

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-
Date: 3 April 2009

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

Public Document

Decision Requesting Observations on Re-classification and Unsealing of Documents

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

Legal Representatives of the Victims

Counsel for the Defence

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

Registrar & Deputy Registrar
Silvana Arbia

Defence Support Section

Victims and Witnesses Unit
Simo Vaatainen

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Ekaterina Trendafilova, acting as Single Judge for Pre-Trial Chamber II (the "Chamber") of the International Criminal Court (the "Court"),¹ is seized of the matter of re-classification and unsealing of documents registered in the records of the situation and the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (the "Case").

1. On 1 December 2008 the Single Judge issued a "Decision on Re-classification and Unsealing of Certain Documents", in which the Prosecutor and the Registry were ordered to re-classify documents in order to make them available to the Defence in view of the confirmation of charges hearing.² The Single Judge recalls that the Chamber regularly re-classified documents contained in the records of the situation and the Case in order, *inter alia*, to make them available to the public.³

2. The Single Judge also recalls that in previous Chamber's decisions, it was noted that some documents were filed "*ex parte*", "underseal" or "confidential" without stating the factual and legal basis for the chosen classification as required by regulation 23bis(1) of the Regulations of the Court (the "Regulations").⁴

3. The Single Judge notes articles 43(6), 57(3)(c), 64(2), 67(1) and 68(1) of the Rome Statute (the "Statute"), rules 15, 17 to 19, 87 and 88 of the Rules of Procedure and Evidence (the "Rules"), regulations 8, 23bis, 24bis and 42(3) of the Regulations and regulation 14 of the Regulations of the Registry.

4. The Single Judge notes the rights of Mr Jean-Pierre Bemba Gombo ("Mr Jean-Pierre Bemba") and in particular, the principle of publicity of proceedings as prescribed in article 67(1) of the Statute.

¹ ICC-01/05-01/08-393.

² ICC-01/05-01/08-301.

³ ICC-01/05-01/08-20, ICC-01/05-01/08-196-Conf., ICC-01/05-01/08-238 and ICC-01/05-01/08-246-Conf.

⁴ ICC-01/05-01/08-238, paragraph 9.

5. The Single Judge recalls her duty at the pre-trial stage to ensure that the overall procedure is fair, conducted with full respect for the rights of the suspect and with due regard for the protection of victims and witnesses concerned by the present Case.

6. In this regard, the Single Judge also recalls her obligation to provide for the protection and privacy of victims and witnesses in accordance with articles 57(3)(c) and 68(1) of the Statute and is of the view that protection of victims and witnesses may render redactions necessary prior to any unsealing or any re-classification of certain documents.

7. Furthermore, the Single Judge notes once more regulation 23bis(1) of the Regulations which obliges the parties, the participants as well as the Registry to state the factual and legal basis for the chosen classification of their respective filed documents marked "*ex parte*", "under seal" or "confidential".

8. Mindful of these principles and in view of the forthcoming end of the pre-trial proceedings, 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.

9. With regard to documents emanating from the Prosecutor, and prior to any decision on unsealing or re-classification, the Single Judge deems appropriate to seek observations from the Prosecutor on making his documents available to the public or at a minimum to the Defence. The Single Judge emphasises that this equally applies to *ex parte* documents, redacted documents where redactions may be no longer

needed, annexes, transcripts of hearing and documents presented at the confirmation of charges hearing, which are not considered as evidence.⁵

10. The Single Judge considers that the treatment of the said documents should be reviewed by the Prosecutor in consultation with the Victims and Witnesses Unit (the "VWU"). The VWU may advise, pursuant to article 68(4) of the Statute, the Prosecutor and the Court on protective measures as referred to in article 43(6) of the Statute, including proposals for redactions where appropriate. In reviewing the level of confidentiality of the documents, the Prosecutor and the VWU should determine whether the original classification is still warranted or, as the case may be, whether proposals for redactions would be appropriate in order to make the documents available to the public in a redacted version.

11. With regard to documents emanating from the Defence and the legal representatives of victims, the Single Judge considers that pursuant to article 68(1) of the Statute, the VWU, being the specialised unit of the Court for victims and witnesses protection, may also advise the Defence and the legal representatives of victims on whether proposals for redactions would be appropriate in order to make their respective documents available to the public in redacted form.

12. With regard to documents emanating from the Registry, and prior to any decision on unsealing or reclassification, the Single Judge also deems appropriate to seek observations from the Registry on making available those documents at a minimum to the Defence and/or to the Prosecutor where applicable. In doing so, 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. The Registry should consider if the "*ex parte*" mention is still justified and if the knowledge by either party of the content of these documents would still defeat their purpose.

⁵ This includes documents stamped "HNE" by the Registry.

13. Finally, as a general principle, the Single Judge requests that in their respective observations the parties and the legal representatives of victims as well as the Registry submit to the Single Judge the reasons why their respective documents may not, at this stage, be the subject of a decision on unsealing or re-classification.

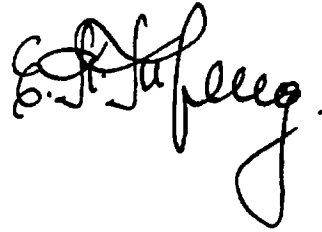
FOR THESE REASONS, THE SINGLE JUDGE

a) **requests** the Prosecutor, the Defence and the legal representatives of victims, in consultation with the Victims and Witnesses Unit, to submit, no later than 4 May 2009, a proposal detailing the treatment of their respective documents filed in the records of the situation and the Case, including, where appropriate, proposals for redactions.

b) **requests** the Registry to submit, no later than 4 May 2009, their respective proposals detailing the treatment of its documents filed in the records of the situation and the Case including, where appropriate, proposals for redactions.

c) **requests** the Prosecutor, the Defence, the legal representatives of victims and the Registry to follow the official numbering of the filings and to include all their proposals respectively, in one single document.

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

A handwritten signature in black ink, appearing to read 'E. Trendafilova', written in a cursive style.

Judge Ekaterina Trendafilova
Single Judge

Dated this Friday 3 April 2009

At The Hague, The Netherlands