



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
URGENT**

Decision on the Postponement 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

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 3 July 2008, at Mr Jean-Pierre Bemba Gombo’s first appearance hearing, it scheduled the confirmation hearing for 4 November 2008.¹

2. The Chamber considers that disclosing some of the information stated in this decision – although contained in confidential, under seal or *ex parte* documents – does not conflict with the confidential, under seal or *ex parte* nature of the said documents.

3. The Chamber further recalls that, on 31 July 2008, it issued a decision on the evidence disclosure system setting a timetable for the disclosure of evidence (“the Decision of 31 July 2008”).² The Chamber also decided, in accordance with rule 121(3) of the *Rules of Procedure and Evidence* (“the Rules”), that 3 October 2008, that is, thirty (30) days prior to the date of the confirmation hearing, would be the deadline for the Prosecutor to submit to the Chamber and the person concerned a detailed list of the charges and the list of the evidence he intends to lead at the hearing. In its Decision of 31 July 2008, the Chamber also clearly stated that no requests for redactions could be filed after 3 September 2008.

4. On 1 August 2008, the Prosecutor filed a first request for redactions³ concerning not only the Prosecutor’s Application for a Warrant of Arrest⁴ and the Prosecutor’s Submission on Further Information and Materials (“the Prosecutor’s Further Submissions”),⁵ but also the related annexes corresponding to the statements of fourteen prosecution witnesses (“the Prosecutor’s First Request”). The Prosecutor’s First Request was notified to the Defence that same day.⁶

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-01/05-13-US-Exp.

⁵ ICC-01/05-01/08-29-US-Exp.

⁶ ICC-01/05-01/08-59-Conf.

5. On 31 August 2008, Judge Kaul, then Single Judge acting on behalf of the Chamber,⁷ issued a first decision on redactions entitled *First decision on the Prosecutor's request for redactions*,⁸ partially granting the Prosecutor's First Request and authorising certain redactions relating solely to the Prosecutor's Application for a Warrant of Arrest and the Prosecutor's Further Submissions.

6. On 2 October 2008, the Chamber issued a *Second Decision on Redactions*⁹ authorising certain redactions concerning the annexes to the Prosecutor's Application for a Warrant of Arrest and the Prosecutor's Further Submissions. The partially authorised redactions related to the statements of twelve of the fourteen witnesses.

7. Furthermore, on 30 September 2008, the Prosecutor filed a new request – without specifying the legal basis thereof – for redactions relating to nine of eleven additional witnesses (“the Prosecutor's Second Request”).¹⁰ That same day, he notified the said request to the Defence.¹¹

8. On 1 October 2008, the evidence disclosure process began, namely when the Defence received the detailed list of the charges and the list of evidence from the Prosecutor.¹²

9. On 3 October 2008, following the timetable set by the Chamber for the disclosure of evidence, the Prosecutor disclosed to the Defence the statements of twelve of the first fourteen witnesses in redacted form.

10. On 8 October 2008, the Chamber held two *ex parte* status conferences in closed session, one with the Prosecutor¹³ and the other with the Defence,¹⁴ in order to hear

⁷ ICC-01/05-01/08-53.

⁸ ICC-01/05-01/08-85-Conf.

⁹ ICC-01/05-01/08-135-Conf.

¹⁰ ICC-01/05-01/08-126-US-Exp.

¹¹ ICC-01/05-01/08-127-Conf.

¹² ICC-01/05-01/08-129.

the observations of the parties on the progress of the evidence disclosure process and to prepare for the confirmation hearing.

11. On 10 October 2008, the Chamber requested¹⁵ from the Registry a report on the difficulties raised by the Defence concerning the implementation of the evidence disclosure process.

12. On 14 October 2008, in response to the Chamber's request, the Registry filed a public report entitled "Registry Report on the Implementation of Disclosure to the Defence" ("the Registry Report").¹⁶

13. On 16 October 2008, the Defence responded by way of submissions on the Registry Report ("the Defence Response").¹⁷ In its response, the Defence mentions that the statements of eleven additional witnesses have not been disclosed to it.

