

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/08
Date: 12 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 Document

With Confidential, Prosecution and Defence Only Annex A

**Prosecution's Fourth Report on the Status of Documents Referred to in Article 54(3)(e)
of the Rome Statute and Related Documents**

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****Counsel for the Defence of Jean-Pierre Bemba**

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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**

Introduction

In the “Decision on the status of documents as referred to in Article 54(3)(e) of the Rome Statute” issued by the Pre-Trial Chamber III (hereinafter referred to as “the Chamber”) on 29 October 2008 (hereinafter referred to as the “29 October 2008 Decision”)¹, the Chamber ordered the Office of the Prosecutor (hereinafter referred to as “the Prosecution”), no later than 12 November 2008, to (i) take all necessary steps to ensure lifting of confidentiality restrictions on all documents containing information of potentially exculpatory nature, with a view to making them available to the Chamber in a non-redacted form; (ii) requested the Prosecution to provide information on whether consultations with third parties have been finalised in relation to the 1200 documents with a view to ascertaining if protective measures are necessary; and (iii) whether any of these 1200 documents is of exculpatory nature.²

The Prosecution respectfully submits this report in response to the issues raised by the Chamber in its 29 October 2008 Decision in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (hereinafter referred to as the “Fourth Report”).³

Request for Confidentiality

1. The Prosecution requests that the Chamber receives this filing and its annex as confidential, as they respond to a decision, which was filed confidentially.⁴

Procedural Background

2. On 17 June 2008, the Chamber issued its “Decision convening a status conference” in which it requested the Prosecution to submit a report on the number of documents received under Article 54(3)(e) of the Rome Statute (hereinafter referred to as the “Statute”) and on the status of lifting of confidentiality restrictions attached to these documents.⁵

¹ ICC-01/05-01/08-196-Conf.

² *Ibid.*, at p. 7.

³ The previous reports submitted to the Chamber have been titled sequentially. The last report submitted to the Chamber on 14 October 2008 was titled “the Third Report”.

⁴ ICC-01/05-01/08-196-Conf.

⁵ ICC-01/05-01/08-17-Conf-Exp

3. On 30 June 2008, the Prosecution submitted its first report on the status of documents received pursuant to Article 54(3)(e) of the Statute and other related documents.⁶ The Prosecution notified the Chamber in this first report that it had identified 5 documents (1 Report and its 4 Annexes) in the Central African Republic collection (hereinafter referred to as the "CAR collection") which may contain potentially exculpatory information and had sent a letter to the relevant information provider to lift confidentiality restrictions. The Prosecution further informed the Chamber that a search of the Democratic Republic of Congo collection (hereinafter referred to as the "DRC collection") was ongoing. Additionally, the Prosecution notified the Chamber that the Central African Republic Authorities (hereinafter referred to as the "CAR Authorities") had submitted approximately 1200 documents in support of the referral, which were not submitted under Article 54 (3)(e) of the Statute but some of which may affect the interests of third parties and may require protective measures.
4. On 10 September 2008, the Single Judge issued the "Decision requesting the Prosecutor to submit a report on documents affected by Article 54(3)(e) of the Rome Statute".⁷
5. On 22 September 2008, the Prosecution filed its Second Report to the Chamber on the status of documents received under Article 54(3)(e) of the Statute (hereinafter referred to as the "Second Report").⁸ In particular, the Prosecution informed the Chamber that only 1 document (the Report) had been identified as containing potentially exculpatory information. The Prosecution further informed the Chamber of the ongoing search in the DRC collection. The Prosecution also submitted that it had consulted with the CAR authorities, who had not indicated particular requirements as to protective measures in respect of the approximately 1200 documents received from them. Finally, the Prosecution informed the Chamber that the CAR authorities recommended that the Prosecution address directly with third parties referred to in these documents the need for protective measures. The Second Report concluded that consultations with the third parties were underway.⁹

⁶ ICC-01/05-01/08-31-US-Exp.

⁷ ICC-01/05-01/08-100-Conf-Exp.

⁸ ICC-01/05-01/08-113-Conf-Exp.

⁹ ICC-01/05-01/08-113-Conf-Exp.

6. At the status conference convened by the Chamber on 8 October 2008, the Prosecution committed to file its Third Report on the status of documents affected by Article 54(3)(e) of the Statute in both CAR and DRC collections, and the status of consultations with information providers on the lifting of confidentiality restrictions attached to these documents.¹⁰
7. On 14 October 2008, the Prosecution submitted its Third Report¹¹ informing the Chamber that it had consulted with the information provider of the 1 Report and its 4 annexes in the CAR collection, and expected a resolution on this issue. Furthermore, the Prosecution informed the Chamber that it had identified 4 documents in the DRC collection that may contain PEXO or information of Rule 77 of the Rules of Procedure and Evidence (hereinafter referred to as the "Rules") evidentiary value. The Prosecution notified the Chamber that it had requested lifting of restrictions on these documents from the information provider.

