

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

No.: **ICC-01/05-01/08**
Date: **31 October 2008**

PRE-TRIAL CHAMBER III

Before

**Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans Peter Kaul
Judge Mauro Politi**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF**

THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO

Public

Decision Setting the Date of the Confirmation Hearing

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

Douzima Lawson

Goun Gaye Quanfiyo

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

**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**

Fiona McKay

Other

1. **PRE-TRIAL CHAMBER III** (“the Chamber”) of the International Criminal Court recalls that on 3 July 2008, at the first appearance hearing of Mr Jean-Pierre Bemba Gombo (Mr Jean-Pierre Bemba), it scheduled the confirmation hearing for 4 November 2008.¹
2. The Chamber further recalls that, on 31 July 2008, it issued a decision on the evidence disclosure system and setting a timetable for the disclosure of evidence (“the Decision of 31 July 2008”).²
3. The Chamber recalls that the Prosecutor has filed three applications for redactions to date, on 1 August 2008,³ 30 September 2008⁴ and 17 October 2008⁵ respectively.
4. On 31 August 2008, Judge Kaul, then Single Judge acting on behalf of the Chamber,⁶ issued a first decision on redactions entitled *First decision on the Prosecutor’s request for redactions*,⁷ partially granting the Prosecutor’s first request and authorising certain redactions pertaining solely to the Prosecutor’s Application for a Warrant of Arrest and the Prosecutor’s Submission on Further Information and Materials (“the Prosecutor’s Further Submissions”).
5. On 2 October 2008, the Chamber issued a second decision on redactions entitled *Second Decision on the Prosecutor’s requests for redactions*⁸ authorising certain redactions concerning the annexes to the Prosecutor’s Application for a Warrant of Arrest and the Prosecutor’s Further Submissions. The third request for redactions is currently under consideration by the Chamber.

¹ ICC-01/05-01/08-T-3-ENG-ET-WT, page 9, line 4.

² ICC-01/05-01/08-55.

³ ICC-01/05-01/08-58-US-Exp.

⁴ ICC-01/05-01/08-126-US-Exp.

⁵ ICC-01/05-01/08-164-US-Exp.

⁶ ICC-01/05-01/08-53.

⁷ ICC-01/05-01/08-85-Conf.

⁸ ICC-01/05-01/08-135-Conf.

6. On 1 October 2008, the evidence disclosure process began, namely when the Defence received the detailed list of charges and the list of evidence from the Prosecutor.⁹

7. On 8 October 2008, the Chamber held two *ex parte* status conferences in closed session, one with the Prosecutor¹⁰ and the other with the Defence,¹¹ in order to hear the observations of the parties on the progress of the evidence disclosure process and to prepare for the confirmation hearing. Following these two conferences, the Defence informed the Chamber of difficulties it encountered in the disclosure of evidence by the Prosecutor, in particular the fact that it had yet to receive key prosecution evidence and was thus prevented from properly preparing for the confirmation hearing.

8. On 17 October 2008, the Prosecutor filed a new detailed list of charges and a new list of evidence referring to prosecution evidence that had not yet been disclosed to the Defence.¹²

9. On that same day, the Chamber, after noting the above-mentioned difficulties, felt compelled, pursuant to rule 121(7) of the *Rules of Procedure and Evidence* (“the Rules”), to postpone the confirmation hearing in order to ensure the proper exercise of the rights of the Defence, and in particular its adequate preparation for the hearing. The Chamber was also compelled to suspend *sine die* the timetable for the disclosure of evidence set in the Decision of 31 July 2008.¹³

10. On 17 October 2008, the Chamber decided to convene a third status conference for 22 October 2008 in the presence of the parties and the Registry¹⁴ notably to resolve the difficulties that had arisen in regard to the evidence disclosure system and to

⁹ ICC-01/05-01/08-129.

¹⁰ ICC-01/05-01/08-T-6-CONF-EXP-ENG-ET.

¹¹ ICC-01/05-01/08-T-7-CONF-EXP-ENG-ET.

¹² ICC-01/05-01/08-169.

¹³ ICC-01/05-01/08-170.

¹⁴ ICC-01/05-01/08-166_tENG.

hear the parties' observations on a new date for a confirmation hearing and its organisation.

11. On 22 October 2008, at the status conference, the Defence described the technical problems it was encountering in obtaining effective access to the evidence. However, in spite of these technical difficulties, the Defence requested that the confirmation hearing be held as soon as practicable. The Prosecutor, for his part, declared that he was ready at any moment.¹⁵

12. The Chamber notes articles 61, 67 and 68 of the *Rome Statute* ("the Statute"), rules 76 to 79, 81, 82, 121 and 122 of the Rules and regulation 20 of the *Regulations of the Court*.

13. At the status conference of 22 October 2008, the Chamber heard the parties and the Registry. In light of the positions taken by the participants at that hearing, the Chamber is of the opinion that at present, the technical difficulties encountered so far by the Defence have been resolved.

