



Original: **English**

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

Date: **30 June 2008**

PRE-TRIAL CHAMBER III

Before: Judge Fatoumata Dembele Diarra (Presiding Judge)
Judge Hans-Peter Kaul
Judge Ekaterina Trendafilova

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

**Public Redacted Version of ICC-01/05-01/08-32-US-Exp
Prosecution's Application Pursuant to Rules 81(2) and 81(4) for redactions to the
Application for a Warrant of Arrest and the Further Submission**

Source: The Office of the Prosecutor

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
Ms Silvana Arbia**

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 23 June 2008 Pre-Trial Chamber III (hereinafter referred to as "PTC") issued an Order¹ requesting the Prosecution to submit a proposal in regards to the classification and requested redactions of the "Prosecutor's Application for Warrant of Arrest under Article 58"² (hereinafter referred to as "Application") as well as the "Prosecutor's Submission on Further Information and Materials"³ (hereinafter referred to as "Further Submission").

2. In compliance with this order, the Prosecution respectfully submits its request for authorisation to apply redactions⁴ to the Application⁵ and the Further Submission⁶, attached to this request.

Request for Sealing

3. The Prosecution requests that this request and its annexes be received by the PTC as "Under seal, Ex Parte, Only available to the Prosecutor and the Victims and Witnesses Unit", since they relate to material that is currently under seal and *ex parte* and depicts information for which redactions are sought. Communication of such information would defeat the purpose for which the redactions are requested.

Legal Basis for the Requested Redactions

4. The redactions proposed in the present application are requested pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence (hereinafter referred to as "Rules"). Following the practice in the DRC cases, red highlights are used for

¹ ICC-01/05-01/08-21

² ICC-01/05-13-US-Exp

³ ICC-01/05-16-US-Exp

⁴ A draft French translation of this filing is attached as Annex C. This translation is provided as an aid to the Chamber and is not meant to be official or authoritative

⁵ The French and English redacted versions of the Application are attached as Annexes A-1 and A-2.

⁶ The English redacted version of the Further Submission is attached as Annex B. The OTP will provide the PTC with a non-official French translation of the redacted Further Submission as soon as possible.

redactions sought under 81(4) of the Rules, blue highlights mark redactions requested pursuant to 81 (2) of the Rules.

Justification for the Requested Redactions

5. In order to protect the safety of witnesses, victims and members of their families pursuant to Rule 81 (4) of the Rules, the Prosecution considers it necessary to redact the names as well as any identifying information of the witnesses, victims and their respective family members. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

6. The Prosecution also requests a limited number of redactions to protect “persons at risk on account of the activities of the Court” as defined by the Appeals Chamber in its “Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I” entitled “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”⁷.

7. The Appeals Chamber (“hereinafter referred to as AC”) found that persons other than witnesses, victims and members of their families, may be protected through the non-disclosure of their identities if the disclosure of the information concerned would pose a danger to the particular person. The AC identified factors to be considered in determining whether or not disclosure of the information concerned would pose a danger to the particular person. The AC stated that there is a two pronged analysis in the first stage. The analysis contemplates whether 1) the danger involves an objectively justifiable risk to the safety of the person concerned, and 2)

⁷ ICC-01/04-01/07-475

whether the risk must arise from disclosing the particular information *to the Defence*, as opposed to disclosing the information to the public at large.

8. [REDACTED]

[REDACTED] For those reasons, these individuals suffer from an objectively justifiable risk as they could be erroneously perceived as prosecution sources or witnesses. In accordance with the Appeals Chamber's Decision, this risk cannot be reduced unless this information is withheld from the Defence and not only from the public at large.

9. The AC went on to state that the second stage of the analysis requires the Chambers to consider is whether the proposed redactions overcome or reduce the risk posed to the person. In other words, the Chambers should consider whether less restrictive protective measures (than redactions) are sufficient and feasible. The third stage of the analysis considers whether the proposed redactions restrict the suspect's rights only as strictly necessary.

10. With respect to the second stage of the analysis, the Prosecution asserts that redactions reduce the risk posed to these individuals by concealing their identities. There are no other less restrictive measures that are applicable to these witnesses given the fact that the suspect's previous history reflects that he has intimidated people, and he would likely repeat such behavior towards witnesses.

11. Accordingly, the Prosecution submits the proposed redactions pursuant to the terms of the Appeals Chamber's decision, and in accordance with Rule 81(4) of the Rules read in conjunction with Article 54(3)(f) of the Statute.

12. The remainder of the proposed redactions the Prosecution seeks are to protect information related to the Prosecution's ongoing investigations pursuant to Rule 81(2) of the Rules.

Description of Annexes

13. The Prosecution appends as annexes A⁸ and B⁹ with highlights, the material for which it seeks authorisation to apply redactions pursuant to Rules 81(2) and (4).

ANNEX A – “Prosecutor’s Application for Warrant of Arrest” with requested redactions (highlighted)

ANNEX B – “Prosecutor’s Submission on Further Information and Materials” with requested redactions (highlighted)

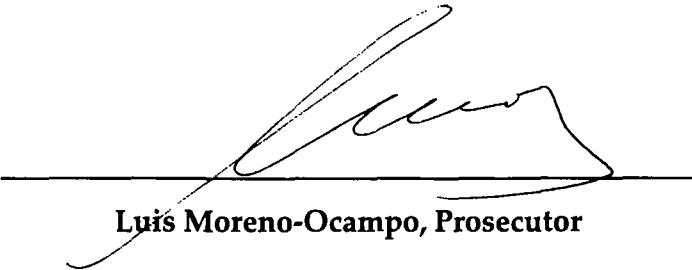
⁸ ICC-01/05-13-US-Exp “Prosecutor’s Application for Warrant of Arrest under Article 58” with requested redactions highlighted

⁹ ICC-01/05-16-US-Exp. “Prosecutor’s Submission on Further Information and Materials” with requested redactions highlighted



Request

14. For the foregoing reasons, the Prosecution respectfully requests that the PTC authorise the proposed redactions to the Application and Further Submission, as submitted in the Annexes to this Application.



Luis Moreno-Ocampo, Prosecutor

Dated this 30th day of June 2008

At The Hague, The Netherlands