

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 4 November 2009

TRIAL CHAMBER III

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge Joyce Aluoch

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

Public Document

Order on disclosure of evidence by the Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor
Ms Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Mr Nkwebe Liriss
Mr Aimé Kilolo-Musamba

Legal Representatives of the Victims

Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

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

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod Jacome

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

Outstanding evidence the Office of the Prosecutor intends to rely on at trial

1. At the status conference on 7 October 2009, Trial Chamber III ("Chamber") ordered the Office of the Prosecutor ("prosecution") to provide a list of the outstanding material it seeks to introduce during its evidence, a summary of the ambit of this material, the issues it concerns and the reasons for late service.¹ This information was provided on 9 October 2009,² and it included a confidential *ex parte* Annex A ("Annex A") containing the full names of the witnesses, a summary of their evidence and its relevance.³

2. Rule 76 of the Rules of Procedure and Evidence ("Rules") states:

Pre-trial disclosure relating to prosecution witnesses

1. The Prosecutor shall provide the defence with the names of witnesses whom the Prosecutor intends to call to testify and copies of any prior statements made by those witnesses. This shall be done sufficiently in advance to enable the adequate preparation of the defence.
2. The Prosecutor shall subsequently advise the defence of the names of any additional prosecution witnesses and provide copies of their statements when the decision is made to call those witnesses.
3. The statements of prosecution witnesses shall be made available in original and in a language which the accused fully understands and speaks.
4. This rule is subject to the protection and privacy of victims and witnesses and the protection of confidential information as provided for in the Statute and rules 81 and 82.

3. In order to facilitate timely defence-preparation and for wider reasons of efficient case-management the prosecution is to provide the defence with Annex A, once any confidential information has been protected, no later than 16.00 on 9 November 2009. If the prosecution anticipates difficulty in implementing this Order, the Chamber is to be notified, in writing, within 48 hours of notification.

¹ Transcript of hearing on 7 October 2009, ICC-01/05-01/08-T-14-ENG-ET, page 9, line 23 to page 10, line 2.

² Prosecution's submission of summary and relevance of outstanding materials and reasons these have not been filed, ICC-01/05-01/08-552, 9 October 2009.

³ Annex A to the Prosecution's submission of summary and relevance of outstanding materials and reasons these have not been filed, ICC-01/05-01/08-552-Conf-Exp-AnxA, 9 October 2009.

Outstanding potentially exculpatory and Rule 77 material

4. The prosecution has an obligation to serve evidence under Article 67(2) of the Rome Statute ("Statute"), as follows:

In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

Additionally, by Rule 77 of the Rules:

Inspection of material in possession or control of the Prosecutor

The Prosecutor shall, subject to the restrictions on disclosure as provided for in the Statute and in rules 81 and 82, permit the defence to inspect any books, documents, photographs and other tangible objects in the possession or control of the Prosecutor, which are material to the preparation of the defence or are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or at trial, as the case may be, or were obtained from or belonged to the person.

5. It is critical that these obligations are met in a timely and comprehensive manner.

Time-limit for disclosure

6. On 7 October 2009, the prosecution indicated it intends to complete disclosure by the end of November 2009.⁴ The prosecution filed a "Prosecution's Request to Lift, Maintain and Apply Redactions to Witnesses' Statements and Related Documents" on 26 October 2009⁵ which requests *inter alia* the lifting of all

⁴ ICC-01/05-01/08-T-14-ENG-ET, page 9, lines 16-18.

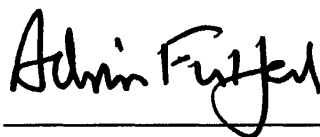
⁵ Prosecution's Request to Lift, Maintain and Apply Redactions to Witnesses' Statements and Related Documents, 26 October 2009, ICC-01/05-01/08-572-Conf-Exp with 219 confidential *ex parte* annexes; confidential *ex parte* redacted version notified to the defence filed on 26 October (notified on 27 Oct), ICC-01/05-01/08-572-Conf-Exp-Red; public redacted version notified on 27 October, ICC-01/05-01/08-572-Red2.

redactions relating to five witnesses; partial lifting of redactions relating to 16 witnesses; and imposition of redactions relating to 22 witnesses (the statements of 6 of whom are being disclosed to the defence under Article 67(2) of the Statute or Rule 77 of the Rules). Given the amount of material which will need to be reviewed with care and the requirement for disclosure of material sufficiently in advance of the commencement of the trial to enable adequate preparation for trial, the Chamber, pursuant to Articles 64(3)(c), 64(6)(c), 64(6)(e) and 68 of the Statute, orders the prosecution to serve the material which is the subject of this request in its current redacted form pending a decision of the Chamber on the prosecution's request of 26 October 2009.

7. Against the background of Articles 64(3)(c), 67 of the Statute and Rules 76 and 77 of the Rules and to ensure they are properly implemented, the Chamber reiterates the direction given during the status conference on 7 October 2009 that the prosecution must effect its disclosure obligations in their entirety by 16.00 on 30 November 2009, subject to paragraph 6 above.⁶ If the prosecution is unable to comply with this order, it is to set out the reasons in writing by way of a filing, sufficiently in advance of that date to enable the Chamber to resolve the issue, including by way of a hearing, before the deadline expires.

⁶ ICC-01/05-01/08-T-14-ENG-ET, page 16, lines 5 – 6.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge Joyce Aluoch

Dated this 4 November 2009

At The Hague, The Netherlands