

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/05-01/08**
Date: **07 November 2008**

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Mauro Politi

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

Confidential

Prosecution's Response to the Defence's "Requête en vue de la restitution des éléments de preuve de la Défense"

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

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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

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Other Section

Procedural Background

1. On 28 October 2008 the Defence for Mr. Jean-Pierre Bemba Gombo (hereinafter referred to as "Defence") filed a "Requête en vue de la restitution des éléments de preuve de la Défense"¹ (hereinafter referred to as "Motion"), in which it requested that the Pre-Trial Chamber (hereinafter referred to as "PTC") orders the Office of the Prosecutor (hereinafter referred to as "Prosecution") to provide an inventory concerning the objects and personal belongings seized at the houses of the suspect in Rhode-Saint-Génèse and Faro. Furthermore, the Defence requested an order for the restitution of a laptop containing a folder titled "CPI", three video tapes relating to trials against MLC soldiers for alleged crimes committed in the Central African Republic, and documents concerning the trials of MLC soldiers for alleged crimes committed in Mambasa.

Prosecution's responds to the Defence's Requests

2. With regard to the Defence's request for an inventory of the objects and personal belongings seized in the houses of Mr. Bemba, the Prosecution submits that it is fully complying with its obligations by disclosing to the Defence, and permitting the Defence to inspect all the materials that were seized in the houses of Mr. Bemba, pursuant to Rule 77 of the Rules of Procedure and Evidence (hereinafter referred to as "Rules"). No further obligations burden the Prosecution in this regard.
3. The Prosecution also stresses that the metadata fields, which accompany every single piece of evidence disclosed to the Defence, specify the origin of the evidence disclosed. Consequently, the metadata fields clarify which evidence was collected by the Prosecution further to the search and seizure in the houses of Mr. Bemba in Rhode-Saint-Génèse and Faro.
4. With regard to the Defence's request for restitution of the above-mentioned items, the Prosecution submits that for the time being those materials are necessary for

¹ ICC-01/05-01/08-194-Conf

the purpose of the investigation that the Prosecution is conducting on the crimes with which the suspect is charged.

5. In addition, the Prosecution notes that the restitution of the evidentiary materials referred to by the Defence would violate the "Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure Between the Parties" issued by the PTC on 31 July 2008 (hereinafter referred to as "31 July Decision"), whereby the Prosecution was ordered to submit to the Registry, after inspection pursuant to Rule 77 of the Rules, the original form of the pieces of evidence inspected by the Defence, to be stored in the Registry vault.² The same order was reiterated by the PTC in the "Décision fixant la date de l'audience de confirmation des charges" issued on 31 October 2008 (hereinafter referred to as "31 October Decision").³
6. Therefore, after the materials in question will be inspected by the Defence, pursuant to the Defence's request dated 24 October 2008,⁴ the laptop, the three video tapes and the documents will have to be submitted to the Registry in compliance with the 31 July Decision and the 31 October Decision.
7. The folder titled "CPI", claimed by the Defence as a very important tool for defence preparation, has already been disclosed to the Defence on 30 October 2008, as communicated to the PTC.⁵
8. The Prosecution also informed the Defence on 28 October 2008 and 29 October 2008 about its readiness and availability to permit the Defence to inspect the laptop belonging to the suspect.⁶ The inspection by the Defence will take place in the next days, depending on Defence's readiness.⁷

² ICC-01/05-01/08-55, pag. 24, para 4.

³ ICC-01/05-01/08-199, pag. 7, para. 4.

⁴ The Defence requested via e-mail to inspect the laptop belonging to the suspect and the charger of the laptop. The communication via e-mail dated 24 October 2008 is attached to this response as Annex A.

⁵ ICC-01/05-01/08-198, Prosecution's Communication of Rule 77 Evidence Disclosed to the Defence on 30 October 2008, with Confidential Annex A, ICC-01/05-01/08-198-Conf-AnxA (List of disclosed materials)

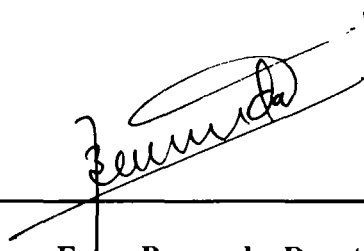
⁶ Prosecution's communications to the Defence via e-mail dated 28 October 2008 and 29 October 2008 are attached to this response as Annexes B and C.

⁷ The inspection of the laptop belonging to Mr. Bemba was scheduled on 30 October 2008, but it could not be undertaken, as the Defence Team's representative did not have the password to get access to the laptop. The inspection report dated 30 October 2008 is attached to this response as Annex D.

9. As to the three video tapes and the documents of which the Defence requested the restitution, it has been clarified with the Defence that they have already been disclosed by the Prosecution pursuant to Rule 77 of the Rules. However, due to a technical problem, the Defence has not been able to open the video tapes and the documents. The Prosecution has therefore invited the Defence to identify those video tapes and documents by referring to their "evidence reference numbers" ("ERNs"), so as to either re-disclose those materials, or assist the Defence to solve the technical problems in any other possible way.⁸

Relief Sought

10. For the foregoing reasons, the Prosecution respectfully requests that the PTC dismiss the Defence's Application.



Fatou Bensouda, Deputy Prosecutor
On Behalf Of
Luis Moreno-Ocampo, Prosecutor

Dated this 7th day of November 2008

At The Hague, The Netherlands

⁸ The Prosecution's communication to the Defence via e-mail dated 31 October 2008 is attached to this response as Annex E.