



Original: **French**

No.: **ICC-01/05-01/08**
Date: **17 October 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 Scheduling a Status Conference

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
Tardja E. Van der Spoel
Aimé Kilolo-Musamba

Legal Representatives of Victims

Legal Representatives of 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, on 31 July 2008, it issued a decision on the evidence disclosure system and setting a timetable for disclosure between the parties.¹ The Chamber ordered, *inter alia*, the Prosecutor to disclose, as soon as possible and no later than 3 October 2008, all evidence under rules 76 and 77 of the *Rules of Procedure and Evidence* (“the Rules”).

2. The Chamber observes that the evidence disclosure process commenced on 1 October 2008.

3. On 8 October 2008, the Chamber held two closed-session *ex parte* status conferences – one with the Prosecutor² and the other with the Defence³ – in order to receive the observations of the parties on the progress of the evidence disclosure process and to prepare for the confirmation hearing.

4. The Chamber recalls that during the status conference in the presence of the Defence, counsel for Mr Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”) proposed that the Chamber schedule a further *ex parte* status conference to be held in closed session on 22 October 2008 in order to “discuss the ongoing issues”.⁴

5. On 14 October 2008, at the request of the Chamber,⁵ the Registry filed a public report entitled “Registry Report on the Implementation of Disclosure to the Defence” (“the Registry Report”).⁶ In that report, the Registry states that the evidence disclosure process took place on 1 and 3 October 2008 in accordance with the e-Court Protocol, that the Defence was informed of the uploading of the evidence and that all of that evidence was available to the Defence via the Registry Ringtail software at the

¹ ICC-01/05-01/08-55.

² ICC-01/05-01/08-T-6-CONF-EXP-ENG-ET.

³ ICC-01/05-01/08-T-7-CONF-EXP-ENG-ET.

⁴ ICC-01/05-01/08-T-7-CONF-EXP-ENG-ET, p. 9, lines 8-11 and p. 11, lines 20-22. Although stated during an *ex parte*, closed session hearing, the Chamber is of the opinion that revealing only this piece of information is not inconsistent with the confidentiality of the transcripts.

⁵ ICC-01/05-01/08-148.

⁶ ICC-01/05-01/08-155.

same time as it was available to the Chamber – that is, on 3 October 2008 at 21.30. The Registry Report also states that two of Mr Jean-Pierre Bemba’s counsel, Mr Van der Spoel and Mr Kilolo, have had access to the Ringtail software since 30 July 2008, on which date they also received training on how to use the said software – training which they themselves had requested on 25 July 2008. The report further points out that Mr Jean-Pierre Bemba has had a computer available to him at the Detention Centre since 10 July 2008 and that on 21 August 2008 he received training to be able to use the Ringtail software. Lastly, the report concludes that, following the resolution of IT problems which arose on 7 October 2008 in the Defence Ringtail environment, Mr Nkwebe, Mr Kilolo and Mr Van der Spoel, Mr Jean-Pierre Bemba’s counsel, and Mr Mangenda, the Defence Team assistant in charge of Ringtail, first had access to the evidence on 3 October 2008 via the Registry Ringtail environment, which can be accessed by the Chamber, the Defence and the Office of the Prosecutor, and subsequently on 7 October 2008 via the Defence Ringtail environment, which contains the same evidence as that available in the Registry Ringtail environment.

6. On 16 October 2008, the Defence submitted its response to the Registry Report (“the Defence Response”).⁷ The Defence explains the technical problems it faced until 8 October 2008 in having effective access to all of the evidence, including remotely. It denies having had access to the Registry Ringtail environment on 1 and 3 October 2008.⁸ The Defence acknowledges having had access to the bulk of that evidence on 3 October 2008, not via the e-Court system, but by the Prosecutor’s direct transmission of several CD-ROMs. According to the Defence, it received the evidence in its entirety via CD-ROMs on 6 October 2008 and via the Ringtail environment of the e-Court system on 8 October 2008. The Defence further states that, due to IT problems, the necessary training for its various team members and Mr Jean-Pierre Bemba to be able to use the Ringtail software and access the evidence, including remotely, is still ongoing.

⁷ ICC-01/05-01/08-159-Corr.

⁸ ICC-01/05-01/08-159-Corr, para. 6.

7. The Chamber notes articles 61 and 67 of the *Rome Statute* (“the Statute”), rules 76 to 82 and 121 of the Rules, as well as regulation 30 of the *Regulations of the Court*.

8. The Chamber recalls its obligation under article 67 of the Statute to ensure that pre-trial proceedings are conducted fairly and expeditiously, with full respect for the rights of the person being prosecuted.

9. Under rule 121(2)(b) of the Rules, the Chamber “shall hold status conferences to ensure that disclosure takes place under satisfactory conditions”.

10. After consideration of the Registry Report and the Defence Response thereto, the Chamber is of the opinion that, while it would be appropriate to agree to the Defence’s proposal to schedule a further status conference, under the circumstances, it is not appropriate for such a hearing to be held *ex parte*. The Chamber considers that, in order to better prepare for the confirmation hearing and to ensure constructive inter-party exchange, it is necessary to schedule a status conference to be held in closed session in the presence of both parties and the Registry, including one of the e-Court administrators already involved in resolving the problems raised by the Defence.

11. Accordingly, the Chamber sets the agenda of that status conference as follows:

(i) evidence disclosure process;

(ii) time and facilities required for the Defence’s preparation;

(iii) observations or proposals from the parties on the organisation of the confirmation hearing;

(iv) miscellaneous issues which the parties wish to raise in view of the confirmation hearing.

FOR THESE REASONS, THE CHAMBER DECIDES

to schedule a status conference to be held in closed session in the presence of the Prosecutor, the Defence and the Registry on Wednesday, 22 October from 10.00 to 13.30 in Courtroom I with interpreters.

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

[signed]
Judge Fatoumata Dembele Diarra
Presiding Judge

[signed]
Judge Hans-Peter Kaul

[signed]
Judge Ekaterina Trendafilova

Dated this 17 October 2008,
At The Hague, The Netherlands