

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 31 July 2008

PRE-TRIAL CHAMBER III

Before: Judge Fatoumata Dembele Diarra, Presiding Judge
Judge Hans-Peter Kaul
Judge Ekaterina Trendafilova

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

Public Document

**Decision on the Evidence Disclosure System and Setting a Timetable for
Disclosure between the Parties**

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, Trial Lawyer

Counsel for the Defence

Nkwebe Liriss

Tjarda Eduard 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”) recalls that, following the surrender of Mr Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”) to the Court on 3 July 2008, it held an initial appearance hearing on 4 July 2008, during which Mr Jean-Pierre Bemba was informed, *inter alia*, of the date of the confirmation hearing that the Chamber scheduled pursuant to rule 121(1) of the Rules of Procedure and Evidence (the “Rules”) for 4 November 2008.

2. The Chamber recalls that in view of the confirmation hearing, the parties in the evidence disclosure system, namely the Prosecutor and the defence, exchange between them evidence relating to the case and communicate it to the Chamber.

3. The Chamber observes that the evidence disclosure system for the purposes of the confirmation hearing and the role to be played by each of the Court’s organs in the exchange of evidence are addressed in articles 54(1)(a), 57(3)(c), 61, 67, 69 of the Rome Statute (the “Statute”), rules 15, 76 to 83, 121, 122 and 131(2) of the Rules, regulation 24*bis* and 26 of the Regulations of the Court and regulations 15 to 19, 21, 24 to 28 and 53(3) of the Regulations of the Registry.

4. By this decision, the Chamber wishes to set out (I.) the general principles relating to the system of disclosing evidence between the parties and its communication to the Chamber, (II.) the modalities for exchanging evidence and (III.) the necessary analysis to be performed by the parties of each piece of evidence to be exchanged.

I. General principles relating to the system for disclosing evidence between the parties and its communication to the Chamber

5. As previously stated by Pre-Trial Chamber II, “[i]t has been repeatedly highlighted that the Pre-Trial Chamber constitutes one of the most significant features of the procedural system enshrined in the Statute.”¹ When elaborating the principles relating to the system of disclosing evidence, the Chamber is guided by the underlying normative framework of the Court, mindful of the fact that the language used stems from different legal systems.²

6. The Chamber recalls that the Statute, the Rules, the Regulations of the Court and the Regulations of the Registry define the respective roles, powers, functions and obligations of each of the organs of the Court and that, at the pre-trial stage, each of the Court’s organs has a particular role to fulfil in ensuring the efficient organisation of the confirmation hearing, in determining whether or not to send the case to trial and in facilitating the conduct of the trial if the charges are confirmed.

7. The Chamber considers that the evidence disclosure system must enable the achievement of the goals set out in the previous paragraph. In order to guarantee the efficiency, transparency and simplicity of the system for disclosing evidence between parties, the Chamber wishes to specify the respective roles of the Prosecutor, the defence, the Chamber itself and of the Registry.

¹ ICC-02/04-01/05-77, para. 19.

² See C. Kress, *The Procedural Law of the International Criminal Court in Outline Anatomy of a Unique Compromise*, Journal of International Criminal Justice, vol. 1 (2003), p. 612 ; K. Ambos, *International criminal procedure . »adversarial », « inquisitorial » or « mixed »?*, International Criminal Law Review, vol. 3 (2003), p. 1 ; A. Orié, *Accusatorial v. Inquisitorial Approach in International Criminal Proceedings Prior to the Establishment of the ICC and in the Proceedings Before the ICC*, in A. Cassesse/P. Gaeta/J.R.W. D. Jones (eds.), *The Rome Statute of the International Criminal Court : A Commentary*, vol II (2002), p. 1485.

A - Role of the Chamber

1) Ensuring proper conduct of the confirmation hearing and contributing to the determination of truth

8. According to the second sentence of article 69(3) of the Statute, “[t]he Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth”.

9. The Chamber concurs with Pre-Trial Chamber I that, although this article appears in Part VI of the Statute entitled “The trial”, it establishes a general principle which applies to the various stages of the proceedings.³ This article, which generally concerns evidence, refers to the “Court” and not to the Trial Chamber only. The Rules confirm this interpretation. In fact, rule 63(1) in the first section (“Evidence”) of Chapter 4 of the Rules entitled “Provisions relating to various stages of the proceedings” states that “[t]he rules of evidence set forth in this chapter, together with article 69 of the Statute, shall apply in proceedings before all Chambers”.

