

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 7 May 2010

**TRIAL CHAMBER III**

**Before:** Judge Adrian Fulford, Presiding Judge  
Judge Elizabeth Odio Benito  
Judge Joyce Aluoch

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

**Public document**

**Public redacted version of "Decision on the prosecution's second application for disclosure of additional evidence" (ICC-01/05-01/08-767-Conf-Exp)**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda, Deputy Prosecutor  
Ms Petra Kneuer, Senior Trial Lawyer

**Counsel for the Defence**

Mr Nkwebe Liriss  
Mr Aimé Kilolo-Musamba

**Legal Representatives of the Victims**

Ms Marie-Edith Douzima-Lawson

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”) in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, delivers the following Decision on the prosecution’s second application for disclosure of additional evidence.<sup>1</sup>

## I. Background and Submissions

1. On 7 October 2009, the Chamber set 30 November 2009 as the deadline for disclosure of evidence by the Office of the Prosecutor (“prosecution”).<sup>2</sup>
2. On 30 November 2009, the prosecution requested an extension of the deadline for adding and disclosing evidence, pursuant to Regulation 35(2) of the Regulations of the Court, from 30 November 2009 to 27 January 2010 in order to permit the possible addition of three witnesses, the submission of statements taken during re-interviews with two previously disclosed witnesses, evidence from two computers seized by national authorities, and satellite telephone records (“Application for Disclosure of Additional Evidence”).<sup>3</sup> The prosecution did not have in its possession any of the anticipated evidence at the time it made the application.
3. In an oral decision of 8 December 2009 (“Oral decision”), the Trial Chamber rejected the prosecution’s application to disclose the “anticipated evidence” from the above-mentioned eight sources outside the deadline for disclosure set by the Chamber.<sup>4</sup>

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<sup>1</sup> Prosecution’s Second Request Pursuant to Regulation 35(2) of the Regulations of the Court, ICC-01/05-01/08-673-Conf-Exp, 27 January 2010; ICC-01/05-01/08-673-Conf-Red, 27 January 2010 (notified on 28 January 2010).

<sup>2</sup> Transcript of hearing on 7 October 2009, ICC-01/05-01/08-T-14-ENG ET WT, page 16, lines 1 to 6.

<sup>3</sup> Prosecution’s Request for Authorisation to Add and Disclose Additional Evidence to be relied on at trial beyond 30 November 2009, 30 November 2009, ICC-01/05-01/08-626; Annex A: Prosecution’s Request for Authorisation to Add and Disclose Additional Evidence to be relied on at trial beyond 30 November 2009, 30 November 2009, ICC-01/04-01/06-626-Conf-Exp-AnxA.

<sup>4</sup> Transcript of hearing on 8 December 2009, ICC-01/05-01/08-T-18-ENG-Red WT, page 36, lines 15 – 24.

4. On 14 December 2009, the prosecution sought leave to appeal the Oral decision (“Application for Leave to Appeal”) under Article 82(1)(d) of the Rome Statute (“Statute”) and Rule 155 of the Rules of Procedure and Evidence (“Rules”).<sup>5</sup>
  
5. On 28 January 2010, the Trial Chamber refused the prosecution’s Application for Leave to Appeal on the basis that the issue was not an appealable issue, principally because of the limited nature of the information provided by the prosecution in its Application for Disclosure of Additional Evidence, and the uncertainty as to the content of any future evidence, or whether it will be forthcoming. This led the Chamber to “the inevitable conclusion that this is not a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination; and that furthermore it concerns abstract questions or hypothetical concerns”.<sup>6</sup> The Chamber further stated that “it is impossible for the Chamber to conclude that any of this material will significantly affect either the fairness or the expeditiousness of the proceedings, or the outcome of the trial, or that an immediate resolution of this Application for Leave to Appeal could materially advance proceedings” due to the speculative nature of the proposed additional evidence.<sup>7</sup>
  
6. It is noteworthy in the context of the present application that the Chamber mentioned in postscript in its Decision on Leave to Appeal that:

It remains open to the prosecution to present a fresh application if there are significant new facts or developments that merit consideration by the Chamber,

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<sup>5</sup> Prosecution’s Request for Leave to Appeal the Trial Chamber’s Oral Ruling Denying Authorisation to Add and Disclose Additional Evidence after 30 November 2009, 14 December 2009, ICC-01/05-01/08-654.

