

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 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

**Prosecution's Response to Defence « *REQUETE AUX FINS DE DIVULGATION DES
ELEMENTS PERTINENTS RELATIFS A L'ADMISSIBILITE* » dated 22 July 2009**

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

Mr Nkwebe Liriss

Mr Karim A. Khan

Mr Aimé Kilolo-Musamba

Mr Pierre Legros

Legal Representatives of Victims

Ms Marie Edith Douzima-Lawson

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

Ms Paolina Massidda

**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 History

1. On 22 December 2004, the Office of The Prosecutor (hereinafter referred to as the “Prosecution”) received a referral concerning the Situation in the Central African Republic (hereinafter referred to as the “CAR”) from the CAR Government.¹ In June 2005, the Prosecution received detailed information from the CAR authorities of the crimes committed and relevant information related to the national criminal proceedings.² On 22 May 2007, the Prosecutor announced the decision to open an investigation into the Situation in the CAR.
2. On 9 May 2008 the Prosecution filed its Application with annexes (hereinafter referred to as the “Arrest Warrant Application”)³ under Article 58 of the Rome Statute (hereinafter referred to as the “Statute”) requesting, *inter alia*, the issuance of a warrant of arrest for Mr Jean-Pierre Bemba-Gombo (hereinafter referred to as the “Accused”). Thereafter on 27 May 2009, the Prosecution filed its Submission on Further Information and Materials for the Arrest Warrant Application (hereinafter referred to as the “Prosecution’s Further Submission”).⁴
3. Between October and November 2008, pursuant to the “Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties”⁵, the Prosecution disclosed evidence, including information falling under Article 67(2) of the Statute and Rule 77 of the Rules of Procedure and Evidence (hereinafter referred to as the “Rules”), to the Defence.
4. On 1 December 2008, in the “Decision on re-classification and unsealing of certain documents”⁶, the Pre-Trial Chamber III (hereinafter referred to as the “PTC III”) ordered the reclassification of additional documents attached to the Prosecution’s Arrest Warrant Application and the Prosecution’s Further Submission.

¹ ICC-01/05-16-US-Exp-Anx1A, transferred to the Case under the reference ICC-01/05-01/08-29-Conf-Anx1A.

² ICC-01/05-16-US-Exp-Anx1B, transferred to the Case under the reference ICC-01/05-01/08-29-Conf-Anx1B.

³ ICC-01/05-13-US-Exp, transferred to the Case under the reference ICC-01/05-01/08-26-US-Exp.

⁴ ICC-01/05-16-US-Exp, transferred to the Case under the reference ICC-01/05-01/08-29-US-Exp.

⁵ ICC-01/05-01/08-55; ICC-01/05-01/08-199.

⁶ ICC-01/05-01/08-301.

5. On 22 July 2009, the Defence filed its “Requête Aux Fins De Divulgateion Des Eléments Pertinents Relatifs A L’admissibilité”⁷ (hereinafter referred to as the “Defence Application”) requesting the Pre-Trial Chamber II (hereinafter referred to as the “Chamber”) to order the Prosecution to disclose to the Defence, *inter alia*, all relevant correspondence addressed to or received from the CAR and Democratic Republic of Congo (hereinafter referred to as the “DRC”) national authorities which is likely to be useful for the question of admissibility.⁸ The Defence further referred to the Prosecutor’s mission in the CAR and information related to admissibility as detailed in the “Prosecution’s report pursuant to Pre-Trial Chamber III’s 30 November 2006 Decision Requesting Information on the Status of the Preliminary Examination of the Situation in the CAR” (hereinafter referred to as the “Prosecution’s Report”).⁹

6. Pursuant to Regulation 24(1) of the Regulations of the Court (hereinafter referred to as the “Regulations”), the Prosecution hereby files this Response to the Defence Application.

Prosecution’s Response

7. For the reasons set out below, the Prosecution respectfully requests that the Single Judge dismiss the Defence Application as it is both legally and factually unsubstantiated.

The Defence request constitutes a procedural error devoid of a legal basis

8. The Defence Application is essentially a request for disclosure of documents bearing on the issue of admissibility. Yet, the Defence has neither sought initial disclosure directly from the Prosecution as mandated by the operative *inter partes* disclosure system¹⁰, nor has the Prosecution taken a position that it will not disclose any such documents if identified. The Prosecution asserts that it is only failing the obligation to honour such a request from the Defence that an application to the Chamber to order disclosure would be appropriate. Consequently, such an application is premature. Thus, without any prejudice as to

⁷ ICC-01/05-01/08-458.

⁸ *Ibid* at p. 3-4.

⁹ *Ibid* at p. 4; see also ICC-01/05-7.

¹⁰ See ICC-01/05-01/08-55.

disclosure, the Defence Application is unsupported by the Statute, Rules and Regulations, as well as the facts.

The Prosecution has disclosed all relevant documents related to admissibility

9. The Prosecution thoroughly reviewed all documents in its possession or control, including the CAR and the DRC collections, and fully discharged its disclosure obligations between October and November 2008. Thus the Defence has possession of the relevant documents related to admissibility, including those referred to in the Prosecution's Report, such as the Decision of the *Cour de Cassation* on the national criminal proceedings conducted in the CAR, as well as other relevant documents from the *Cour d'Appel de Bangui*.¹¹ Furthermore the PTC III reclassified as "Confidential" and made available to the Defence relevant documents bearing on admissibility and those specified in the Prosecution's Report. In this regard, the Prosecution submits that the Defence has both the referral and its supporting report provided by the CAR authorities.¹²
10. However, if the Defence takes issue with the receipt of the items described above or seeks other material relevant to admissibility, the Prosecution invites the Defence to specify any such undisclosed document(s) that they believe to be in the Prosecution's possession or control. The Prosecution will review such a request and respond to the Defence in a timely manner.
11. Furthermore, in spite of the Defence request for a stay of all proceedings and the corrigendum filed consecutively on 17 and 20 July 2009,¹³ based, *inter alia*, on the Accused's inability to honour his financial obligations to his Defence team due to the freezing of his

¹¹ These documents, noted in the "Prosecution's report pursuant to Pre-Trial Chamber III's 30 November 2006 Decision Requesting Information on the Status of the Preliminary Examination of the Situation in the CAR": ICC-01/05-7, were referred to in paragraph 7 of the Defence Application and disclosed to the Defence in ICC-01/05-01/08-138-Conf-AnxA. In the same filing (ICC-01/05-7), the Prosecution referred to its Draft Report on Article 53(1) which is an internal work product protected under Rule 81(1) of the Rules and thus not subject to disclosure.

¹² See ICC-01/05-01/08-301, "Decision on re-classification and unsealing of certain documents": ICC-01/05-01/08-29-Conf-Anx1A and ICC-01/05-01/08-29-Conf-Anx1B.

¹³ ICC-01/05-01/08-452 and ICC-01/05-01/08-452-Corr.

assets,¹⁴ the Prosecution submits that the Defence Application constitutes a fresh step in furtherance of the current proceedings.

Relief Sought

12. For the reasons set out above, the Prosecution respectfully requests the Single Judge to dismiss the Defence Application for an order directing the Prosecution to disclose documents related to admissibility.



Luis Moreno-Ocampo, Prosecutor

Dated this 13th day of August 2009

At The Hague, The Netherlands

¹⁴ The Defence informed the Single Judge of the non-renewal of the mandate of one of its counsels, as well as the resignation of its legal assistant, see ICC-01/05-01/08-452-Corr.