10. The Chamber notes that, pursuant to rule 122(9) of the Rules, article 69 of the Statute shall apply *mutatis mutandis* at the confirmation hearing, subject to the provisions of article 61 of the Statute. Thus, the rules concerning evidence in article 69 of the Statute, including the authority of the Chamber to request the submission of further evidence, apply at the pre-trial stage of the proceedings, taking into account the specific purpose and limited scope of the confirmation of the charges. To that end, it needs to be noted that the application of article 69(3) of the Statute at the confirmation phase is restricted since, in contrast to the trial phase, the Chamber does not have to determine the guilt of the person prosecuted beyond

³ ICC-01/04-101-tEN, para. 43.

reasonable doubt. It has simply to determine whether there are substantial grounds to believe that the person prosecuted committed the crimes charged. Finally, the Chamber considers that the authority it derives from article 69(3) of the Statute at the pre-trial phase is crucial for the determination of the scope of the charges to be retained if the case is sent to trial.

11. The Chamber further emphasises that the search for truth is the principal goal of the Court as a whole.⁴ In contributing to this ultimate goal, the Pre-Trial Chamber, in particular, shall prevent cases which do not meet the threshold of article 61(7) of the Statute to proceed to the trial stage. In order to fulfil its duty, the Chamber considers it vital not only to conduct properly the confirmation hearing but to organise meaningfully the disclosure proceedings.

2) The Chamber's role under article 61 of the Statute

12. The Chamber recalls that article 61 of the Statute describes the various stages pertaining to the confirmation hearing.

13. Under article 61(7) of the Statute, the Chamber is obliged to determine whether there is sufficient evidence to establish substantial grounds to believe that the person prosecuted committed each of the crimes charged. Based on this determination, the Pre-Trial Chamber shall confirm the charges and commit the person to a Trial Chamber for trial on the charges as confirmed, decline to confirm the charges or adjourn the hearing.

⁴ During discussions, delegations insisted on the need to "bear in mind the additional historical dimension and truth-finding mission of the Court", Report of the Working Group on Procedural Matters, A/AC.249/1997/WG.4/CRP.11/Add.2, 11 December 1997, page 2.

14. The Chamber emphasises, moreover, that, as decided earlier by the Appeals Chamber, its role is particularly important since, under articles 61(7) and 61(9) of the Statute, it defines the parameters of the trial and therefore the extent of the Trial Chamber's authority.⁵ By setting the parameters of the trial, it simultaneously determines the extent of the Trial Chamber's authority to determine the truth which is the ultimate goal of any procedure before this Court.

15. Furthermore, if in the exercise of its filtering function the Chamber decides not to confirm the charges, this decision ends the prosecution of the suspect, thus avoiding superfluous proceedings as any warrant of arrest and other restrictive measures cease to have effect in accordance with article 61(10) of the Statute.

16. Thus, in order to fulfil properly its mandate pursuant to articles 61(7) and 69(3) of the Statute and to conduct an independent assessment of the case before it, the Chamber should not be confined to the evidence which the parties intend to rely on for the purposes of the confirmation hearing.

17. To arrive at the determination required by article 61(7) of the Statute, the Chamber is of the opinion that it must have accurate and in-depth knowledge of the case record.

18. As Pre-Trial Chamber I has stated, the Chamber's role is to distinguish those cases that should go to trial from those that should not.⁶

⁵ ICC-01/04-01/06-1432, para. 63; see also the decision of Trial Chamber I, ICC-01/04-01/06-1084, para. 39.

⁶ ICC-01/04-01/07-428-Corr., para. 6.

19. The Chamber considers that it cannot fulfil this filtering function at the pre-trial stage without having access to the evidence exchanged between the Prosecutor and the defence, in particular to exculpatory evidence.

3) Guaranteeing the rights of the accused

20. The relevant provisions on disclosure constitute a vital mechanism in the Court's criminal procedure for guaranteeing the fundamental right of every person to a fair and expeditious trial. They must be interpreted in a manner which is compatible with, *inter alia*, the right of the person prosecuted to be informed promptly and in detail of the nature, cause and content of the charges and with his or her right to have adequate time and facilities for the preparation of the defence.

21. At the pre-trial stage, under rule 121(1) of the Rules, the Chamber has the duty to ensure that the disclosure system provides no less than the minimum guarantees set out in articles 67(1)(a) and 67(1)(b) of the Statute and to ensure fairness in the disclosure system and respect for equality of arms between the parties.

