



Original: **English**

No.: **ICC-01/05-01/08**
Date: **4 September 2008**

PRE-TRIAL CHAMBER III

Before: Judge Fatoumata Dembele Diarra (Single Judge)

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

Public Redacted Version of ICC-01/05-01/08-91-US-Exp

**Prosecutor's Position regarding Disclosure of Additional Witnesses for Referral to
VWU in Response to Pre-Trial Chamber III's Order dated July 23, 2008**

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 of Jean-Pierre Bemba

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
Mr Simo Väätäinen**

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Procedural History

1. On 20 June 2008, Pre-Trial Chamber III (hereinafter referred to as "PTC III") issued an Order setting forth deadlines for the submission of redacted material, including proposed redactions related to the Application for the Warrant of Arrest, as well as proposed redactions to witness statements.
2. On 30 June 2008, the Prosecution filed the "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"¹. On 16 July 2008, the Prosecution filed the "Prosecutor's Application for Redaction Pursuant to Rules 81(2) and 81(4)"².
3. On 23 July 2008, PTC III issued a Decision concerning the Prosecutor's proposals for redactions requesting a response from the Prosecutor (hereinafter referred to as the "Decision").
4. On 1 August 2008, the Prosecution filed the "Prosecutor's Decision concerning the Prosecutor's proposals for redactions"³.
5. On 31 August 2008, the PTC III issued its First Decision on the Prosecutor's request for redactions (hereinafter referred to as the "First Decision").

II. Request for Sealing

6. The Prosecution requests that this document be received as "Under Seal, *Ex Parte*, Prosecutor Only", as the decision to which it is responding has been filed as Under Seal⁴

¹ ICC-01/05-01/08-32-US-Exp

² ICC-01/05-01/08-44-US-Exp

³ ICC-01/05-01/08-58-US-Exp.

⁴ ICC-/05-01/08-48-US-Exp.

7. The Rules of Procedure and Evidence (hereinafter referred to as the “Rules”) provide that applications pursuant to Rule 81(2) “shall be heard on an *Ex Parte* basis”. The Prosecution submits the instant memorandum pursuant to Rule 81(2). Accordingly, the Prosecution submits that *Ex Parte* classification is justified.

III. Scope of the Present Submission

8. In page 15 of the Decision, PTC III ordered in pertinent part:

(c) orders the Prosecutor (i) to proceed as indicated in (a) and (b) above in respect of any witness, not mentioned in his Application or his Further Submissions or their annexes, on the statement of whom he intends to rely at the confirmation hearing scheduled for 4 November 2008, and (ii) to inform the Chamber at the latest by 4 September 2008, who the other persons referred to the VWU and what the reasons for their referral or non-referral are; (Italics added)

IV. Status of Witness Referral and Witness Protection

9. In exercising its duty under Article 68(1), the Prosecution aims to eliminate all foreseeable risks to witnesses. This is the standard agreed upon by the Presidency, the Registry and the Prosecution which committed in the Strategic Plan of the Court to “put in place a system to address all security risks, striving for maximum security of all participants”⁵. In doing so, the Prosecution assesses past and present security situations and utilizes that information to forecast what the likely future risks will be for witnesses.

10 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁵ See Strategic Plan of the Court, ICC-ASP, 4 August 2006, para. 31 and Annex, page 14

11. At this time, the Prosecution has completed its initial review of the individual risk assessments for the fourteen identified witnesses. The recently completed summary security risk assessment was given to Victim Witness Unit (hereinafter referred to as "VWU") on 3 September 2008. Individual risk assessments for the fourteen witnesses will be finalized today and immediately transmitted to VWU. The Prosecution, as explained below, has also shared with VWU a series of proposals for protective measures to be implemented.

12. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁶

13. [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
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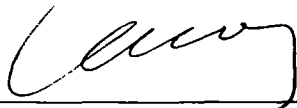
14. The Prosecution intends to continue to work closely with VWU to jointly conduct in-depth assessments with respect to the general security assessment and individual assessments and additional protective measures. Ideally, the Prosecution seeks to reach a mutual agreement with VWU as to which additional protective measures are appropriate

⁶ See ICC-01-/05-01/08-72-US-Exp

given the circumstances, and jointly present their recommendations to PTC III prior to the deadline of 3 October 2008. If that is not possible, the filing by the Prosecution will be made with prior consultation with VWU.

V. September 4th 2008 deadline to inform the Chamber on the identity of witnesses not previously mentioned on whom the Prosecution intends to rely at the confirmation hearing

15. The confirmation hearing is presently scheduled for 4 November 2008. The Prosecution does not currently foresee disclosing additional witnesses upon whom it intends to rely. If there is a need to present additional witnesses, the Prosecution will make a disclosure no later than 30 days before the date of the confirmation hearing in compliance with Rule 121(3) of the Rules, and in collaboration with VWU, will take in consideration the protective measures required to avoid any delay of the proceedings.



Luis Moreno-Ocampo, Prosecutor

Dated this 4th day of September 2008

At The Hague, The Netherlands