *“unless otherwise ordered by a Chamber, any response [...] to a decision shall be filed with the same classification”*; and that, therefore, the responses submitted by the Registry should maintain their current level of classification unless the Chamber decides to reclassify its decisions;

CONSIDERING that, as a matter of practice, the Registry treats all communications with States as confidential;

⁷ Ibid., par. 8.

⁸ Ibid., par. 12.

CONSIDERING that, as a matter of practice, the Registry treats all matters relating to the freezing and seizure of assets as under seal *ex parte* only available to the Prosecutor;

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 and/ or representatives of state authorities shall remain at a minimum confidential;

CONSIDERING that in accordance with article 68(1), the Court shall ensure that necessary measures (i.e. non-disclosure of sensitive information relating to victims and witnesses) are taken to “protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”;

CONSIDERING that confidentiality and discrete operations are key elements for the successful implementation of protection measures; that knowledge of the specific measures implemented by the Victims and Witnesses Unit (“VWU”) would help to trace protected witnesses;

CONSIDERING furthermore that, by revealing internal plans and procedures of the VWU, an individual or organization with malicious intent will be put in an advantageous position to monitor and predict movements and steps taken by the VWU in relation to witnesses;

CONSIDERING that, in relation to detention matters, all monitoring reports have been reclassified “confidential” with redactions⁹ and were communicated to both the Defence and the Office of the Prosecutor;

⁹ ICC-01/05-01/08-346-Conf

CONSIDERING that the transcripts of the non-privileged communications of Jean-Pierre Bemba Gombo which were annexed to the monitoring reports of the Registry shall remain confidential because they refer to information which, on the one hand, is confidential and falls within the detention record of the detained person according to regulation 92 of the Regulations of the Court and regulation 189 of the Regulations of the Registry and, on the other hand, may not fall in the detention record but is still confidential and can only be disclosed to persons authorized by the Registrar because they are of a sensitive nature or pertain to the 'private life' of the detained person;

CONSIDERING furthermore that regulation 171 of the Regulations of the Registry prohibits disclosure of information obtained by certain means to unauthorized persons and that, consequently, the annexes revealing the content of the monitoring referred to above cannot be made available to persons other than those authorized and in this particular case the parties;

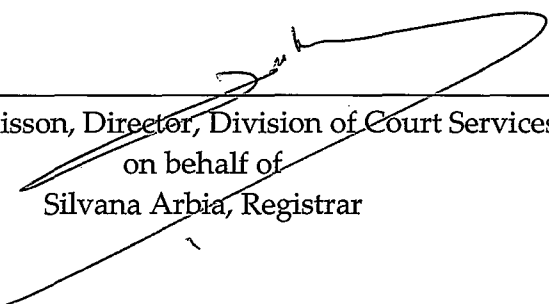
CONSIDERING that the redacted parts of the monitoring reports shall remain because they relate to the *modus operandi* of the monitoring and particular situations regarding the Detention Centre in relation to the monitoring; and that if the parties or the public were to learn about it, the security purpose falling out of it would be defeated;

CONSIDERING that the Decision of 3 April 2009 is public but seeks observations from the Registry in order to make accessible to the public or the parties documents falling under certain levels of classification if deemed appropriate; and that the annexes of the present submission are therefore submitted as confidential *ex parte*;

RESPECTFULLY SUBMITS, as follows, the observations of the Registrar on the reclassification of submissions by the Registry and where appropriate her proposals for redactions:

- In Annex 1 classified confidential *ex parte* only available to the Registrar, the observations on the documents prepared by the Immediate Office of the Division of Court Services on behalf of the Registrar;
- In Annex 2 classified confidential *ex parte* only available to the Registrar, the observations on the documents prepared by the Court Management Section on behalf of the Registrar;
- In Annex 3 classified confidential *ex parte* only available to the Registrar and VWU, the observations on the documents prepared by VWU on behalf of the Registrar;
- In Annex 4 classified confidential *ex parte* only available to the Registrar and the Detention Section, the observations on the documents prepared by the Detention Section on behalf of the Registrar;
- In Annex 5 classified confidential *ex parte* only available to the Registrar and the Victims Participation and Reparation Section ("VPRS"), the observations on the documents prepared by VPRS on behalf of the Registrar;

- In Annex 6 classified confidential *ex parte* only available to the Registrar and the Defence Support Section ("DSS"), the observations on the documents prepared by DSS on behalf of the Registrar.



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

Dated this 6 May 2009

At The Hague in The Netherlands