



Original: **English**

No.: **ICC-01/05-01/08**  
Date: **17 October 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-01/05-01/08-164-US-Exp**

**Prosecution's Application for Proposed Redactions Pursuant to Rules 81(2) and  
81(4) of the Rules of Procedure and Evidence**

**Source:** The Office of the Prosecutor

17/10/2008

**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**

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**Registrar  
Ms Silvana Arbia**

**Defence Support Section**

**Victims and Witnesses Unit  
Mr Simo Väätäinen**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

17/10/2008

## I. Procedural History

1. On 20 June 2008, Pre-Trial Chamber III (hereinafter referred to as "PTC") issued an Order<sup>1</sup> requesting that the Prosecution submit a proposal in regards to the classification and requested redactions of the "Prosecutor's Application for Warrant of Arrest under Article 58"<sup>2</sup> as well as the "Prosecutor's Submission on Further Information and Materials".<sup>3</sup>
2. On 30 June 2008, the Prosecution filed the "Prosecutor's Application Pursuant to Rules 81(2) and 81(4) for redactions to the Application for a Warrant of Arrest and the Further Submission".<sup>4</sup> On 4 July 2008, the Victims and Witnesses Unit (hereinafter referred to as "VWU") provided its observations thereto.<sup>5</sup>
3. On 16 July 2008, the Prosecution filed the "Prosecutor's Application for Redaction Pursuant to Rules 81(2) and 81(4)".<sup>6</sup> On 23 July 2008, the PTC issued the "Decision concerning the Prosecutor's proposal for redactions".<sup>7</sup>
4. On 31 July 2008, the PTC issued its "Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties".<sup>8</sup>
5. On 1 August 2008, the Prosecution filed the "Prosecutor's Decision concerning the Prosecutor's proposals for redactions"<sup>9</sup> and on 18 August 2008, the VWU submitted its observations thereto.<sup>10</sup> On 28 August 2008 the Single Judge held a

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<sup>1</sup> ICC-01/05-01/08-21-US-Exp.

<sup>2</sup> ICC-01/05-01/08-26-US-Exp.

<sup>3</sup> ICC-01/05-01/08-29-US-Exp.

<sup>4</sup> ICC-01/05-01/08-32-US-Exp.

<sup>5</sup> ICC-01/05-01/08-39-US-Exp.

<sup>6</sup> ICC-01/05-01/08-44-US-Exp.

<sup>7</sup> ICC-01/05-01/08-48-US-Exp.

<sup>8</sup> ICC-01/05-01/08-55.

<sup>9</sup> ICC-01/05-01/08-58-US-Exp.

<sup>10</sup> ICC-01/05-01/08-72-US-Exp.

17/10/2008

status conference on the redactions and on 29 August 2008 the Prosecution submitted additional information at the request of the Single Judge. On 31 August 2008, the Single Judge issued its "First Decision on the Prosecutor's request for redactions"<sup>11</sup> (hereinafter referred to as "First Decision") with two Annexes.<sup>12</sup>

6. In the First Decision the Single Judge authorized temporary redactions of six witnesses after finding that the disclosure of their identity or information about their personal circumstances to the defence would expose each of them to an increased "objectively justifiable safety risk" and that there were no alternative measures short of redaction available and feasible in the present circumstances.<sup>13</sup>

7. Further, the Single Judge held that "[w]here there is an objectively justifiable risk for the safety of the witness concerned, the Single Judge accepts the proposal submitted by the Prosecution and the VWU that the disclosure of the names is delayed as late as possible" but placed his decision within the timeframe of the evidence disclosure system set forth in the PTC's decision of 31 July 2008.<sup>14</sup> However, in the First Decision, the Single Judge allowed for either the Prosecution or the VWU to apply for the PTC to reconsider its decision<sup>15</sup>.

8. On 15 September 2008, the Single Judge issued its confidential and *ex parte* "Décision relative à la Requête du Procureur aux fins d'expurgations pour les témoins 0009, 0033, 0038, 0022, 0023, 0029".<sup>16</sup> In that decision, the Prosecution was ordered to provide an amended request for proposed redactions relating to the six witnesses who were the subject of temporary redactions.

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<sup>11</sup> ICC-01/05-01/08-85-Conf.

<sup>12</sup> The Annexes were given in two parts on 1 and 2 September 2008 respectively.

<sup>13</sup> ICC-01/05-01/08-85-Conf-Exp-Anx pp. 2-3; 6-7; 8-9; 11-12; 15-16; and 26.

<sup>14</sup> ICC-01/05-01/08-85-Conf-Exp, paragraph 33.

<sup>15</sup> Ibid, paragraph 35.

