

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 13 January 2010

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

Prosecution's Response to the Defence's Observations titled "Observations de la Défense sur la Divulgence du Procureur du 18 Décembre 2009 conformément à la seconde décision de la Chambre de Première Instance III du 14 Décembre 2009 référencée ICC-01 /05-01/08-655"

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

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1. On 14 December 2009, Trial Chamber III (“the Chamber”) issued the “Second decision on disclosure relating to an admissibility challenge” (“Second Decision”) whereby it ordered the Office of the Prosecutor (“the Prosecution”) to disclose the judicial decisions of the national criminal courts in Bangui as identified in paragraph 19 thereof together with any other decisions in the possession of the Prosecution which concern the crimes committed during the 2002-2003 conflict.

2. On 18 December 2009, the Prosecution filed the “Prosecution’s communication of documents disclosed to the Defence on 18 December 2009 pursuant to the “Second decision on disclosure relating to an admissibility challenge”.¹

3. On 22 December 2009, the Defence filed the “Observations de la Défense sur la Divulgence du Procureur du 18 Décembre 2009 conformément à la seconde décision de la Chambre de Première Instance III du 14 Décembre 2009 référencée ICC-01 /05-01/08-655”.² The Defence asserted that the Prosecution deliberately disclosed more material than was prescribed by the Second Decision and that it included additional incriminatory material to circumvent the Chamber’s orders requiring disclosure by 30 November.³ The Defence identified 18 documents out of the 74 documents disclosed by the Prosecution on 18 December as the only documents that meet the criteria under the Second Decision.⁴ Though termed “Observations,” the filing affirmatively requests that the Chamber i) not take into consideration the disclosure of the materials that did not conform to the Second Decision, notably “les 49 procès-

¹ ICC-01/05-01/08-659.

² ICC-01/05-01/08-663.

³ ICC-01/05-01/08-663, paras 6, 7, 10.

⁴ ICC-01/05-01/08-663, para 8. It is noted that the Defence stated in paragraph 6 of its application that the Prosecution disclosed 55 irrelevant documents out of the total documents disclosed (74 documents), which would suggest that there are 19 relevant documents. However, in paragraph 8, it identified only 18 documents as relevant. The Defence also complains in particular about 49 allegedly irrelevant documents. Ultimately, however, because the remedy sought is unnecessary, it is not essential to clarify how many, or which, documents are at issue.

verbaux de constat et d'audition", and ii) order the Prosecution not to rely on the said materials.

4. The Prosecution disagrees with the Defence assertion that the Prosecution intended to circumvent the Chamber's orders barring the inclusion of additional incriminatory evidence. Contrary to the Defence assumption,⁵ the Prosecution did not classify the contested documents as incriminatory, and it does not intend to rely on them as affirmative evidence of guilt at the upcoming criminal trial.

5. Rather, the Prosecution disclosed the documents to the Defence as Rule 77 material to assist the Defence in its preparation to an admissibility challenge. The contested documents are all part of the dossier before the national criminal courts in Bangui. They were disclosed to enable the Defence to view the relevant documents in their proper context.⁶

6. Because the Prosecution did not and does not intend to rely on the contested documents as incriminatory evidence, the Defence's second request is unnecessary.



Luis Moreno-Ocampo, Prosecutor

Dated this 13th Day of January 2010

At The Hague, The Netherlands

⁵ See ICC-01/05-01/08-663, para 10.

⁶ In so doing, the Prosecution followed the directions of the Chamber that "there is a clear need for the defence to be able to view any relevant documents in their proper context", ICC-01/05-01/08-632, para 30.