22. The Chamber recalls that the right to a fair trial includes the right of the parties to submit any observations that they consider relevant and that this right should be practical and effective.⁷ The Chamber therefore has the duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties.⁸

23. To achieve this objective, the disclosure system must be such that it allows the Chamber to have access to the evidence exchanged between the parties in order

⁷ European Court of Human Rights (ECtHR), case of *Artico v Italy*, Judgment of 13 May 1980, Series A no. 37, p. 16, para. 33.

⁸ ECtHR, cases of *Perez v France* [GC], no. 47287/99, para. 80, ECHR 2004-I and *Albina c Romania*, no. 57808/00, para. 30, 28 April 2005.

to verify i) that the defence has received properly the evidence to be disclosed by the Prosecutor, and ii) that it had adequate time and facilities for preparation.⁹

4) Guaranteeing the effective organisation of the confirmation hearing and proper preparation for trial

24. The Chamber's function is to guarantee the effective organisation of the confirmation hearing so that it can fulfil its role of proper preparation of the trial.¹⁰

25. Creating and maintaining a record of the proceedings containing all evidence exchanged between the parties, the Registry will enable the Chamber to fulfil properly its function of preparing the trial, since the record of the proceedings created pursuant to rule 121(10) of the Rules is to be transmitted to the Trial Chamber pursuant to rule 131(2) of the Rules.

B - Role of the Prosecutor

26. The Chamber notes that, under article 54(1)(a) of the Statute, in order to establish the truth, the Prosecutor shall investigate incriminating and exonerating circumstances equally and gather evidence which may either establish or exclude the criminal responsibility of Mr Jean-Pierre Bemba.

⁹ ICC-01/04-01/06-102, Annex I, para. 5.

¹⁰ A. Orié, *Accusatorial v. Inquisitorial Approach in International Criminal Proceedings Prior to the Establishment of the ICC and in the Proceedings Before the ICC*, in A. Cassese/P. Gaeta/J.R.W. D. Jones (eds.), *The Rome Statute of the International Criminal Court : A Commentary*, vol II (2002), pp. 1484 and 1485.

27. The Prosecutor's obligation to investigate incriminating and exonerating circumstances equally has undoubtedly an impact on the volume of evidence which the Prosecutor has to disclose to the defence pursuant to article 67(2) of the Statute.

28. The Chamber is of the opinion that the Prosecutor's obligation to investigate incriminating and exonerating circumstances equally is a further reason why it must request communication of all exculpatory evidence.

29. The Chamber observes that, in the absence of exculpatory evidence, it would possess only a partial record, limited to incriminating evidence. As a result, in general terms, the Chamber would be unable to differentiate properly between the cases which warrant being committed for trial and those which do not. The Chamber must be able to exercise this function, which is also essential on the grounds of judicial economy, in particular where the defence decides – as is its right – not to present evidence under article 61(6) of the Statute.

C - Role of the defence

30. The Chamber is of the opinion that the obligation of the defence under the Statute and the related legal instruments relating to the disclosure of evidence is more limited than that of the Prosecutor. Thus, the defence is free to decide whether or not to rely on and present evidence at the confirmation hearing.

31. However, if the defence intends to rely on certain evidence at the confirmation hearing pursuant to rule 78 of the Rules, it has an obligation to disclose it to the Prosecutor and to communicate it to the Chamber.

32. In any event, pursuant to article 69(3) of the Statute and rule 79(4) of the Rules, the Chamber observes that it still has the authority to request the submission of any other evidence.

D - Role of the Registry

33. The Chamber is of the opinion that the Registry has essential functions which, if carried out in accordance with the provisions of the Statute and the related legal instruments, enable it to increase the efficiency of the evidence disclosure system.

34. Vis-à-vis the parties, the Chamber considers that the Registry first and foremost has the role of a simple carrier, a communication channel between them. The Chamber recalls that the Registry must under no circumstances be considered a third party with a role in the assessment of the evidence to be disclosed.

35. The Chamber observes that the Registry fulfils a support function for the parties and for the Chamber. The Registry must facilitate the rapid access of the Chamber to the evidence exchanged. It is also the organ which implements technically the parties' requests in respect of the level of confidentiality of the evidence disclosed between them and communicated to the Chamber and the extent and conditions of access to it.

