

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 10 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
THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

**URGENT
Public**

**Decision on the Submission of an Updated, Consolidated Version of the In-depth
Analysis Chart of Incriminatory Evidence**

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

The Office of the Prosecutor

Fatou Bensouda, Deputy Prosecutor
Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Nkwebe Liriss
Tjarda E. Van der Spoel
Aimé Kilolo-Musamba

Legal Representatives of the Victims

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
Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. **Pre-Trial Chamber III** (the “Chamber”) of the International Criminal Court (the “Court”) follows up on its oral order made during the status conference convened on 22 October 2008.¹

2. On 31 July 2008 the Chamber issued a “Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties” (the “Decision on Disclosure”)² in which it decided, *inter alia*, that “when submitting any evidence to the Registry, the parties shall provide (...) [a]n analysis of each piece of evidence reflecting its relevance as described in part III of this decision”.³

3. On 1 October 2008 the Prosecutor filed the document containing the charges against Jean-Pierre Bemba Gombo.⁴ An amended version was filed on 17 October 2008 along with an amended list of evidence.⁵ Throughout October 2008 and on 7 November 2008 the Prosecutor also submitted in-depth analysis charts for both incriminatory⁶ and exonerating⁷ evidence. Pursuant to an oral decision taken by the

¹ ICC-01/05-01/08-T-8-CONF-ENG CT.

² ICC-01/05-01/08-55.

³ *Ibid.*, letter (e) of the operative part, p. 22.

⁴ “Prosecution’s Submission of Public Redacted Version of the Document Containing the Charges Against Jean-Pierre Bemba Gombo”, ICC-01/05-01/08-136. The list of evidence had been provided to the Defence on a confidential basis on 1 October 2008, ICC-01/05-01/08-129-Conf-Anx2C.

⁵ “Prosecution’s Submission of Amended Document Containing the Charges and Amended List of Evidence”, ICC-01/05-01/08-169 and its annexes. A second amended list of evidence was filed by the Prosecutor on 7 November 2008, ICC-01/05-01/08-225-Conf-Anx2A.

⁶ “Prosecution’s Communication of In-Depth Analysis Charts for Items of Truly Relevant Incriminating and Exonerating Evidence Disclosed to the Defence on 1 October 2008”, ICC-01/05-01/08-130-Conf-Exp-AnxA; “Prosecution’s Submission of In-Depth Analysis Chart for Items of Evidence Disclosed to the Defence as Incriminatory Evidence on 1 and 3 October 2008”, ICC-01/05-01/08-163-Conf-AnxA; “Prosecution’s Submission of In-Depth Analysis Chart for Items of Evidence Disclosed to the Defence as Incriminatory Evidence on 17 October 2008”, ICC-01/05-01/08-178-Conf-AnxA; “Prosecution’s Communication of Redacted In-Depth Analysis Charts pursuant to the Chamber’s Oral Decision of 22 October 2008 for Items of Truly Relevant Incriminating Evidence disclosed to the Defence on 1 October 2008”, ICC-01/05-01/08-182-Conf-Anx1; “Prosecution’s Submission of Updated Versions of In-Depth Analysis Charts for All Items of Incriminatory Evidence Disclosed to the Defence”, ICC-01/05-01/08-218-Conf-AnxB.

⁷ “Prosecution’s Communication of In-Depth Analysis Charts for Items of Truly Relevant Incriminating and Exonerating Evidence Disclosed to the Defence on 1 October 2008”, ICC-01/05-01/08-130-Conf-Exp-AnxB; “Prosecution’s Submission of In-Depth Analysis Chart for Items of Potentially Exonerating Evidence Disclosed to the Defence on 16 October 2008”, ICC-01/05-01/08-174-Conf-AnxA; “Prosecution’s Submission of Updated Version of In-Depth Analysis Chart for All Items of Potentially Exonerating Evidence Disclosed to the Defence”, ICC-01/05-01/08-203-Conf-AnxA.

Chamber during the status conference on 22 October 2008, the Prosecutor submitted consolidated in-depth analysis charts on 24 October 2008.⁸

4. The Chamber notes articles 61(3) and 61(6) of the Rome Statute (the “Statute”), rule 121 of the Rules of Procedure and Evidence (the “Rules”) and regulation 28 of the Regulations of the Court (the “Regulations”).

