

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 5 December 2008

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Single Judge

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

Public

Decision on the Disclosure of Evidence by the Defence

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
Karim A. A. Khan
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. **Judge Ekaterina Trendafilova**, acting as Single Judge on behalf of Pre-Trial Chamber III (the “Chamber”) of the International Criminal Court (the “Court”)¹ follows up on the Defence’s submission of its list of evidence.

2. On 31 July 2008 the Chamber issued its “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 In addition, the Chamber also provided the parties with the e-Court protocol, setting the standards for submitting their evidence in electronic form and the requisite metadata which should accompany the evidence in order to ensure the proper disclosure process.⁴

3. On 22 October 2008 during a status conference, the Chamber explained the meaning of such a disclosure requirement,⁵ and on 10 November 2008 the Chamber issued its “Decision on the Submission of an Updated, Consolidated Version of the In-depth Analysis Chart of Incriminatory Evidence” with a model chart annexed thereto (the “Model Chart”).⁶ Although this decision was mainly addressed to the Prosecutor, the Chamber notified the Defence and reminded it to follow the same approach if it decided to present evidence or rely on evidence disclosed by the Prosecutor.⁷

4. On 31 October 2008, in view of the confirmation of charges hearing (the “Hearing”), the Chamber established a calendar for disclosure, requiring the Defence

¹ “Decision Designating a Single Judge”, ICC-01/05-01/08-293.

² ICC-01/05-01/08-55.

³ ICC-01/05-01/08-55, letter (e) of the operative part, p. 22.

⁴ ICC-01/05-01/08-55, para. 62 and Annex.

⁵ ICC-01/05-01/08-T-8-CONF-ENG, p. 14, lines 7-17.

⁶ ICC-01/05-01/08-232-Anx.

⁷ ICC-01/05-01/08-232, para. 9.

to disclose the evidence which it intended to use for the purpose of the Hearing no later than 21 November 2008.⁸

5. On 21 November 2008 the Defence submitted its “List of Defence Evidence” (the “First List of Evidence”) with 61 items.⁹ On 25 November 2008 the Defence filed a “Communication par la Défense du rapport de pré-inspection des Eléments de preuve divulgués au Bureau du Procureur en vertu de la Règle 78 du Règlement de Preuve et de Procédure” (the “Second List of Evidence”) with an amended list of evidence containing 64 items.¹⁰ Finally, on 28 November 2008 the Defence submitted a third, amended list of evidence with 65 items (the “Third List of Evidence”).¹¹

6. The Single Judge notes article 61(6) of the Rome Statute (the “Statute”), rules 78 and 121(6) of the Rules of Procedure and Evidence (the “Rules”) and regulation 26 of the Regulations of the Court.

7. The Single Judge recalls the Chamber’s Decision on Disclosure, particularly part II-B on the registration procedure where it stated “that the parties shall submit evidence in due time [and] in proper format (...)”¹² and reminded the parties *inter alia* “to include in their submission of evidence (...) (i) a list of evidence enlisting all pieces of evidence enclosed with their respective document ID as defined in the e-Court protocol”.¹³ Accordingly, the Single Judge stresses the importance of the parties’ compliance with the Decision on Disclosure and the e-Court protocol, which “defines the standards according to which the [parties] should prepare and provide evidence and material in electronic form with the Court”.¹⁴ Furthermore, the Single

⁸ “Décision fixant la date de l’audience de confirmation des charges”, ICC-01/05-01/08-199, letter (b)(5) of the operative part, p. 7.

⁹ ICC-01/05-01/08-270-Conf-AnxA.

¹⁰ ICC-01/05-01/08-290-Conf-AnxA.

¹¹ ICC-01/05-01/08-298-Conf-AnxA and “Corrigendum Communication par la Défense du rapport de pré-inspection des Eléments de preuve divulgués au Bureau du Procureur en vertu de la Règle 78 du Règlement de Preuve et de Procédure”, ICC-01/05-01/08-298-Corr

¹² ICC-01/05-01/08-55, para. 54.