<sup>6</sup> Decision on the “Prosecution’s Request for Leave to Appeal the Trial Chamber’s Oral Ruling Denying Authorisation to Add and Disclose Additional Evidence after 30 November 2009”, 28 January 2010, ICC-01/05-01/08-680, paragraph 35.

<sup>7</sup> ICC-01/05-01/08-680, paragraph 36.

particularly if substantive, relevant evidence is obtained as a result of the enquiries and investigations set out in Annex A.<sup>8</sup>

7. On 27 January 2010, the prosecution filed the “Prosecution’s Second Request Pursuant to Regulation 35(2) of the Regulations of the Court” (“Second Application for Disclosure of Additional Evidence” or “Second Application”),<sup>9</sup> in which it was indicated that the prosecution had secured some of the evidence previously identified in the original Application for Disclosure of Additional Evidence of 30 November 2009. In particular, the prosecution submits that it now has the statements of two new witnesses and a third statement obtained through the re-interview of a witness whose original statement has already been disclosed to the defence.<sup>10</sup> Since the deadline for disclosing this evidence to the defence expired on 30 November 2009, the prosecution now seeks the leave of the Chamber to disclose the statements to the defence and to add the witnesses to its trial list.<sup>11</sup>
8. The prosecution distinguishes the Second Application for Disclosure of Additional Evidence from the previous Application on the basis that it has now secured the relevant evidence and, additionally, because this Second Application is made outside the disclosure deadline, it can be considered as a new application, pursuant to Regulation 35(2) of the Regulations of the Court.<sup>12</sup> The prosecution submits that the requirement for late applications is met because it originally made an application before the time limit expired, and this Second Application for Disclosure of Additional Evidence is now filed following the Chamber’s original refusal: hence, it was not filed in a timely manner.<sup>13</sup> It suggests that the Chamber’s earlier refusal of the

<sup>8</sup> ICC-01/05-01/08-680, paragraph 38.

<sup>9</sup> ICC-01/05-01/08-673-Conf-Exp and ICC-01/05-01/08-673-Conf-Red.

<sup>10</sup> ICC-01/05-01/08-673-Conf-Exp and ICC-01/05-01/08-673-Conf-Red, paragraph 3.

<sup>11</sup> ICC-01/05-01/08-673-Conf-Exp and ICC-01/05-01/08-673-Conf-Red, paragraph 4.

<sup>12</sup> ICC-01/05-01/08-673-Conf-Exp and ICC-01/05-01/08-673-Conf-Red, paragraphs 5 – 6.

<sup>13</sup> ICC-01/05-01/08-673-Conf-Exp and ICC-01/05-01/08-673-Conf-Red, paragraphs 18 – 19.

prosecution's Application for Disclosure of Additional Evidence was an event that was not within the prosecution's control.<sup>14</sup>

9. Additionally and alternatively, the prosecution invokes the Court's authority to "order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties" pursuant to Articles 64(6)(d) and 69(3) of the Statute.<sup>15</sup> The prosecution submits that this evidence is compelling and comprises previously unknown information that has a significant bearing on the case. In particular, the prosecution maintains that "the statements of the two new witnesses and the re-interview statement of an already disclosed witness are essential to establish the truth, to prove the command responsibility of the accused under Article 28 of the Statute – the new mode of liability confirmed by the Pre-Trial Chamber – and to refute the claim by the accused that he bears no responsibility for the crimes".<sup>16</sup>
10. The prosecution seeks to add evidence from three witnesses who provide details of the accused's command and control over the Movement for the Liberation of Congo ("MLC") and his knowledge of the crimes that were being committed against the civilian population by the MLC. By way of greater detail, the evidence the prosecution wishes to add is as follows:

(i) A statement based on a re-interview with witness CAR-OTP-WWWW-0036 ("witness 36"), an [REDACTED] whose identity and prior statements have been previously disclosed. The prosecution submits that despite efforts to re-interview this witness before the 30 November 2009 disclosure deadline set by the Chamber, this was not possible due to the witness's engagement in [REDACTED] and because

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<sup>14</sup> ICC-01/05-01/08-673-Conf-Exp and ICC-01/05-01/08-673-Conf-Red, paragraph 19.

<sup>15</sup> ICC-01/05-01/08-673-Conf-Exp and ICC-01/05-01/08-673-Conf-Red, paragraph 22.

