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

Date: **17 August 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

Application by the Legal Representatives of the Victims for disclosure of the confidential documents relating to the proceedings for the release of the accused

Source: The Legal Representatives of the Victims

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Mr Liriss Nkwebe
Mr Karim A.A. Khan
Mr Aimé Kilolo-Musamba
Mr Pierre Legros

Legal Representatives of the Victims

Ms Marie Edith Douzima-Lawson
Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

States' Representatives

Kingdom of Belgium
French Republic
Federal Republic of Germany
Republic of Italy
Kingdom of the Netherlands
Portuguese Republic
Republic of South Africa

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Defence Support Section

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Procedural History

1. On 12 December 2008, the Single Judge of Pre-Trial Chamber III issued the “Fourth Decision on Victims’ Participation” granting, *inter alia*, to applicants a/0271/08; a/0272/08; a/0273/08; a/0275/08; a/0277/08; a/0278/08; a/0279/08; a/0283/08; a/0284/08; a/0285/08; a/0286/08; a/0287/08; a/0288/08; a/0289/08; a/0290/08; a/0291/08; a/0292/08; a/0294/08; a/0296/08; a/0298/08; a/0390/08; a/0391/08; a/0393/08; a/0394/08; a/0395/08; a/0396/08; a/0455/08; a/0457/08; a/0458/08; a/0459/08; a/0460/08; a/0461/08; a/0462/08; a/0463/08; a/0464/08; a/0465/08; a/0466/08; a/0467/08; a/0468/08; a/0469/08; a/0470/08; a/0471/08; a/0472/08; a/0473/08; a/0474/08; a/0475/08; a/0476/08; a/0478/08; a/0479/08; a/0480/08 and a/0481/08 the status of victims authorized to participate in the proceedings in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.¹

2. On 14 August 2009, the Single Judge of Pre-Trial Chamber II issued the “Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa” (the “Decision on Interim Release”),² granting the conditional interim release of Mr Jean-Pierre Bemba Gombo, postponing the execution of said Decision until a State agreed to receive him on its territory and inviting the aforementioned States to present detailed observations on the issues relating to the interim release of Jean-Pierre Bemba Gombo on their territory at hearings to be held between 7 and 14 September 2009.

3. In the Decision on Interim Release, the Single Judge invites the Legal Representatives of the Victims to attend the hearings to be held between 7 and 14 September 2009, so that they may present observations on behalf of the Victims they

¹ See the “Fourth Decision on Victims’ Participation” (Single Judge, Pre-Trial Chamber III), No. ICC-01/05-01/08-320, 12 December 2008.

² See the “Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa” pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo” (Single Judge), No. ICC-01/04-01/08-475, 14 August 2009.

are representing, in accordance with rule 119(3) of the Regulations of the Court. Consequently, the Legal Representatives of the Victims authorized to participate in the proceedings in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* submit respectfully to the Single Judge the present application to disclose confidential documents filed by the States involved in the proceedings for interim release, as well as by the parties and the Registry, where applicable.

II. On access by the Legal Representatives of the Victims to confidential documents filed in the proceedings concerning interim release

4. Rule 119(3) of the Rules of Procedure and Evidence provides for the possibility for victims to present observations on any conditions restricting liberty imposed on the accused. The Legal Representatives submit that in order to be able to present said observations on behalf of the Victims they represent and to be able to effectively discharge their mandate to represent their clients, they need to have access to the confidential documents filed by the States involved in the proceedings for interim release, as well as by the parties and the Registry, where applicable.

5. In this regard, the Legal Representatives note that in the Decision on Interim Release the Single Judge makes reference to documents filed by the States concerned, which allegedly contain more extensive information on the difficulties experienced by said States concerning the reception of Mr Bemba Gombo on their territory, including observations relating to guarantees given by the Defence.³ Said observations are clearly of interest to the Victims as they relate to the conditions of interim release, issues which will be debated at hearings scheduled for 7 to 14 September 2009 and on which they have the right to be heard.