¹³ ICC-01/05-01/08-55, para. 62.

¹⁴ ICC-01/05-01/08-55-Anx.

Judge underlines that these requirements are meant to facilitate both parties' proper preparation for and participation in the Hearing.

8. The Single Judge observes that the Defence submitted most of its evidence by the 21 November 2008 deadline set by the Chamber in accordance with rule 121(6) of the Rules. After reviewing the Defence's Third List of Evidence, the Single Judge notes that the Defence: 1) failed to provide the Registry with all of the metadata required by the e-Court protocol,¹⁵ 2) neglected to provide dates for some items listed,¹⁶ 3) failed to systematically stamp the items with their respective document ID numbers,¹⁷ 4) provided inaccurate page counts for some documents,¹⁸ 5) gave incorrect document IDs for some items¹⁹ and 6) submitted some documents that were unreadable when uploaded onto Ringtail.²⁰ Therefore, the Single Judge considers that the Defence's disclosure was substantively incomplete and in turn ineffective as these problems have not been resolved despite the Defence's assertion that it has complied with the e-Court protocol.²¹

9. Furthermore, the Defence included some information regarding the relevance of each item, but it did not include a chart analyzing each piece of evidence in accordance with the Decision on Disclosure and the Model Chart. The Single Judge emphasizes that although the Defence may organise its strategy as it deems appropriate, it is still obliged to do so within the parameters of the law and the decisions of the Chamber. In particular, bearing in mind the person's right to object to the charges and present evidence pursuant to article 61(6)(a) and (c) of the Statute, the Defence is expected to follow the Model Chart when presenting its case.

¹⁵ The Defence has provided the following metadata: document ID, type, title and main date. In comparison, in addition to the aforementioned metadata the Prosecutor, following the Annex to the Decision on Disclosure, has also provided, organisations, language of the item, disclosure phase, participant, search limitations, batch, chain of custody notes, date filed, disclosure category and defendant and author.

¹⁶ In the Third List of Evidence dates were missing for evidence numbers 7, 31, 32 and 40.

¹⁷ Presently none of the documents uploaded onto Ringtail are stamped with document IDs.

¹⁸ In the Third List of Evidence the page counts for evidence numbers 26, 27, 33 and 34 are erroneous.

¹⁹ In the Third List of Evidence the document IDs for evidence numbers 11, 31, 32, 61, 63 and 64 are incorrect.

²⁰ For example, some pages uploaded onto Ringtail for evidence numbers 25, 26, 50 and 60 are unreadable.

²¹ "Communication par la Défense du rapport de pré-inspection des Eléments de preuve divulgués au Bureau du Procureur en vertu de la Règle 78 du Règlement de Preuve et de Procédure", ICC-01/05-01/08-298-Conf-AnxB

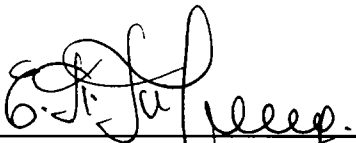
10. In these circumstances, the Defence is required to provide the Prosecutor and the Chamber with an in-depth analysis chart of each piece of evidence, following the approach described in part III of the Decision on Disclosure and the Model Chart and also comply with the e-Court protocol.

FOR THESE REASONS, THE SINGLE JUDGE

a) requests the Defence to re-submit no later than **Monday 15 December 2008**, its Third List of Evidence in compliance with the e-Court protocol laid out in the Annex to the Decision on Disclosure, especially with regard to the missing metadata and the document IDs of each item of evidence to be provided to the Registry.

b) requests the Defence to submit no later than **Monday 15 December 2008**, an in-depth analysis chart of the evidence it intends to use for the purpose of the Hearing, following the Model Chart.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Friday, 5 December 2008

At The Hague, The Netherlands