

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 7 November 2008

PRE-TRIAL CHAMBER III

Before: Judge Hans-Peter Kaul, Duty Judge

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

**Public
URGENT**

Decision on the "Prosecution's Urgent Application to Provisionally Vary the Disclosure Order in the 'Third Decision on the Prosecutor's Requests for Redactions and Related Request for the Regulation of Contacts of Jean-Pierre Bemba Gombo' dated 6 November 2008, Pending Application for Leave to Appeal"

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

Deputy Registrar

Didier D. Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. Judge Hans-Peter Kaul, acting as Duty Judge for the period of 7 November until 21 November 2008 has been seized of the “Prosecution’s Urgent Application to Provisionally Vary the Disclosure Order in the ‘Third Decision on the Prosecutor’s Requests for Redactions and Related Request for the Regulation of Contacts of Jean-Pierre Bemba Gombo’ dated 6 November 2008, Pending Application for Leave to Appeal” (the “Prosecutor’s Urgent Application”)¹.

2. The Duty Judge recalls that Pre-Trial Chamber III (the “Chamber”) issued the “*Décision fixant la date de l’audience de confirmation des charges*”² setting the date for the confirmation of charges hearing on 8 December 2008 and establishing the timetable for disclosure between the parties. According to this decision, the Prosecutor was ordered to disclose all evidence under rule 76 of the Rules of Procedure and Evidence as soon as possible and no later than 7 November 2008.³

3. Further, the Chamber issued on 6 November 2008 the “Third Decision on the Prosecutor’s Requests for Redactions and Related Request for the Regulation of Contacts of Jean-Pierre Bemba Gombo” (the “Third Decision on Redactions”)⁴ in which the Chamber ordered the Prosecutor, *inter alia*, to disclose items of incriminating evidence specified in the Annex of said decision. Following the timetable established by the Chamber, this evidence was to be disclosed on 7 November 2008.

¹ ICC-01/05-01/08-223-Conf. The present decision is classified as public although it refers to the existence of documents and, as the case may be, to a limited extent to their content, which have been submitted and are currently treated confidential. The Duty Judge considers that references in the present decision to the Prosecutor’s Urgent Application have been kept to a minimum and are not inconsistent with its nature.

² ICC-01/05-01/08-199.

³ See letter (b)(2) of the operative part of the decision scheduling the date of the confirmation of charges hearing, ICC-01/05-01/08-199.

⁴ ICC-01/05-01/08-215-Conf.

4. On 7 November 2008 at 17h05 the Prosecutor submitted the Prosecutor's Urgent Application requesting the Chamber to "urgently authorize to provisionally maintain the redactions to protect the identities of witnesses [concerned] pending the Chamber's decision on an application for leave to appeal the Decision and, if granted, any decision of the Appeals Chamber".

5. On 7 November 2008 at 18h36 the Prosecutor filed the "Prosecution's Communication of Incriminatory Evidence Disclosed to the Defence on 7 November 2008" relating to the disclosure of incriminating evidence specified in the Annex to the Third Decision on Redactions.⁵

6. The Duty Judge notes regulation 17(2) of the Regulations of the Court (the "Regulations") according to which the duty judge shall be responsible for dealing with requests or applications if the following conditions are met:

- (a) the request or application is submitted during normal Registry hours⁶ and the Pre-Trial Chamber or Chamber referred to in regulation 46, sub-regulation 3, is unavailable;
- (b) the duty judge is satisfied that the matter is urgent and that it is appropriate for him or her to deal with it.

7. Given the fact that the Chamber was unavailable at the time of the notification of the Prosecutor's Urgent Application, the Duty Judge shall now turn to the conditions of urgency and appropriateness of the matter raised by the Prosecutor.

⁵ ICC-01/05-01/08-229.

⁶ The regular working hours of the Court are from 9h00 until 17h30 from Monday to Friday; see rule 101.9(b) of the Staff Rules and point 2.1 of the Information Circular ICC/HRS/2007/7229.

8. The Duty Judge notes that the Prosecutor effectively disclosed the evidence concerned. Therefore, the Duty Judge is not satisfied that the matter raised by the Prosecutor meets the criteria of urgency and appropriateness pursuant to regulation 17(2) of the Regulations.

FOR THESE REASONS, THE DUTY JUDGE

rejects the Prosecutor's Urgent Application.

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

A handwritten signature in black ink, appearing to read 'Kaul' with a date '7/11/08' written at the end of the signature.

Judge Hans-Peter Kaul
Duty Judge

Dated this Friday, 7 November 2008

At The Hague, the Netherlands