<sup>16</sup> ICC-01/05-01/08-108-Conf-Exp.

17/10/2008

9. On 22 September 2008, the Prosecution filed the "Prosecution's Amended Application for Proposed Redactions Pursuant to Rules 81(2) and 81(4)" (hereinafter the "Prosecution's Amended Application").<sup>17</sup>

10. On 22 September 2008, the Single Judge issued the "*Ordonnance relative à la protection des témoins et au rapport d'évaluation des risques*" and sought additional material from the Prosecution.<sup>18</sup> The material was provided by the Prosecution on 23 September 2008.<sup>19</sup>

11. On 25 September 2008 the PTC issued the "Decision requesting further information on the security situation of certain witnesses".<sup>20</sup>

12. On 26 September 2008 the Prosecution filed the "Prosecutor's Submission of Additional Information Demonstrating the Existence of an Objectively Identifiable Risk".<sup>21</sup>

13. On 30 September 2008, the Prosecution filed an application to inform the PTC that the Prosecution wished to rely upon eleven additional witnesses for the confirmation hearing. The Prosecution also proposed to apply redactions to four and to use summaries for two out of the eleven witnesses.<sup>22</sup>

14. In order to support its previous applications, on 1 October 2008 the Prosecution submitted [REDACTED]

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<sup>17</sup> ICC-01/05-01/08-114-US-Exp.

<sup>18</sup> ICC-01/05-01/08-111-US-Exp.

<sup>19</sup> ICC-01/05-01/08-119-US-Exp, *Prosecution's Response to "Ordonnance relative à la protection des témoins et au rapport d'évaluation des risques"* and its accompanying annexes.

<sup>20</sup> ICC-01/05-01/08-121-US-Exp

<sup>21</sup> ICC-01/05-01/08-122-US-Exp.

<sup>22</sup> ICC-01/05-01/08-126-US-Exp

17/10/2008

[REDACTED]

[REDACTED]

15. On 1 October 2008 the Prosecution filed its Document Containing the Charges<sup>24</sup> and the list of the evidence which it intends to present at the confirmation hearing.<sup>25</sup>

16. On 8 October 2008 the PTC held a status conference concerning disclosure of evidence, during which the Prosecution duly acknowledged the Chamber's concerns in terms of managing and regulating the proceedings, and the need to inform Chambers of any changes to the charging document as soon as possible, and in any case 15 days prior to the confirmation hearing, in accordance with the Rules of Procedure and Evidence.<sup>26</sup>

17. The Prosecution hereby files an application to inform the PTC that the Prosecution wishes to rely upon one additional witness for the confirmation hearing and to this end it is proposing to apply redactions to the statement of such witness at this stage of the proceedings.<sup>27</sup> The Prosecution hereby informs the Chamber that this completes its list of witnesses prior to the confirmation hearing.

## II. Request for Sealing

[REDACTED]

<sup>23</sup> [REDACTED]

<sup>24</sup> ICC-01/05-01/08-129-US-Exp Anx 1A

<sup>25</sup> ICC-01/05-01/08-122-US-Exp Anx 1C

<sup>26</sup> ICC-01/05-01/08-T-6-CONF-EXP-ENG ET, p. 7

<sup>27</sup> The statement of the witness and a chart which explains the sought redactions are attached as Annexes 1A and 1B

17/10/2008

18. The Prosecution requests that this application 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 depict information for which redactions are sought.

19. By a separate filing the Defence will be notified of the existence of this Application.

### III. Prosecution’s Submission for the Requested Redactions

20. Pursuant to its continuing obligations under Article 54 of the Rome Statute (hereinafter referred to as “Statute”), while submitting the Document Containing the Charges and the List of Evidence pursuant to Rule 121(3) of the Rules of Procedure and Evidence (hereinafter referred to as “Rules”), the Prosecution has continued its investigation<sup>28</sup> before the confirmation hearing, as contemplated by Article 61(4) of the Statute. Further to this investigation, the Prosecution now intends to present new evidence, as provided by the following additional witness for the confirmation hearing: [REDACTED] (Witness 0087).

21. Bearing in mind the provision of Article 69(4) of the Statute, it is submitted that the proposed evidence of this witness is probative and its admission would not prejudice Mr. Bemba’s right to fair trial. In this regard the Prosecution stresses that where the Prosecutor intends to present new evidence at the confirmation hearing, the time-limit imposed by Rule 121(5) of the Rules to notify the PTC and the suspect and to provide the amended list of evidence is 15 days prior to the confirmation hearing. Thus the Prosecution is preparing an amended Document Containing the

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<sup>28</sup> ICC-01/04-01/06-568 OA3, paragraphs 49 to 51, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on Disclosure Restriction pursuant to Rule 81(2) and (4).