Request to the Prosecution to take all necessary steps to ensure lifting of confidentiality on PEXO documents and to make them available to the Chamber by no later than 12 November 2008

8. After the filing of the Third Report, the Prosecution disclosed to the Defence, 1 document from the DRC collection previously collected under Article 54 (3)(c) of the Statute and which could later be found in the public domain.¹² This disclosure to the Defence reduced the total number of documents affected by Article 54(3)(e) of the Statute confidentiality restrictions in the DRC collection to 3. On 7 November 2008, the provider of these 3 documents notified the Prosecution that it lifted all previous restrictions. The 3 documents were subsequently disclosed to the Defence on 12 November 2008.
9. In furtherance of consultations with the information provider of the 1 report in the CAR collection for which the Prosecution had requested lifting of restrictions, on 11 November 2008, the information provider placed the relevant portion of the information which may

¹⁰ ICC-01/05-01/08-T-6-CONF-EXP-ENG ET, p. 40, lines 13-22.

¹¹ ICC-01/05-01/08-157-Conf-Exp

¹² A public version of this document was located and registered in the CAR collection under CAR-OTP-0030-0280, which was disclosed to the Defence as Rule 77 in Batch 4 on 16 October 2008: ICC-01/05-01/08-160-Conf-AnxA, List of Disclosed Material - number 18.

contain PEXO in the public domain. The Prosecution has already indicated to the Defence the webpage where the said information can be accessed, and has additionally disclosed a copy of the relevant information on 12 November 2008.

10. The Prosecution has no other document in its possession received under 54(3)(e) which may contain potentially exonerating value or probative value under Rule 77. The Prosecution has obtained the relevant consents from the information providers concerned in order to lift confidentiality restrictions, and has thus fulfilled in time its disclosure obligations.

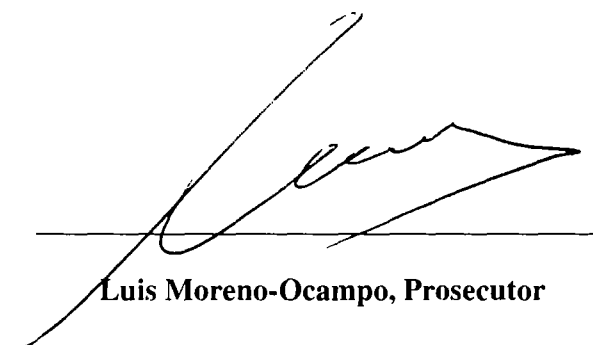
Submission on whether consultations with third parties have been finalized in relation to the 1200 documents submitted by the CAR authorities with a view to ascertaining if protective measures are necessary, and whether any of these documents is of exculpatory nature

11. The vast majority of the approximately 1200 documents submitted in support of the referral by the CAR authorities were documents generated by CAR authorities which have not expressed specific protection requirements in the event of disclosure. They do not affect third parties.
12. Of these documents, the Prosecution has identified 7 to be of potential exculpatory nature and 34 as falling under Rule 77 of the Rules. These documents have already been disclosed and/or provided to the Defence for inspection, as further detailed in the Annex A appended.¹³
13. A limited number of documents were initially generated by third parties. After review, it appears that these documents do not contain potentially exonerating value or probative value under Rule 77. Further, the Prosecution does not intend to rely on these documents at the confirmation hearing. The Prosecution has therefore determined that the documents in question do not have to be disclosed to the defence. Consultations with third parties on protective measures which may be required in the event of disclosure to the defence are therefore no longer necessary

¹³ Annex A is the list of material disclosed to the Defence pursuant to Article 67(2) and Rule 77, which were part of the 1200 documents submitted by the CAR Authorities alongside the referral.

Conclusion

14. The disclosure of evidence pursuant to Article 67(2) of the Statute and/or Rule 77 of the Rules is an ongoing obligation in order to ensure fairness of the proceedings for the suspect. The Prosecution submits that in the present case, it has disclosed the totality of exculpatory evidence and evidence material to the preparation of the Defence in anticipation of the confirmation hearing.



Luis Moreno-Ocampo, Prosecutor

Dated this 12th day of November 2008

At The Hague, The Netherlands