

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 22 July 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 Document**

**Decision on the "Motion to unseal certain documents and decisions" of 14 July  
2008**

Decision 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**

Tjarda Eduard Van der Spoel  
Aimé Kilolo-Musamba

**Legal Representatives of the Victims**

**Legal Representatives of the 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**

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**Registrar**

Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**PRE-TRIAL CHAMBER III** (the “Chamber”) of the International Criminal Court (the “Court”) is seized of a motion<sup>1</sup> of 14 July 2008 to unseal certain documents and decisions (the “Motion for unsealing”) in the case of the *Prosecutor v. Jean-Pierre Bemba Gombo* (the “Case”).

1. On 20 June 2008 the Chamber took a decision<sup>2</sup> to unseal and reclassify as public certain documents and decisions in the record of the situation in the Central African Republic (the “Situation”) and in the Case and to transfer some of the unsealed and reclassified documents and decisions from the record of the Situation (ICC-01/05) to the record of the Case (ICC-01/05-01/08).

2. The documents and decisions that were unsealed and reclassified comprised the “Notification to Pre-Trial Chamber III and request for Extension of Page Limit and Expedited Consideration”<sup>3</sup>, the “Decision on the Prosecutor’s Notification to Pre-Trial Chamber III and Request for Extension of Page Limit and Expedited Consideration”<sup>4</sup>, the “Decision Requesting Additional Information in Respect of the Prosecutor’s Application for Warrant of Arrest under Article 58”<sup>5</sup> and the “Prosecutor’s Application for Request for Provisional Arrest under Article 92”<sup>6</sup>.

3. The documents and decisions mentioned in the previous paragraph, as well as the “Prosecutors Application for Warrant of Arrest under Article 58”<sup>7</sup> (the “Prosecutor’s Application”) with Annexes 1-14 and the “Prosecutor’s Submission on Further

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<sup>1</sup> ICC-01/05-01/08-42.

<sup>2</sup> ICC-01/05-01/08-20.

<sup>3</sup> ICC-01/05-10-US-Exp, transferred to the record of the case and re-registered as ICC-01/05-01/08-24.

<sup>4</sup> ICC-01/05-12-US-Exp, transferred to the record of the case and re-registered as ICC-01/05-01/08-25.

<sup>5</sup> ICC-01/05-14-US-Exp, transferred to the record of the case and re-registered as ICC-01/05-01/08-27.

<sup>6</sup> ICC-01/05-15-US-Exp, transferred to the record of the case and re-registered as ICC-01/05-01/08-28.

<sup>7</sup> ICC-01/05-13-US-Exp.

Information and Materials”<sup>8</sup> (the “the Prosecutor’s Further Submission”) with Annexes 1-18, were at the same time transferred to the record of the Case. They were subsequently given new reference numbers.

4. For the sake of completeness, the Chamber notes that the unsealing and reclassification pursuant to the decision of 20 June 2008 also concerned annexes 6, 9-A, 9-B, 9-C and 14 to the Prosecutor’s Application and annexes 4, 6-A, 6-B, 7, 8, 9, 10, 11, 18-A and 18-B to the Prosecutor’s Further Submission.

5. On 30 June 2008 the Prosecutor filed an application<sup>9</sup> requesting redactions pursuant to rules 81(2) and 81(4) of the Rules of Procedure and Evidence with regard to the Prosecutor’s Application and the Prosecutor’s Further Submission. The Prosecutor later filed a similar application<sup>10</sup> in respect of the annexes to the Prosecutor’s Application and the Prosecutor’s Further Submission, which had not been unsealed and reclassified before. Both applications for redactions are pending.

6. On 3 July 2008 Messrs Tjarda Eduard Van der Spoel and Aimé Kilolo-Musamba were appointed duty counsel to Mr Jean-Pierre Bemba Gombo for the purposes of his initial appearance before the Chamber.

7. On 4 July 2008 the Registry notified to Messrs Tjarda Eduard Van der Spoel and Aimé Kilolo-Musamba all Non-Ex parte Court Records at that time in the record of the Case as well as the report registered under file number ICC-01/05-01/08-34 in the

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<sup>8</sup> ICC-01/05-16-US-Exp.

<sup>9</sup> ICC-01/05-01/08-32-US-Exp. Although this submission has been classified as “under seal, *ex parte*”, the Chamber is of the view that lifting the restriction on this particular quotation is not inconsistent with the under seal nature of the submission.