<sup>16</sup> ICC-01/05-01/08-673-Conf-Exp and ICC-01/05-01/08-673-Conf-Red, paragraph 25.

the prosecution required the cooperation of the [REDACTED]. It was not until the first week of December that a [REDACTED] authorized witness 36 to assist the prosecution, and he was re-interviewed on 9 December 2009. Although some relevant facts have previously been disclosed, the prosecution submits that the new statement provides additional corroborative material. The witness's statement, which is 24 pages long, is available for immediate disclosure, albeit with redactions. It is said that the witness will be able to give evidence based particularly on his position [REDACTED]. His evidence relates to the accused's knowledge of the crimes his troops were allegedly committing at the relevant time, and he allegedly saw Mr Bemba distribute goods pillaged from the Central African Republic ("CAR") to MLC commanders in Gbadolite.<sup>17</sup>

(ii) A witness statement for witness CAR-OTP-WWWW-0209 ("witness 209"), the [REDACTED], who first came to the prosecution's attention on 27 October 2009. Contact was made with this witness on 28 October by investigators to determine the witness's availability for a meeting and he was then seen briefly on 31 October 2009 during a pre-interview assessment, in order to discuss possible security arrangements. The investigators thereafter conducted a security assessment and, in addition, because the witness held an [REDACTED], the prosecution contacted the [REDACTED] authorities to obtain their consent. On 1 December 2009, the prosecution and the witness made arrangements for an interview, which was conducted between 11 and 15 December 2009. The identity of this witness is unknown to the defence, and the prosecution proposes to disclose this information 30 days prior to the start of trial. The witness's statement, which is 80 pages long, is available for immediate disclosure, albeit with redactions. The witness,

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<sup>17</sup> ICC-01/05-01/08-673-Conf-Exp and ICC-01/05-01/08-673-Conf-Red, paragraph 14 and paragraphs 26 – 28.

*inter alia*, can give evidence about the accused's visit to [REDACTED] and his response when crimes were reported against civilians.<sup>18</sup>

(iii) A statement from witness CAR-OTP-WWWW-0213 ("witness 213"), [REDACTED] whose existence was brought to the attention of the prosecution through an unsolicited letter from another prospective witness on 13 November 2009. Investigators telephoned witness 213 on 17 November 2009 for an initial pre-interview assessment, and then again on 23 November for a follow-up screening interview. A substantive interview was arranged, which was conducted between 7 and 9 December 2009. The prosecution submits that the statement then provided cannot be disclosed immediately, even with redactions, because although witness 213 is [REDACTED], members of his family [REDACTED], and the witness refuses to consent to the disclosure of his identity or statement [REDACTED]. The prosecution suggests, as an interim solution, that a summary is disclosed to the defence, and disclosure of the witness's identity and his statement follows no later than 30 days before the start of trial. The statement of this witness is 93 pages long. This witness purportedly [REDACTED] at the time of the events charged. It is suggested that he [REDACTED] with the accused, and that he will provide direct evidence of the latter's role during 2002 and 2003; his evidence will be that soldiers in the CAR were under the accused's direct orders; that he maintained contact with them; and that he controlled troop movements, the number of soldiers deployed and the details of the military operations. In essence, he will say that the accused knew of the crimes that were being committed and encouraged his troops to commit them.<sup>19</sup>

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<sup>18</sup> ICC-01/05-01/08-673-Conf-Exp and ICC-01/05-01/08-673-Conf-Red, paragraph 14 and paragraphs 29 – 31.

<sup>19</sup> ICC-01/05-01/08-673-Conf-Exp and ICC-01/05-01/08-673-Conf-Red, paragraph 14 and paragraphs 32 – 34.

11. Finally, the prosecution submits that no undue prejudice will be caused to the defence as this evidence can be disclosed three months before the start of trial, which would thereby give the defence adequate time to prepare for trial, as was considered appropriate in the case of *The Prosecutor v. Thomas Lubanga Dyilo*. Regarding the impossibility of disclosing the third statement immediately, the prosecution submits that it is attempting to resolve the witness's concerns about his family expeditiously, and that it can provide a sufficiently detailed summary of the evidence to enable the defence to prepare, including by way of an informed investigation into the alleged facts. The prosecution additionally undertakes to disclose the statement sufficiently in advance of the trial, and in any event well in advance of the witness's oral evidence, thereby minimizing any prejudice attendant on late disclosure. The prosecution further submits that the additional evidence addresses, in the main, matters that are within the direct knowledge of the accused, including actions on his part and issues that he has raised in his own defence at, and following, the confirmation hearing.<sup>20</sup>

12. A confidential redacted version of the Second Application was filed by the prosecution on 27 January 2010.<sup>21</sup>

13. On 11 February 2010, the defence filed its response,<sup>22</sup> objecting to what it suggests is the persistence of the prosecution in seeking to add and disclose additional evidence. The defence submits that the prosecution's arguments justifying the late submission of its Second Application are erroneous, as the refusal of the original Application for Disclosure of Additional Evidence by the Chamber does not constitute "a reason outside the control of the

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<sup>20</sup> ICC-01/05-01/08-673-Conf-Exp and ICC-01/05-01/08-673-Conf-Red, paragraphs 36 – 40.