6. Furthermore, rule 121(10) of the Rules of Procedure and Evidence states that

³ *Idem*, paras. 14, 16, 20 and 21.

“[s]ubject to any restrictions concerning confidentiality and the protection of national security information, the record may be consulted by the Prosecutor, the defence, the representatives of States participating in the proceedings and victims or their legal representatives participating in the proceedings pursuant to rules 89 and 91”.

7. This rule sets out the principle of free access for victims or their legal representatives to all documents in the case file, but which can be restricted by a competent chamber for the purpose of safeguarding confidential information and information affecting national security. Moreover, this restriction extends to all persons listed in rule 121(10) of the Rules of Procedure and Evidence, not only to the victims and their legal representatives. Consequently, the Legal Representatives submit that, as the Victims are entitled to present observations on the issue of conditional release, they must have access to the relevant documents.

8. The Legal Representatives also observe that, in accordance with “internationally recognized human rights”,⁴ the requirements of a “fair trial” mean, *inter alia*, that “each party must be afforded a reasonable opportunity to present his case [...] under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent”⁵ and that, moreover, the right to a “fair trial” means that each participant must have “the opportunity not only to make known any evidence needed for his claims to succeed, but also to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court’s decision”.⁶

⁴ In this regard, see “Judgment on the Prosecutor’s Application for extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision denying Leave to Appeal”, No. ICC-01/04-168, 13 July 2006, para. 11.

⁵ See ECHR, *Dombo Beheer B.V. v. The Netherlands*, Application No. 14448/88, Judgment of 27 October 1993, para. 33.

⁶ See ECHR, *Mantovanelli v. France*, Application No. 21497/93, Judgment of 18 March 1997, para. 33; *Nideröst-Huber v. Switzerland*, Application No. 18990/91, Judgment of 18 February 1997, para. 24; *Lobo Machado v. Portugal*, Application No. 15764/89, Judgment of 20 February 1996, para. 31; *Vermeulen v. Belgium*, Application No. 19075/91, Judgment of 20 February 1996, para. 33; *Ruiz-Mateos v. Spain*, Application No. 12952/87, Judgment of 12 September 1993, para. 63.

9. In this regard, the Legal Representatives recall principle 21 of the Basic Principles on the Role of Lawyers, pursuant to which:

*“[i]t is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time”.*⁷

10. In light of the principles of the aforementioned “internationally recognized human rights”, the Legal Representatives submit that refusal of access to confidential documents in the record relating to the proceedings for the interim release of Mr Bemba Gombo would deprive counsel of the possibility of representing the interests of their clients effectively and appropriately, all the more so given that some of the Victims they represent have the status of both victim and witness.

For the reasons set out above, the Legal Representatives of the Victims request respectfully that the Single Judge order that they be given access to the following confidential documents:

- ICC-01/05-01/08-448-Conf-Anx1;
- ICC-01/05-01/08-448-Conf-Anx2;
- ICC-01/05-01/08-448-Conf-Anx3;
- ICC-01/05-01/08-461-Conf-Anx2;
- ICC-01/05-01/08-465-Conf-Anx2;
- ICC-01/05-01/08-472-Conf-Anx1;
- ICC-01/05-01/08-472-Conf-Anx2;

⁷ See the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, from 27 August to 7 September 1990. The document is available on the website of the Office of the United Nations High Commissioner for Human Rights at the following address: <http://www2.ohchr.org/french/law/barreau.htm>.

The Legal Representatives also request the reclassification of document No. ICC-01/05-01/08-473-Conf-Exp-Anx2 filed by the Republic of South Africa, in order that they may access it.

Lastly, the Legal Representatives also request that they be given access to any other confidential document filed, or which may be filed, by the parties, the Registry or the States concerned in the proceedings relating to the interim release of Mr Jean-Pierre Bemba Gombo.

Ms Paolina Massidda **Ms Marie Edith Douzima-Lawson**
Legal Representatives of the Victims

Dated this 17 August 2009

At The Hague, The Netherlands and Bangui, The Central African Republic