

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 10 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
URGENT**

Decision on the Implementation of Disclosure to the Defence

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

Nkwebe Liriss
Tjarda E. 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

Registrar

Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. **Pre-Trial Chamber III** (the "Chamber") of the International Criminal Court (the "Court"), preparing the hearing on the confirmation of charges in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Mr Jean-Pierre Bemba"), wishes to receive information by the Registrar on the implementation of its "Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties" ("Decision on Disclosure") of 31 July 2008.¹

2. It is recalled that at the initial appearance hearing on 4 July 2008, Mr Jean-Pierre Bemba was informed, *inter alia*, of the date of the confirmation hearing that the Chamber scheduled pursuant to rule 121(1) of the Rules of Procedure and Evidence (the "Rules") for 4 November 2008.

3. In view of this time schedule, the Chamber issued its Decision on Disclosure and established the calendar for disclosure according to which the Prosecutor was ordered, *inter alia*:

m) (...)

1. (...) to disclose to the defence through the Registry all evidence in the Prosecutor's possession or control under article 67(2) of the Statute as soon as practicable and on a continuous basis.

2. (...) to disclose to the defence through the Registry all evidence under rule 76 of the Rules as soon as possible and no later than **3 October 2008** in original and a language which Mr Jean-Pierre Bemba Gombo fully understands and speaks.

3. (...) to permit the defence to inspect at a location agreed upon by them all evidence under rule 77 of the Rules as soon as possible and no later than **3 October 2008**.

(...)

4. The Chamber ordered both parties when submitting evidence

b) (...) to submit the original of the evidence as well as its electronic copy or, in case of tangible objects, its electronic photograph to the Registry.

c) (...) to submit any evidence with the appropriate metadata in accordance with the e-Court protocol as set out in the Annex to this decision.

¹ ICC-01/05-01/08-55.

d) (...) to submit the evidence in due time and within official filing hours of the Registry.

e) (...) [to] provide the following accompanying documentation:

1. A list of evidence enlisting all pieces of evidence enclosed with their respective document ID;

2. A list of identified recipients for each evidentiary item reflecting also the access and the level of confidentiality for each item vis-à-vis any party;

3. An analysis of each piece of evidence reflecting its relevance as described in part III of this decision.

f) (...) to comply with the registration procedure of any evidence as described in part II of this decision.

5. The Chamber further ordered the Registrar to make the following arrangements:

g) (...) to register electronic copies of any evidence in the record of the case and to store its original in the Registry vault.

h) (...) to provide the parties with access to any evidence as indicated by the party in the list of recipients.

i) (...) to grant to the Chamber unrestricted access to all evidence disclosed between the parties.

j) (...) to make all necessary arrangements and to provide Mr Jean-Pierre Bemba Gombo with unrestricted access to a computer terminal in the Detention Centre for the purpose of accessing the evidence and materials disclosed between the Prosecutor and the defence of Mr Jean-Pierre Bemba Gombo.

k) (...) to report any related practical or security concern to the Chamber as soon as possible.

6. On 8 October 2008 the Chamber held a status conference² with the Defence in order to ensure that disclosure takes place under satisfactory conditions in accordance with rule 121(2)(b) of the Rules.

7. During the status conference the Defence alleged that it received evidence by the Prosecutor on the 3rd, 4th and 6th October 2008.³ However, the Defence contended that it has been unable to access and read the material disclosed as the computer system

² ICC-01/05-01/08-141-Conf; ICC-01/05-01/08-T-7-CONF-EXP-ENG ET.

³ ICC-01/05-01/08-T-7-CONF-EXP-ENG ET, p. 3, lines 13 to 15. Although this submission has been made during a status conference *in camera* and *ex parte* before Pre-Trial Chamber III, the Chamber is of the view that lifting the restriction of the particular quotations in the present decision is not inconsistent with the confidential nature of the status conference.

has only become available to it on the morning of 8 October 2008.⁴ Further, the counsels of Mr Jean-Pierre Bemba alleged that it has not received any training to use the Ringtail software.⁵

8. The Chamber observes that to date 2,130 pieces of evidence in total have been disclosed by the Prosecutor to the Defence and have been communicated to the Chamber.

9. The Chamber, mindful of its responsibilities under article 61(3) of the Rome Statute and rule 121(2) of the Rules is seeking further information from the Registrar concerning the implementation of its Decision on Disclosure and the issues raised by the Defence at the status conference.

FOR THESE REASONS THE CHAMBER

a) orders the Registrar to submit a report no later than **Tuesday, 14 October 2008** on the following issues:

- 1) whether the disclosure process between the parties has been facilitated through the Registry as ordered by the Chamber's Decision on Disclosure of 31 July 2008;
- 2) whether disclosure has taken place under the conditions established by the Chamber's Decision on Disclosure, in particular letters (b) to (g) of its operative part;
- 3) whether and when the Defence has been granted access to all evidence disclosed by the Prosecutor;

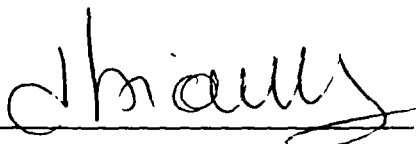
⁴ ICC-01/05-01/08-T-7-CONF-EXP-ENG ET, p. 3, line 16 ; p. 4, line 13.

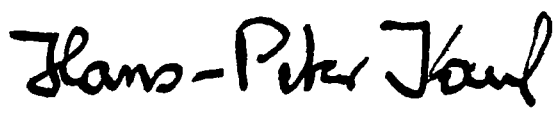
⁵ ICC-01/05-01/08-T-7-CONF-EXP-ENG ET, p. 3, line 24.

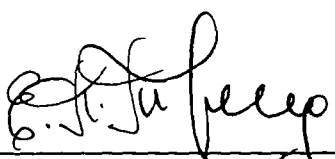
- 4) whether, and if so, when and who of the members of the Defence received training to use the Ringtail system in which the evidence disclosed is stored;
- 5) whether Jean-Pierre Bemba Gombo has unrestricted access to a computer terminal in the Detention Centre for the purpose of accessing the evidence and material disclosed between the Prosecutor and the Defence;
- 6) whether any difficulties have been encountered with regard to the notification of the filings of the Prosecutor as of 30 September 2008;
- 7) whether and when the Defence has communicated any concerns to the Registrar;

b) orders the Registrar to report any further related concerns to the Chamber.

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



Judge Fatoumata Dembele Diarra
Presiding Judge

Judge Hans-Peter Kaul

Judge Ekaterina Trendafilova

Dated this 10 October 2008

At The Hague, the Netherlands