<sup>21</sup> ICC-01/05-01/08-673-Conf-Red.

<sup>22</sup> Réponse de la Défense à la Requête du Bureau du Procureur intitulée : « *Prosecution's Second Request pursuant to Regulation 35 (2) of the Regulations of the Court* » du 27 Janvier 2010, 11 February 2010, ICC-01/05-01/08-692-Conf-Exp.

prosecution” but rather it is an immediate consequence of the “partial and incomplete” explanations that have been provided relating to the prosecution’s attempts to gather additional evidence.<sup>23</sup>

14. The defence questions the prosecution’s submission that it had to recommence its investigations following the Decision on the Confirmation of Charges, and it submits that there is no evidence to support the prosecution’s assertions as to the reasons why the meetings with the three witnesses had not taken place earlier. The defence suggests that the approach of the prosecution, leading to the fragmentary disclosure of evidence, creates procedural chaos and that as a result, this Second Application should be refused.<sup>24</sup>

15. The defence also submits that the prosecution’s Second Application amounts to nothing more than a request for reconsideration of the original Decision, despite the prosecution’s arguments to the contrary.<sup>25</sup> The defence suggests that late disclosure of two of the witnesses’ names is not supported by any legal justification, and additionally no security risks have been identified. The defence argues that it has a right to see the unsolicited letter referred to by the prosecution.<sup>26</sup>

16. Finally, the defence submits that at the status conference on 7 October 2009, it requested a period of 6 months to prepare for the trial from the time when the prosecution completed its disclosure obligations; in the result, the defence submits that if the prosecution’s present application is granted, the rights of the accused will be seriously prejudiced, not least because he will

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<sup>23</sup> ICC-01/05-01/08-692-Conf-Exp, paragraph 8.

<sup>24</sup> ICC-01/05-01/08-692-Conf-Exp, paragraphs 9 – 12.

<sup>25</sup> ICC-01/05-01/08-692-Conf-Exp, paragraph 17.

<sup>26</sup> ICC-01/05-01/08-692-Conf-Exp, paragraphs 19 – 23.

be denied a speedy trial. It is submitted that any additional delay should lead to a reconsideration of the decision to deny the accused bail.<sup>27</sup>

17. The defence submits that the accused should be exempted from his obligation to reimburse the Registry in accordance with the Chamber's Decision of 4 November 2009, in the event this Second Application is granted and if the trial is postponed. It is submitted that any such delay will have punitive economic consequences for the accused.<sup>28</sup>
18. The defence therefore requests the Chamber to reject the prosecution's Second Application or, alternatively, if the Chamber grants the Second Application, it should consider releasing the accused due to "inexcusable delay" pursuant to Article 60(4) of the Statute, and that any resulting costs are not met by the accused.<sup>29</sup>
19. On 18 February 2010, before the Chamber had reached a decision on this Second Application for Disclosure of Additional Evidence, the prosecution filed the "Prosecution's Communication of Incriminating Evidence Disclosed to the Defence on 17 February 2010",<sup>30</sup> notifying the Chamber that it had disclosed the statement obtained following the re-interview of witness 36 to the defence.
20. The defence responded to this disclosure of incriminating evidence in a filing dated 3 March 2010.<sup>31</sup> The defence objects to the continued piece-meal disclosure of evidence, and in particular the late service of the additional

<sup>27</sup> ICC-01/05-01/08-692-Conf-Exp, paragraphs 24 – 25.

<sup>28</sup> ICC-01/05-01/08-692-Conf-Exp, paragraph 26.

<sup>29</sup> ICC-01/05-01/08-692-Conf-Exp, paragraphs 27 – 28.

<sup>30</sup> Prosecution's Communication of Incriminating Evidence Disclosed to the Defence on 17 February 2010, 18 February 2010, ICC-01/05-01/08-696; Annex A: Prosecution's Communication of Incriminating Evidence Disclosed to the Defence on 17 February 2010, 18 February 2010, ICC-01/05-01/08-696-Conf-Exp-AnxA.