36. Furthermore, pursuant to regulations 15 to 19, 24 to 28 and 53(3) of the Regulations of the Registry, the Chamber points out that the Registry has responsibilities related to the proceedings, insofar as it manages the access to and storage of the documents of the proceedings, registers the evidence exchanged,

notifies it to the persons authorised to access it and stores the original of the evidence disclosed and authenticates it as being official.

37. In order to be able to carry out these functions, the Registry is responsible for maintaining a record of the proceedings pursuant to rule 15 of the Rules. As regards specifically the evidence exchanged between the parties and communicated to the Chamber, pursuant to rule 121(10) of the Rules, the Registry creates and maintains the record of the proceedings containing the evidence disclosed and the parties and the Chamber have access to it.

38. The Chamber further considers that, pursuant to regulations 57 and 72 of the Regulations of the Registry, the Registry's responsibility for the official Court translation services enables it to manage any translation problems which may arise between the parties. The Chamber recalls in this respect that it is essential, in accordance with article 67 of the Statute, that the person being prosecuted has access to documents in a language which he or she fully understands and speaks.

39. The Chamber points out that, in the context of the process of disclosing evidence, the Registry must be able to exercise its functions and to transmit all evidence to be disclosed to the parties or communicated to the Chamber with the required expeditiousness.

II. Modalities of disclosure of evidence and communication of that evidence to the Chamber

A - General remarks

40. The Chamber observes that in the Statute and the Rules reference is made to the process of disclosure between the parties, namely the Prosecutor and the defence. Regarding the modalities of disclosure, the Chamber notes the relevant provisions in articles 61(3) and 67(2) of the Statute and rules 76 to 83 and 121 of the Rules.

41. The Chamber further notes that the modalities of disclosure will be subject to any decision taken by the Chamber in respect of restrictions on disclosure pursuant to rules 81 and 82 of the Rules.

42. The Chamber observes that the provisions on disclosure, especially rule 121(2)(c) of the Rules, draw a clear distinction between “disclosure” which is *inter partes* and “communication” to the Chamber. Therefore, the Chamber is of the view that the concept of “disclosure” should not be confused with the concept of “communication” of evidence to the Chamber. The Chamber is not a party to the proceedings and does not take part in the disclosure process. Pursuant to rule 121(2)(b) of the Rules, the Chamber shall ensure that disclosure takes place under satisfactory conditions. Thus, for the Chamber to be in a position to ensure that proper disclosure takes place and to make an informed decision in accordance with its statutory mandate, as already set out in part I, the Chamber shall be informed by way of communication of all the evidence disclosed between the parties.

43. The Chamber notes that under rule 121(2)(c) of the Rules “all evidence disclosed between the Prosecutor and the person for the purposes of the confirmation hearing shall be communicated to the Pre-Trial Chamber”. The reference to “all evidence” in rule 121(2)(c) of the Rules implies that communication to the Chamber comprises all the evidence disclosed between the parties and that it is not limited to the evidence which the parties intend to rely on or to present at the confirmation hearing. The *travaux préparatoires*¹¹ of that rule indicate that it was first placed in the section of disclosure as draft rule 5.12, preceding rules concerning both disclosure *stricto sensu* and inspection which have now become rules 76 to 79 of the Rules. However, delegations decided that draft rule 5.12 would be better placed in the rule concerning the confirmation hearing. Without any modification,¹² that draft rule was then transferred and incorporated into the present rule 121 of the Rules. In the Chamber's view, this is a further indication that the drafters intended rule 121(2)(c) of the Rules to cover all elements of disclosure referred to in what are now rules 76 to 79 of the Rules.

44. Furthermore, the Chamber notes that rule 121(2)(c) of the Rules is to be interpreted “in accordance with article 61 paragraph 3” of the Statute referring also to information which the Chamber may order to be disclosed pursuant to the second sentence of article 61(3) of the Statute. This allows the Chamber to have access to evidence other than that on which the parties intend to rely at the confirmation hearing.

45. The Chamber points out that Section II of Chapter IV of the Rules entitled “Disclosure” refers to two forms of disclosure according to the nature of the evidence, namely disclosure *stricto sensu* pursuant to rule 76 of the Rules, and

¹¹ Document PCNICC/1999/L.3/Rev.1, Proceedings of the Preparatory Commission at its first session (16-26 February 1999), 2 March 1999, p. 15.