5. The Chamber recalls the status conference held on the 22 October 2008 in which it ordered the Prosecutor to provide an analysis chart of all evidence disclosed to the Defence in one consolidated document⁹ and clarified the correct approach for preparing this document in accordance with the Decision on Disclosure.¹⁰

6. In its Decision on Disclosure the Chamber required, *inter alia*, that the Prosecutor conduct an in-depth analysis consisting of “presenting each piece of evidence according to its relevance in relation to the constituent elements of the crimes presented by [him] in his application under article 58 of the Statute” so that the analysis is presented in a manner which “shows the relevance of the evidence presented in relation to the constituent elements of the crimes with which the person is charged”. This enables the Chamber to “verify that for each constituent element of any crime with which the person is charged, including their contextual elements, as well as for each constituent element of the mode of participation in the offence with which he or she is charged, there are one or more corresponding pieces of evidence (...), which the Chamber must assess in light of the criteria set under article 61(7) of the Statute”.¹¹

⁸ “Prosecution’s Submission of Consolidated Versions of In-Depth Analysis Charts for All Items of Evidence Disclosed to the Defence”, ICC-01/05-01/08-187-Conf-AnxB-D.

⁹ ICC-01/05-01/08-T-8-CONF-ENG CT, p. 30, lines 10-20.

¹⁰ ICC-01/05-01/08-T-8-CONF-ENG CT, p. 14, lines 7-17.

¹¹ ICC-01/05-01/08-55, paras 69-70.

7. The Chamber acknowledges the efforts undertaken by the Prosecutor to comply with the Decision on Disclosure. However, the Chamber remains of the opinion that the Prosecutor's consolidated incriminating evidence analysis chart does not fully adhere to paragraphs 69 and 70 of the said decision in terms of the organisational and analytical structure of the chart.

8. As the Chamber is duty bound to guarantee the fairness and proper organisation of proceedings during the pre-trial stage, particularly during the confirmation of charges hearing, and to ensure the effective implementation of the Decision on Disclosure, it requests the Prosecutor to submit an updated, consolidated version of the in-depth analysis chart of incriminating evidence following the structure of the model chart annexed to the present decision.


9. The Chamber finally underlines that if the Defence intends to present evidence under article 61(6) of the Statute and in accordance with rules 78, 79 and 121(6) of the Rules or rely on evidence disclosed by the Prosecutor it shall follow the same approach as indicated by the Chamber in the present decision.

FOR THESE REASONS, THE CHAMBER

a) requests the Prosecutor to submit an updated, consolidated version of the in-depth analysis chart of incriminating evidence disclosed, following the analysis structure of the model chart annexed to the present decision no later than **Monday, 24 November 2008**.

b) requests the Defence to follow the same approach as indicated by the Chamber in the present decision if he intends to present evidence or rely on evidence disclosed by the Prosecutor.


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



Judge Ekaterina Trendafilova
Presiding Judge



Judge Hans-Peter Kaul



Judge Mauro Politi

Dated this Monday, 10 November 2008

At The Hague, The Netherlands

ANNEX

ELEMENTS	REFERENCE TO INCRIMINATORY EVIDENCE
CRIMES	
1. Crimes against humanity	
Common (contextual) elements	
(1) Attack	
(2) Widespread or systematic	
(3) Directed against a civilian population	
(4) <i>Knowledge of the attack</i>	
Specific constituent elements of the counts	
<i>Count 1 – Rape - Article 7(1)(g)</i>	
Specific elements following the text of the elements of crimes	
<i>Count 3 – Torture - Article 7(1)(f)</i>	
Specific elements following the text of the elements of crimes	
<i>Count 7 – Murder - Article 7(1)(a)</i>	
Specific elements following the text of the elements of crimes	
2. War crimes	
Common (contextual) elements	
(1) Armed conflict	
(2) Non-international	
(3) General requirement: i.e. awareness of the factual circumstances that establish the existence of an armed conflict	
Specific constituent elements of the counts	
<i>Count 2 – Rape- Article 8 (2)(e)(vi)</i>	
Specific elements following the text of the elements of crimes	
<i>Count 4 – Torture - Article 8(2)(c)(i)</i>	
Specific element following the text of the elements of crimes	
<i>Count 5 – Outrages upon personal dignity– Article 8(2)(c)(ii)</i>	

Specific elements following the text of the elements of crimes	
Count 6 – Murder - Article 8(2)(c)(i)	
Specific elements following the text of the elements of crimes	
Count 8 – Pillaging - Article 8(2)(e)(v)	
Specific elements following the text of the elements of crimes	
MODES OF LIABILITY	
Article 25(3) (a)	
(i) Jointly with another	
(ii) Jointly through another person	