<sup>31</sup> Soumissions de la Défense suite à la divulgation hors délai et sans autorisation préalable de la Chambre de nouvelles dépositions du témoin *CAR-OTP-WWWW-0036* par le bureau du Procureur, 3 March 2010, ICC-01/05-01/08-713.

statement of witness 36, noting that this additional statement had been taken after the disclosure deadline set by the Chamber of 30 November 2009, and that no reasonable explanation has been offered as to why the information was not sought earlier.<sup>32</sup>

21. The defence also observes that this additional statement was disclosed in advance of the Chamber's Decision on the prosecution's Second Application, which is opposed by the defence.<sup>33</sup>

22. The defence submits that the seemingly continuous and uncontrolled disclosure of evidence by the prosecution engages two fundamental rights of the accused, set out in Articles 64(3) and 67(1)(b) of the Statute.<sup>34</sup> In summary, therefore, the defence requests that this application to admit this fresh material from witness 36 during the trial is rejected, and it highlights the lack of compliance by the prosecution with the 30 November 2009 disclosure deadline, which it submits forms part of the prosecution's general failure to comply with the Chamber's orders, and is likely to lead to unreasonable delay, pursuant to Article 60(4) of the Statute.<sup>35</sup>

23. On 1 March 2010, the prosecution filed the "Prosecution's Submission of its 'Updated In-Depth Analysis Chart of Incriminatory Evidence'",<sup>36</sup> which includes all the evidence it intends to rely on at trial.

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<sup>32</sup> ICC-01/05-01/08-713, paragraph 11.

<sup>33</sup> ICC-01/05-01/08-713, paragraph 13.

<sup>34</sup> ICC-01/05-01/08-713, paragraph 15.

<sup>35</sup> ICC-01/05-01/08-713, paragraphs 16 – 17.

<sup>36</sup> Prosecution's Submission of its "Updated In-Depth Analysis Chart of Incriminatory Evidence", 1 March 2010, ICC-01/05-01/08-710; Annex A: Prosecution's Submission of its "Updated In-Depth Analysis Chart of Incriminatory Evidence", 1 March 2010, ICC-01/05-01/08-710-Conf-Exp-AnxA.

## II. Relevant Provisions

24. In accordance with Article 21(1) of the Statute, the Trial Chamber has considered the following provisions:

**Article 60 of the Statute**  
**Initial proceedings before the Court**

[...]

4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.

**Article 64 of the Statute**  
**Functions and Powers of the Trial Chamber**

[...]

6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:

[...]

(d) Order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties;

(e) Provide for the protection of the accused, victims and witnesses;

**Article 68 of the Statute**  
**Protection of the victims and witnesses and their participation in the proceedings**

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

[...]

**Article 69 of the Statute**  
**Evidence**

[...]

3. The parties may submit evidence relevant to the case, in accordance with article 64. The Court shall have the necessary authority to request the submission of all evidence that it considers necessary for the determination of the truth.

**Rule 81 of the Rules  
Restrictions on disclosure**

[...]

4. The Chamber dealing with the matter shall, on its own motion or at the request of the Prosecutor, the accused or any State, take the necessary steps to ensure the confidentiality of information, in accordance with articles 54, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, including by authorizing the non-disclosure of their identity prior to the commencement of the trial.

**Regulation 35 of the Regulations of the Court  
Variation of time limits**

[...]

2. The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants the opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.

**III. Analysis and conclusions**

25. This application is made in markedly different circumstances to that of 30 November 2009. In particular, the defence is now properly funded, and counsel and their assistants are in place. The trial date has moved from 27 April 2010 to 5 July 2010 because of the accused's admissibility and abuse of process applications, and the defence has been in possession of the main elements of the prosecution evidence for a significant period of time. At the end of 2009 the circumstances were notably different, most particularly because of the *de facto* lack of defence funding. It follows that this application should be dealt with on its merits, bearing in mind the changed circumstances since the last request to add evidence.

26. The proposed additional statement based on a re-interview with witness 36, [REDACTED] whose identity and prior statements have been previously disclosed, was not served earlier in the proceedings for reasons that have been fully explained, and which reflect difficulties outside of the prosecution's control. Given that for this witness the prosecution simply

seeks to supplement evidence that will otherwise be given, the Chamber is of the view that during the two months before the trial commences the defence will have adequate time to prepare for the additional testimony, which is essentially corroborative in nature and addresses matters that are particularly within the accused's own knowledge. Indeed, the defence was provided with the additional statement on 18 February 2010, albeit without the Chamber's leave. Although disclosure in these circumstances should not have occurred without the Chamber's express permission, this evidence, on analysis, is likely to assist the Chamber in its determination of the truth (Article 69(3) of the Statute).