¹² H. Brady, *Disclosure of Evidence*, in R. Lee (ed.), *The International Criminal Court, Elements of Crimes and Rules of Procedure and Evidence* (2001), p. 407, fn. 15.

disclosure by way of inspection either by the defence or by the Prosecutor pursuant to rules 77 and 78 of the Rules.

46. Furthermore, the Chamber notes that article 61(3) of the Statute does not follow this differentiation and encompasses both forms of disclosure as set out above.

47. Therefore, the Chamber considers that evidence previously inspected by the parties is to be communicated to the Chamber.

48. The Chamber observes that rule 77 of the Rules puts an obligation on the Prosecutor to disclose to the defence three types of evidence: any books, documents, photographs and other tangible objects in the possession or control of the Prosecutor, (i) which are material to the preparation of the defence or (ii) are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or (iii) were obtained from or belonged to the person charged.

49. The Chamber notes that rule 77 comprises material which may be of incriminatory, exculpatory or mixed nature. Therefore, in order to enable the Chamber to make its own assessment of the evidence inspected, all of it has to be communicated to the Chamber.

50. The above applies equally to the material in possession or control of the defence that is to be inspected by the Prosecutor in accordance with rule 78 of the Rules.

51. In light of the aforesaid, the Chamber will have access to the following disclosed evidence:

a) evidence pursuant to article 67(2) of the Statute, namely all evidence in the Prosecutor's possession or control which the Prosecutor believes to show or tend to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of the prosecution evidence.

b) evidence pursuant to rule 76 of the Rules, namely all names and statements of witnesses on whom the Prosecutor intends to rely at the confirmation hearing, regardless of whether the Prosecutor intends to call them to testify.

c) evidence in the possession or control of the Prosecutor, which is material to the preparation of the defence or is intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or was obtained from or belonged to the person charged and which are subject to inspection pursuant to rule 77 of the Rules.

d) evidence in the possession or control of the defence, which is intended for use by the defence as evidence for the purposes of the confirmation hearing and is subject to inspection pursuant to rule 78 of the Rules.

e) evidence the defence may present, in case it intends, pursuant to rule 79 of the Rules, to raise the existence of an alibi or to raise a ground for excluding criminal responsibility.

52. As described in part I of this decision, the Registry, acting as a channel of communication, will take all appropriate measures to facilitate the appropriate access to all evidence by the parties and the Chamber.

53. To this end, the Registry will establish a record of the case for the Chamber which will contain all evidence disclosed between the parties and communicated to it. The parties will have access to the record of the case through an electronic mechanism established by the Registry.

B - Registration procedure

54. In order to ensure the expeditiousness of proceedings and proper case management, the parties shall submit the evidence in due time, in proper format and within the official filing hours as set out in regulation 33(2) of the Regulations of the Court.

55. The Chamber draws particular attention of all concerned to the fact that all evidence is to be registered into the record of the case by the Registry and that, for the registration, they are to accord the Registry a reasonable time. The Chamber has been assured that up to 250 pieces of textual evidence can be processed within one working day. In case of video or audio evidence, additional time will be needed.

56. The Chamber further wishes to inform the parties about the registration procedure to be undertaken by the Registry.

57. Upon receipt, the Registry will register each piece of evidence to be disclosed and communicated to the Chamber and will assign to it a specific number, an "EVD number", in accordance with regulation 28 of the Regulations of the Registry. It will be assumed that every piece of evidence submitted by any party is authentic, accurate and complete. The parties will submit evidence in its original form and a corresponding electronic copy or, in case of tangible objects, an electronic photograph.

58. Before assigning the "EVD number" to the evidence, no additional authentication process, confirming that the electronic copy is an exact replica of the

original piece of evidence, will be conducted by the Registry, unless objections are raised by any party or the Chamber.

59. Such objections should be raised promptly with the Registry and may only relate to the provider, the completeness and legibility of the evidence submitted. In case of doubt in respect of such objections, the Registrar may make a formal submission to the Chamber pursuant to regulation 24*bis* of the Regulations of the Court. Objections shall not be raised with regard to the admissibility of evidence as this forms the subject-matter of judicial ruling according to articles 69(4) and 69(7) of the Statute.

60. In case a piece of evidence or part of it needs to be replaced in the record of the case upon an objection, the document shall be provided in accordance with the e-Court protocol (see Annex).

61. When submitting evidence under rule 76 of the Rules, the Prosecutor is reminded to provide a translation which will be reflected accordingly in the record of the case. That translation of the document shall be provided in accordance with the e-Court protocol (see Annex).