14. The Chamber considers that it is incumbent upon it to ensure, on the one hand, that the confirmation hearing is conducted diligently and, on the other hand, fairly and in a manner that fully respects the rights of the person concerned, in particular by ensuring that Mr Jean-Pierre Bemba has been afforded adequate time and facilities to prepare his defence. The Chamber considers that in order to respect these two principles, it is appropriate to schedule the confirmation hearing for 8 December 2008.

15. The Chamber is of the opinion that in light of this new date, it is appropriate to set a new timetable for the disclosure of evidence as set forth below. The Chamber, however, emphasises that the modalities for the disclosure of evidence set out in sub-

¹⁵ ICC-01/05-01/08-T-8-CONF-ENG CT, p. 51, lines 1-2 and ICC-01/05-01/08-T-8-CONF-ENG CT, p. 53, lines 14 and 15.

paragraphs a) to l) of the operative part of the Decision of 31 July 2008 shall remain unchanged.

16. Lastly, the Chamber indicates that it is of paramount importance for the parties and the Registry to make every effort to ensure that the confirmation hearing is held on the date set in this decision.

FOR THESE REASONS, THE CHAMBER

a) **SETS** the date of the commencement and end of the confirmation hearing respectively on **8 December 2008** and on **12 December 2008**.

b) **SETS**, as follows, a new timetable for the disclosure of evidence between the parties and the related communication to the Chamber, subject to any ruling by the Chamber pursuant to rules 81 and 82 of the Rules and any protective measures to be implemented in respect of the witnesses, victims or other persons at risk:

1) ORDERS the Prosecutor to disclose to the Defence, through the Registry, all the evidence in his possession or control under article 67(2) of the Statute as soon as practicable and on a rolling basis.

2) ORDERS the Prosecutor to disclose to the Defence, through the Registry, all evidence under rule 76 of the Rules as soon as practicable, and no later than **7 November 2008**.

3) ORDERS the Prosecutor to permit the Defence to inspect at a location agreed upon by the parties all evidence under rule 77 of the Rules as soon as practicable, and no later than **7 November 2008**.

4) ORDERS the Prosecutor to submit to the Registry, after inspection of any evidence under rule 77 of the Rules, electronic copies or, in the case of tangible objects, electronic photographs thereof, so that the Registry may register them

in the record of the case and the original of such evidence or the tangible objects themselves may be placed in the Registry vault.

5) ORDERS the Defence to permit the Prosecutor to inspect at a location agreed upon by the parties all evidence under rule 78 of the Rules as soon as practicable, and no later than **21 November 2008**.

6) ORDERS the Defence to submit to the Registry, after inspection of any evidence under rule 78 of the Rules, electronic copies or, in the case of tangible objects, electronic photographs thereof, so that the Registry may register them in the record of the case and the original of such evidence or the tangible objects themselves may be placed in the Registry vault.

7) ORDERS the Defence, should it intend, pursuant to rule 79 of the Rules, to raise the existence of an alibi or a ground for excluding criminal responsibility set forth in article 31(1) of the Statute, to comply with the modalities for the disclosure of evidence prescribed in the Decision of 31 July 2008.

8) ORDERS the Defence, should it intend to lead evidence pursuant to article 61(6) of the Statute, to comply with rule 126(1) of the Rules and submit the list to the Pre-Trial Chamber no later than **21 November 2008** failing which, any request to lead such evidence at the confirmation hearing will be rejected *in limine*.

9) INFORMS the Prosecutor that any new request for redactions submitted to the Chamber under rules 81 and 82 of the Rules concerning evidence to be disclosed within the time limit prescribed in rule 121(3) of the Rules will be rejected *in limine*.

10) ORDERS the Prosecutor to comply with the filing deadline set for **4 November 2008** for all requests for redactions submitted to the Chamber

under rules 81 and 82 of the Rules concerning evidence to be disclosed within the time limit prescribed in rule 121(5) of the Rules, failing which, any such requests for redactions will be rejected *in limine*.

11) ORDERS the Defence to comply with the filing deadline set for **4 November 2008** for all requests for redactions submitted to the Chamber under rules 81 and 82 of the Rules concerning evidence to be disclosed within the time limit prescribed in rule 121(6) of the Rules, failing which, any such requests for redactions will be rejected *in limine*.

12) ORDERS the Prosecutor and the Defence, should they intend, pursuant to rule 121(9) of the Rules, to lodge written submissions on points of fact or law, including grounds for excluding criminal responsibility set forth in article 31(1), to lodge such submissions with the Chamber no later than **4 December 2008**.

13) ORDERS the Registry, pursuant to rule 121(9) of the Rules, to transmit a copy of the said submissions immediately to the party concerned.

c) **WILL ISSUE** the exact calendar for the conduct and organisation of the confirmation hearing at a later date.

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

[signed]

**Judge Ekaterina Trendafilova,
Presiding Judge**

[signed]

Judge Hans Peter Kaul

[signed]

Judge Mauro Politi

Done this 31 October 2008,
The Hague, The Netherlands.