27. Notwithstanding the potential evidence from witness 209, the [REDACTED], only first came to the prosecution's attention on 27 October 2009, the prosecution's proposals for disclosure are unacceptable. The witness was interviewed in mid-December 2009, and the prosecution proposes to disclose his identity only 30 days before the commencement of the trial (although a redacted version of his statement may be served immediately). Given it is proposed that his identity is to remain concealed until 30 days prior to trial, this proposed procedure is likely to lead to significant preparation difficulties for the defence if they are only able to commence substantive research into his evidence so close to the trial date. The precondition for permitting the prosecution to rely on this evidence (which, as set out above, addresses command responsibility) at trial is that it is to be served in non-redacted form, including the identity of the witness, by 16.00 on 10 May 2010, save that his current whereabouts and any other information which may be the subject of appropriate redactions (for instance, if there are relevant security concerns for other individuals) can be addressed in an application for protective measures, filed no later than 16.00 on 10 May 2010. In the latter event, a suitably redacted statement is to be served no later than the same date. In the view of the Chamber this will

afford the defence sufficient time for trial preparation. This evidence addresses matters that are essentially within the accused's own knowledge and it is likely to assist the Chamber in its determination of the truth.

28. Finally, the Chamber addresses witness 213, [REDACTED] whose existence was brought to the attention of the prosecution through an unsolicited letter from another prospective witness on 13 November 2009. The substantive interview with this witness, who [REDACTED], was completed on 9 December 2009, but the prosecution proposes initially to serve only a summary of this witness's evidence, withholding his statement and identity until 30 days prior to trial in order to address the possible security risks [REDACTED]. This witness will address the suggested command responsibility of the accused, and as with the previous proposed new witness, the Chamber is of the view that the prosecution's disclosure proposals are likely to lead to significant preparation difficulties for the defence if they are only able to commence substantive research into his evidence so close to the trial date, once the witness's identity and evidence has been revealed. Again, as with the previous witness, the precondition for permitting the prosecution to rely on this evidence at trial is that it is to be served in non-redacted form, including the identity of the witness, by 16.00 on 20 May 2010, save that his current whereabouts and that of his family, and any other information which may be the subject of appropriate redactions (for instance, if there are relevant security concerns for other individuals) can be addressed in an application for protective measures, filed no later than 16.00 on 20 May 2010. In the latter event, a suitably redacted statement is to be served no later than the same date. In the view of the Chamber this will afford the defence sufficient time for trial preparation. This evidence addresses matters that are essentially within the accused's own knowledge and it is likely to assist the Chamber in its determination of the truth. However, particularly given the concerns the witness has

expressed for the safety of members of his family, his consent must be obtained before disclosure is effected. If disclosure cannot occur before this deadline, the prosecution will be unable to rely on this evidence.

29. There is no need for the Chamber to address the defence submissions made on the basis of Article 60(4) of the Statute, as the detention of Mr Bemba has since been reviewed by the Chamber on 1 April 2010.<sup>37</sup> The defence arguments as regards potential financial implications for the accused are adjourned until the end of the proceedings, which is the appropriate time to review globally any applications of this kind, rather than on a piecemeal basis.

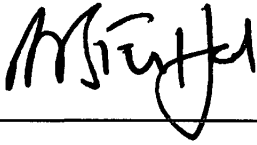
30. As a result of the authorization granted herein for the disclosure of additional evidence to be relied on at trial, the prosecution is ordered to file an updated version of the in-depth analysis chart of incriminatory evidence to reflect the additional material by 27 May 2010. The additions to be made to the table may be provided by way of an addendum.

31. The Second Application, therefore, is granted, subject to the conditions set out above.

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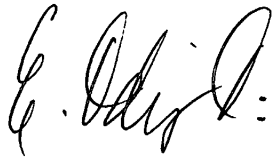
<sup>37</sup> Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence, 1 April 2010, ICC-01/05-01/08-743.

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



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**Judge Adrian Fulford**



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**Judge Elizabeth Odio Benito**



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**Judge Joyce Aluoch**

Dated this 7 May 2010

At The Hague, The Netherlands