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

TRIAL CHAMBER III

Before: **Judge Adrian Fulford, Presiding Judge**
Judge Elisabeth Odio-Benito
Judge Joyce Aluoch

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

Public document
With Confidential, *Ex Parte*, Prosecution and Defence only Annex A

Prosecution's Submission on Evidence that it intends to positively rely upon at trial

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 Aimé Kilolo Musamba
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 Section	**Other**

Introduction

1. During the status conference of 7 October 2009, Trial Chamber III ("the Chamber") requested submissions from the parties and participants on the evidential significance of Evidence numbers ("EVD") assigned to items of incriminatory evidence filed in the case.[1] The Chamber recalled the experience of Trial Chamber I in the *Lubanga* case, wherein only a selection of items of incriminatory evidence disclosed in the case were submitted before the Judges as forming part of the Prosecution's evidence.[2] Given these circumstances, the Chamber sought to know how they and the other participants are to identify which documents are positively relied on and which documents happen to be included but which are no longer relied on. As a solution, the Chamber proposed that while the Prosecution compiles its summary, it may wish to use that opportunity to list each item of incriminatory evidence with an EVD number, which the Prosecution will be positively relying upon at trial.[3] The Office of the Prosecutor ("the Prosecution") respectfully provides its submissions on the matter.

Prosecution's submission

2. In compliance with the Chamber's proposal, the Prosecution appends as Annex A to this submission a list of items of incriminatory evidence the Prosecution references in its case summary and which it currently intends positively to rely upon at trial at this stage. Annex A also contains the corresponding EVD numbers for items of incriminatory evidence for which the Registry has assigned EVD numbers. The other items contained in the list without corresponding EVD numbers have either not been disclosed or are pending before the Chamber for protective measures.

3. The Prosecution notes that the list does not limit the Prosecution's right to introduce new evidence and that the Prosecution is not bound solely by those items of incriminatory evidence which it references in its case summary. This submission is supported by Articles 54 (1)(a) and (b) of the Statute as well as the Appeals Chamber's Judgment in the *Lubanga* case, which confirms that the Prosecution's investigations may continue beyond the confirmation of charges.[4]

[1] ICC-01/05-01/08-T-14-ENG, p. 16, lines 22-25.
[2] ICC-01/05-01/08-T-14-ENG, p. 17, lines 1-5.
[3] The Prosecution has provided submissions on why it should be allowed to introduce new evidence not presently in its possession and not be solely bounded by evidence referenced in its summary document to prove its case at trial.
[4] *Prosecutor v. Lubanga*, "Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled Decision Establishing General principles Governing Applications to Restrict Disclosure pursuant to Rules 81(2) and (4) of the Rules of Procedure and Evidence" 13 October 2006, ICC-01/04-01/06-568, paras. 2 and 52.

As the Appeals Chamber noted, "the duty to establish the truth is not limited to the time before the confirmation hearing. Therefore, the Prosecution must be allowed to continue its investigations beyond the confirmation hearing if this is necessary to establish the truth."[5]

Request for Confidentiality

4. The Prosecution requests that Annex A appended to this filing be received as Confidential, Ex Parte, Prosecution and Defence Only because it contains information on witnesses known only to the Defence but not the public.

Conclusion

5. In light of the foregoing, the Prosecution requests that the Chamber receives this filing and its appended Annex A, as evidence that it positively intends to rely upon at this stage, without excluding the possibility of introducing further evidence necessary to establish the truth.

Luis Moreno-Ocampo, Prosecutor

Dated this 4th day of November 2009

At The Hague, The Netherlands

[5] *Ibid,* para. 52