<sup>10</sup> ICC-01/05-01/08-44-US-Exp. Although this submission has been classified as “under seal, *ex parte*”, the Chamber is of the view that lifting the restriction on this particular quotation is not inconsistent with the under seal nature of the submission.

record of the Situation (see the "Copy Control List" attached as annex to this decision).

8. On 14 July 2008 the Chamber received the Motion for unsealing. It was submitted by Messrs Tjarda Eduard Van der Spoel and Aimé Kilolo-Musamba, but was neither signed nor dated, as envisaged in standard templates of the Court. The Motion for unsealing was aimed at unsealing and reclassification of all the documents and decisions mentioned above.

9. On 15 July 2008 the Chamber received the "Enregistrement des déclarations de Maitre Tjarda E. Van der Spoel et Maitre Aimé Kilolo-Musamba acceptant l'extension de leur mandat comme conseil de permanence de M. Jean-Pierre Bemba Gombo". Annexed to this filing, there were declarations by Messrs Tjarda Eduard van der Spoel and Aimé Kilolo Musamba signed on 14 July 2008 and accepting extension of their mandate to represent Mr Jean-Pierre Bemba Gombo by one month as from 5 July 2008.

10. On 18 July 2008 the Prosecutor filed the "Prosecutor's Response to Defence 'Motion to unseal certain documents and decisions'"<sup>11</sup>. He submitted that the Motion for unsealing could not be allowed since it in part concerned documents and decisions that had already been unsealed and reclassified and in the remaining part documents in respect of which a proposal for redactions had been made.

11. The Chamber recalls at the outset that pursuant to regulation 23(1)(a) of the Regulations of the Court, a document filed with the Court "shall, as far as practicable, state the identity of the person filing the document". The Chamber considers that a person filing a document should normally append his or her

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<sup>11</sup> ICC-01/05/01/08-46.

signature to the document as a certification of the provenance of the document. This has not been the case in respect of the Motion for unsealing. Nevertheless, the provenance of the Motion for unsealing is clear from its content. Therefore, in light of the jurisprudence of the Appeals Chamber on the matter<sup>12</sup>, the Chamber concludes that the absence of signatures on the Motion for unsealing by the legal representatives of Mr Jean-Pierre Bemba Gombo does not render the filing inadmissible and that, in the circumstances, the Motion for unsealing is to be considered as being validly made on his behalf.

12. The Chamber further considers that, in so far as the Motion for unsealing concerns the "Notification to Pre-Trial Chamber III and request for Extension of Page Limit and Expedited Consideration", the "Decision on the Prosecutor's Notification to Pre-Trial Chamber III and Request for Extension of Page Limit and Expedited Consideration", the "Decision Requesting Additional Information in Respect of the Prosecutor's Application for Warrant of Arrest under Article 58" and "Prosecutor's Application for Request for Provisional Arrest under Article 92", annexes 6, 9-A, 9-B, 9-C and 14 to the Prosecutor's Application and annexes 4, 6-A, 6-B, 7, 8, 9, 10, 11, 18-A and 18-B to the Prosecutor's Further Submission, the motion cannot be granted as these documents and decisions have already been unsealed and reclassified, by virtue of the decision of 20 June 2008. Furthermore, it is to be noted that these documents and decisions were notified by the Registry to Messrs Tjarda Eduard van der Spoel and Aimé Kilolo Musamba on 4 July 2008. In this respect, the Chamber would remind the defence that these documents and decisions have been transferred to the record of the Case and that their reference numbers have been changed accordingly.

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<sup>12</sup> "Decision on Victim Participation in the appeal of the Office of Public Counsel for the Defence against Pre-Trial Chamber I's Decision of 3 December 2007 and in the appeals of the Prosecutor and the Office of Public Counsel for the Defence against Pre-Trial Chamber I's Decision of 6 December 2007", the Appeals Chamber, ICC-02/05-138, paras 29 and 30.

13. To the extent that the Motion for unsealing concerns the Prosecutor's Application, the Prosecutor's Further Submission and those of their respective annexes that have not been unsealed and re-classified under the decision of 20 June 2008, the motion can equally not be granted at the present time as the Prosecutor's applications for redactions are under consideration and will be decided upon in due course.

**FOR THESE REASONS, THE CHAMBER**

**rejects** the motion of 14 July 2008.

Done in both English and French, the English version being authoritative.



Judge Fatoumata Demele Diarra  
Second Vice-President



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Judge Hans-Peter Kaul



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Judge Ekaterina Trendafilova

Dated this 22 July 2008

At The Hague, The Netherlands