17/10/2008

Charges and an Additional List of Evidence, which will be submitted in the next few days in compliance with the law governing the Court.

22. Mindful of its obligations pursuant to Article 68(1) of the Statute, in particular where the crimes charged involve sexual violence, the Prosecution is therefore seeking redactions as measures to protect the safety of the above-mentioned witness.

#### **IV. Risk Assessment for witness [REDACTED] (Witness 0087)**

23. Further to earlier submissions, the Prosecution has prepared an individual risk assessment for the witness in question, which is appended to the present application as Annex 2. This individual risk assessment will be reassessed on an ongoing basis as the proceedings progress.

24. Witness 0087, a victim of a rape committed by three MLC soldiers at her home in Boy-Rabe, an area of Bangui, on 30 October 2002, provides evidence on the killing of her brother the same day by MLC soldiers. [REDACTED]

25. To date, Witness 0087 whose identity the Prosecution is requesting be withheld from the Defence, has not been the recipient of threats or violence since the alleged crimes by virtue of her anonymity, as it appears that she has not yet been identified as a witness for the current investigation. As will be detailed below, however, the disclosure of her identity or information relating to her personal circumstances would expose her or her family members to an increased objectively justifiable safety risk.



17/10/2008

26. It is submitted that Witness 0087 may face repercussions once her name is disclosed to the defence. As a victim of crimes, the disclosure of Witness 0087's identity would automatically increase knowledge of this witness' contribution to the investigation and would likely draw attention to her case. It should further be noted that, should her identifying information be disclosed, Witness 0087 could be singled out for providing unique evidence on the killing of her brother.

27. [REDACTED]  
[REDACTED]  
[REDACTED] continued redactions at this time would be essential in limiting the time exposure of the witness and maintaining the protection inherent to her anonymity. As a result, it is submitted that continued redactions in the present circumstances would be a critical contribution to protect the witness from a justifiably objective risk.

28. The Prosecution's prior submissions to the PTC have shown Mr. Bemba's past behaviour against opponents, and the capability of his large number of supporters to threaten and intimidate persons and organize public unrest in the Democratic Republic of Congo (hereinafter referred to as "DRC"), in the CAR and in other countries as far as Europe: [REDACTED]

[REDACTED] upon news of his arrest, MLC supporters have been mobilized to attack MONUC, one NGO compound but also to organize targeted demonstrations in Belgium. The new phase of the proceeding can objectively trigger other forms of reaction. This is of relevance to the above-mentioned witness.

29. In its submission of 22 September 2008,<sup>29</sup> the Prosecution advised the PTC that a member of the Office of the Prosecutor had met with [REDACTED]

<sup>29</sup> ICC-01/05-01/08-114-Conf-Exp, para. 27

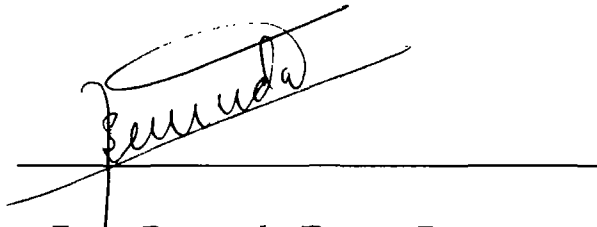


17/10/2008

the redactions sought under Rule 81(4) and blue highlights mark redactions requested pursuant to Rule 81(2). The submitted chart summarizing the redactions sought by the Prosecution, appended to this application as Annex 1, complies with the instructions of the Single Judge at the 28 August 2008 status conference<sup>31</sup> in conjunction with directions given by the Single Judge at the 17 September 2008 status conference.<sup>32</sup>

## VI. Relief Sought

For the foregoing reasons, the Prosecution respectfully requests that the PTC authorizes the proposed redactions as submitted in the Annex 1A and 1B to this Application.

A handwritten signature in black ink, appearing to read 'Bensouda', is written over a horizontal line. The signature is written in a cursive style and is partially enclosed by a circular scribble.

**Fatou Bensouda, Deputy Prosecutor  
on behalf of  
Luis Moreno-Ocampo, Prosecutor**

Dated this 17th day of October 2008

At The Hague, the Netherlands

<sup>31</sup> ICC-01/05-01/08-T-4-CONF-EXP-ENG ET.

<sup>32</sup> ICC-01/05-01/08-108-Conf-Exp, *Décision relative à la Requête du Procureur aux fins d'expurgations pour les témoins 0009, 0033, 0038, 0022, 0023, 0029.*