

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 18 December 2008

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Single Judge

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

**URGENT
Confidential**

Order for Full Disclosure and Further Clarification from the Defence

Order, to be notified in accordance with regulation 31 of the *Regulations of the Cour*, to:

The Office of the Prosecutor

Fatou Bensouda, Deputy Prosecutor
Petra Kneuer, 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 is seised with the matter of the disclosure of evidence in the case *The Prosecutor v. Jean-Pierre Bemba Gombo* (the “Case”).

2. On 15 December 2008 the Defence filed a communication² with the Chamber including two confidential annexes containing an up-dated list of evidence (the “Up-dated List of Evidence”)³ and a related in-depth analysis of that evidence⁴ following the Chamber’s decision on disclosure dated 31 July 2008 (the “Decision on Disclosure”)⁵ and a model chart as ordered by the Single Judge on 5 December 2008.⁶

3. The Single Judge notes that the name of a counsel, Mr Ngatouwa Goungaye Wanifiyo, currently legal representative for certain victims of the Case,⁷ appears in one of the Defence’s confidential evidence referenced under the EVD number EVD-D01-00037 and named “JPB: preuve achat des billets pour Enquêteurs par Kinshasa” (the “Defence’s Evidence”).⁸

4. The Single Judge notes articles 61(6), 67 and 69(3) of the Rome Statute (the “Statute”), rules 78, 79(4) and 121(6) of the Rules of Procedure and Evidence (the “Rules”), regulations 22 and 28 of the Regulations of the Court (the “Regulations”) and articles 12(1)(a) and 16 of the Code of Professional Conduct for counsel (the “Code of Conduct”).

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

² “Communication par la Défense de la Liste de ses Eléments de preuve ainsi que du ‘Chart Model of Indepth Analysis of defence evidences’ conformément à la décision de la Chambre Préliminaire III du 5 Décembre 2008 intitulée Decision on Disclosure of Evidence by the Defence”, ICC-01/05-01/08-319

³ ICC-01/05-01/08-319-Conf-AnxA.

⁴ ICC-01/05-01/08-319-Conf-AnxB.

⁵ ICC-01/05-01/08-55

⁶ “Decision on Disclosure of Evidence by the Defence”, ICC-01/05-01/08-311.

⁷ See notification sheet of the “Fourth Decision on Victims’ participation”, ICC-01/05-01/08-320

⁸ ICC-01/05-01/08-319-Conf-AnxA, p. 4, line 37 of the table.

5. The Single Judge notes that (i) the Defence's Evidence has not been disclosed in its entirety as one page is missing, (ii) in disclosing the Defence's Evidence, the field "author" or "person from whom the document emanated" of the e-Court protocol has not been completed and (iii) the Defence's Evidence names Mr Ngatouwa Goungaye Wanifiyo who is currently a legal representative for certain victims of the case.

6. First, with regard to the incompleteness of the Defence's Evidence, the Single Judge has the power, pursuant to article 69(3) of the Statute to request "the submission of *all* evidence that [she] considers necessary for the determination of the truth"(emphasis added). Inherent in the power to request all evidence be disclosed, is the power to order the full disclosure of evidence already partially disclosed. The same applies to rule 79(4) of the Rules, which also allows the Single Judge to order the disclosure of the Defence's Evidence in full. In addition, the Single Judge recalls the Decision on Disclosure which requested both parties fully and effectively disclose their evidence. Therefore, the Single Judge holds the view that the Defence's Evidence should be submitted in its entirety.

7. Second, with regard to the author of the Defence's Evidence, the Single Judge also recalls the Decision on Disclosure which refers to the e-Court protocol, setting standards for submitting evidence in electronic form and the requisite metadata which should accompany the evidence in order to ensure the proper disclosure process.⁹ The Single Judge underlines that "author" or "person from whom the document emanated" is metadata required to be provided to the Registry by the Defence. Thus, the Single Judge considers that the counsels of Jean-Pierre Bemba Gombo ("Mr Jean-Pierre Bemba") should re-submit the Defence's Evidence with the requisite metadata.

⁹ ICC-01/05-01/08-55, para. 62 and Annex, see also the "Decision on the Disclosure of Evidence by the Defence", ICC-01/05-01/08-311, para. 2.

8. Third, with regard to the role of Mr Ngatouwa Goungaye Wanifiyo in relation to Mr Jean-Pierre Bemba, the Single Judge notes regulation 28 of the Regulations in which a participant may be ordered to clarify or provide additional details on any document within a specified time limit.

9. The Single Judge recalls once more the Decision on Disclosure in which it was clearly stated that there are two forms of disclosure according to the nature of the evidence disclosed – disclosure *stricto sensu* of witness statements and disclosure by way of inspection of books, documents, photographs and other tangible objects in the possession or control of the Defence as prescribed under rule 78 of the Rules. The Single Judge further emphasises that “article 61(3) of the Statute does not follow this differentiation and encompasses both forms of disclosure”.¹⁰ The Single Judge thus notes that the Defence’s Evidence is a document disclosed by way of inspection pursuant to rule 78 of the Rules.

10. The Single Judge considers that, having read the Defence’s Evidence, it is unclear if Mr Ngatouwa Goungaye Wanifiyo was involved in any way in assisting the Defence in the present Case. Furthermore, the Single Judge deems it necessary to avoid any impediments to representation and any possible conflict of interest pursuant to articles 12(1)(a) and 16 of the Code of Conduct.

11. In conclusion, as the Defence’s Evidence raises concerns with regard to its completeness, its origin and the role of Mr Ngatouwa Goungaye Wanifiyo in the present Case, the Single Judge finds it appropriate to obtain both the Defence’s Evidence in full and additional details on this document.

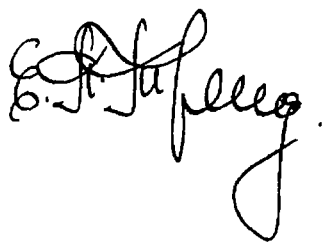
¹⁰ ICC-01/05-01/08-55, paras 45 and 46

FOR THESE REASONS, THE SINGLE JUDGE

a) orders the Defence no later than **Friday 19 December 2008, 16h00** to submit the Defence's Evidence in its entirety ;

b) orders the Defence no later than **Friday 19 December 2008, 16h00** to clarify the author or person from whom the Defence's Evidence emanated and the possible role of Mr Ngatouwa Goungaye Wanifiyo in relation to Jean-Pierre Bemba Gombo.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Thursday 18 December 2008

At The Hague, The Netherlands