62. The parties are reminded to include in their submission of evidence the following documentation: (i) a list of evidence enlisting all pieces of evidence enclosed with their respective document ID as defined in the e-Court protocol (see Annex) and (ii) a list of recipients including the level of confidentiality applicable to each item vis-à-vis any party.

63. In view of the principle of publicity of proceedings, the evidence submitted shall in principle be registered as public unless there is a need to classify it otherwise.

III. Required analysis of the evidence exchanged between the parties

64. The Chamber observes that under article 61(5) of the Statute, the Prosecutor “shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged”.

65. Furthermore, pursuant to article 67(1)(a) and (b) of the Statute, not only must the accused “be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks” but must also “have adequate time and facilities for the preparation of the defence”.

66. Bearing in mind these objectives, the Chamber is of the view that the defence has to have all necessary tools to understand the reasons why the Prosecutor relies on any particular piece of evidence and that, consequently, the evidence exchanged between the parties and communicated to the Chamber must be the subject of a sufficiently detailed legal analysis relating the alleged facts with the constituent elements corresponding to each crime charged.

67. In the Chamber’s opinion, the most important factor in both safeguarding the rights of the defence and enabling the Chamber to exercise its functions is not for the Prosecutor to disclose the greatest volume of evidence, but to disclose the evidence which is of true relevance to the case, whether that evidence be incriminating or exculpatory. In fact, disclosure of a considerable volume of evidence for which it is difficult or impossible to comprehend the usefulness for the case merely puts the defence in a position where it cannot genuinely exercise its rights, and serves to hold back the proceedings.

68. The Chamber considers that disclosure of truly relevant evidence presupposes an in-depth analysis by the Prosecutor of each piece of evidence prior to its disclosure, whether that evidence is incriminating or exculpatory.

69. This analysis consists of presenting each piece of evidence according to its relevance in relation to the constituent elements of the crimes presented by the Prosecutor in his application under article 58 of the Statute and taken into account by the Chamber in its decision of 10 June 2008¹³. Each piece of evidence must be analysed – page by page or, where required, paragraph by paragraph – by relating each piece of information contained in that page or paragraph with one or more of the constituent elements of one or more of the crimes with which the person is charged, including the contextual elements of those crimes, as well as the constituent elements of the mode of participation in the offence with which person is charged. The same analysis technique shall apply *mutatis mutandis* to photographs, maps, videodiscs, tangible objects and any other support disclosed by the Prosecutor.

70. The Chamber considers that this analysis should be presented in the form of a summary table which shows the relevance of the evidence presented in relation to the constituent elements of the crimes with which the person is charged. It should enable 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, either incriminating or exculpatory, which the Chamber must assess in light of the criteria set under article 61(7) of the Statute.

¹³ ICC-01/05-01/08-14-tENG.

71. The Chamber is of the opinion that, after each exchange of evidence between the parties, the summary table should be updated and filed, taking into account the analysis of the new evidence exchanged between the parties and communicated to the Chamber.

72. The Chamber considers that the sole purpose of these instructions to the parties is to streamline the disclosure of evidence, to ensure that the defence be prepared under satisfactory conditions, to expedite proceedings and to prepare properly for the confirmation hearing. The hearing will be conducted more efficiently if the parties have duly complied with the proposed methodology in that, pursuant to rule 122(1) of the Rules, the order in which the evidence contained in the record of the proceedings is presented at the confirmation hearing follows the order of the counts set out in the document containing the charges under article 61(3) of the Statute.

73. Accordingly, the Chamber is of the opinion that the analysis of each piece of evidence and the regular registration of the summary tables analysing each piece of evidence at each instance of disclosure as referred to in paragraph 69 of this decision will permit the Presiding Judge to organise the presentation of evidence by the parties according to the crimes charged with one party responding to the other on each count consecutively. As highlighted above, this mechanism will serve to ensure respect for the rights of the defence, better organisation of disclosure and efficiency and expeditiousness of the proceedings for the determination of whether there is sufficient evidence to establish substantial grounds to believe that the person charged committed each of the crimes he or she was charged with.