14. On 17 October 2008, the Prosecutor filed a third request for redactions¹⁸ under rule 121(5) of the Rules in relation to the statement of an additional witness ("the Prosecutor's Third Request"). The existence of this request was notified to the Defence.¹⁹

15. That same day, the Chamber decided to schedule a third status conference on 22 October 2008 in the presence of the parties and the Registry²⁰ in order to clarify the apparent contradictions between the statements of the Registry and those of the Defence, in particular, with regard to the evidence disclosure system, and to successfully prepare for the confirmation hearing.

¹³ ICC-01/05-01/08-T-6-CONF-EXP-FRA-ET.

¹⁴ ICC-01/05-01/08-T-7-CONF-EXP-FRA-ET.

¹⁵ ICC-01/05-01/08-148.

¹⁶ ICC-01/05-01/08-155.

¹⁷ ICC-01/05-01/08-159-Corr.

¹⁸ ICC-01/05-01/08-164-US-Exp.

¹⁹ ICC-01/05-01/08-165-Conf.

²⁰ ICC-01/05-01/08-166.

16. On 17 October 2008, the Prosecutor filed a new detailed list of charges and a new list of evidence.²¹

17. The Chamber notes articles 61, 67 and 68 of the *Rome Statute* (“the Statute”), rules 76, 121 and 122 of the *Rules of Procedure and Evidence* (“the Rules”).

18. The Chamber recalls that, pursuant to rule 76 of the Rules, the Prosecutor is required to disclose information concerning prosecution witnesses to the Defence “sufficiently in advance to enable the adequate preparation of the defence”.

19. The Chamber notes that the Prosecutor’s Second Request was filed on 30 September 2008, that is long after 3 September 2008, the deadline set by the Chamber in its Decision of 31 July 2008 for the filing of any request for redactions.

20. The Chamber further notes that the Prosecutor’s Second Request was filed just three days before 3 October 2008, the thirty-day deadline prior to the date of the confirmation hearing. Accordingly, the Prosecutor put himself in a position where it was materially impossible for him to disclose the redacted versions of the statements of nine of the eleven additional witnesses to the Defence by 3 October 2008, since requests for redactions must be granted or denied by the Chamber prior to any disclosure to the Defence.

21. Furthermore, the Chamber notes that the Prosecutor’s Third Request was again filed just three days before 20 October 2008, the fifteen-day deadline prior to the date of the confirmation hearing. Thus, the Prosecutor once again put himself in a similar position to that described in the preceding paragraph.

22. Moreover, the Chamber observes with astonishment that the Prosecutor includes in the two lists of evidence accompanying the detailed list of charges and the amended detailed list of charges, respectively, some of the additional witnesses

²¹ ICC-01/05-01/08-169.

without disclosing their names, without even waiting for the Chamber's decision on the Prosecutor's Second and Third Requests granting or denying the requests for redactions proposed by the Prosecutor.

23. In light of the foregoing, the Chamber notes the existence of significant problems that have emerged so far in the evidence disclosure system especially regarding the Prosecutor's obligation to disclose this material to the Defence correctly, fully and diligently in accordance with the timetable set in the Decision of 31 July 2008.

24. In fact, the Chamber notes with concern that part of the evidence on which the Prosecutor intends to rely at the confirmation hearing is not yet accessible to the Defence.

25. In these circumstances the Chamber considers that, pursuant to rule 121(7) of the Rules, it must postpone the confirmation hearing in order to ensure that the Defence may properly exercise its rights and, in particular, prepare adequately for the hearing. The Chamber is of the opinion that the new date for the confirmation hearing must be the subject of consultation between the parties at the status conference scheduled for 22 October 2008.²² That date will be communicated to the parties following the status conference.

FOR THESE REASONS, THE CHAMBER DECIDES

a) to postpone the confirmation hearing to a date to be set and communicated to the parties after the status conference of 22 October 2008.

b) to suspend until otherwise ordered the timetable for the disclosure of evidence set out in the Decision of 31 July 2008.

²² ICC-01/05-01/08-166.

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