FOR THESE REASONS, THE CHAMBER

a) **decides** that the disclosure process between the parties shall be facilitated through the Registry as described in letter (m) below.

b) **orders** the parties submitting any evidence to submit the original of the evidence as well as its electronic copy or, in case of tangible objects, its electronic photograph to the Registry.

c) **orders** the parties to submit any evidence with the appropriate metadata in accordance with the e-Court protocol as set out in the Annex to this decision.

d) **orders** the parties to submit the evidence in due time and within official filing hours of the Registry.

e) **decides** that, when submitting any evidence to the Registry, the parties shall provide the following accompanying documentation:

1. A list of evidence enlisting all pieces of evidence enclosed with their respective document ID;
2. A list of identified recipients for each evidentiary item reflecting also the access and the level of confidentiality for each item vis-à-vis any party;
3. An analysis of each piece of evidence reflecting its relevance as described in part III of this decision.

f) **orders** the parties to comply with the registration procedure of any evidence as described in part II of this decision.

g) **orders** the Registrar to register electronic copies of any evidence in the record of the case and to store its original in the Registry vault.

h) **orders** the Registrar to provide the parties with access to any evidence as indicated by the party in the list of recipients.

i) **orders** the Registrar to grant to the Chamber unrestricted access to all evidence disclosed between the parties.

j) **orders** the Registrar to make all necessary arrangements and to provide Mr Jean-Pierre Bemba Gombo with unrestricted access to a computer terminal in the Detention Centre for the purpose of accessing the evidence and materials disclosed between the Prosecutor and the defence of Mr Jean-Pierre Bemba Gombo.

k) **orders** the Registrar to report any related practical or security concern to the Chamber as soon as possible.

l) **orders** the parties to provide factual and legal basis for any proposal to classify (as non-public) the evidence submitted.

m) **decides** to establish the following calendar for the disclosure between the parties and the related communication to the Chamber, subject to any ruling of the Chamber

pursuant to rules 81 and 82 of the Rules and the implementation of any protective measures for witnesses, victims or other persons at risk:

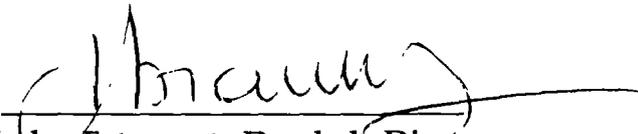
1. **orders** the Prosecutor to disclose to the defence through the Registry all evidence in the Prosecutor's possession or control under article 67(2) of the Statute as soon as practicable and on a continuous basis.
2. **orders** the Prosecutor to disclose to the defence through the Registry all evidence under rule 76 of the Rules as soon as possible and no later than **3 October 2008** in original and a language which Mr Jean-Pierre Bemba Gombo fully understands and speaks.
3. **orders** the Prosecutor to permit the defence to inspect at a location agreed upon by them all evidence under rule 77 of the Rules as soon as possible and no later than **3 October 2008**.
4. **orders** the Prosecutor to submit after inspection to the Registry electronic copies, or electronic photographs in the case of tangible objects, of such evidence subject to inspection in order to be registered as evidence in the record of the case and to submit the original form of the respective piece of evidence to be stored in the Registry vault.
5. **orders** the defence to permit the Prosecutor to inspect at a location agreed upon by them all evidence under rule 78 of the Rules as soon as possible and no later than **20 October 2008**.
6. **orders** the defence after inspection to submit to the Registry electronic copies or, in the case of tangible objects, electronic photographs of the evidence subject to inspection in order to be registered as evidence in the record of the case and to submit the original form of the respective piece of evidence to be stored in the Registry vault.
7. **orders** the defence, for the purposes of the confirmation hearing and in case it intends, pursuant to rule 79 of the Rules, to raise the existence of an alibi or to raise

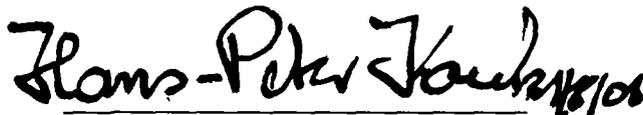
a ground for excluding criminal responsibility, to comply with the technical modalities of the disclosure procedure as set out in this decision.

n) **decides** that any delays in the disclosure process, which emanate from procedures pursuant to articles 54(3)(e), 72 and 93 of the Statute, shall be brought to the attention of the Chamber as soon as possible.

o) **orders** the parties to submit any request under rules 81 and 82 of the Rules at the latest on **3 September 2008**.

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


Judge Fatoumata Dembele Diarra
Presiding Judge


Judge Hans-Peter Kaul


Judge Ekaterina Trendafilova

Dated this 31 July 2008

At The Hague, the Netherlands