



Original: English

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

Date: 25 November 2008

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Mauro Politi

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

Public Document

**Defence Observations on the Proposed Schedule for
the Confirmation of Charges Hearing**

Source: The Defence

Document 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 & Karim A. A. Khan
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. On 21 November 2008, Pre-Trial Chamber III filed its “Decision Requesting Observations

on the Proposed Schedule for the Confirmation of Charges Hearing”.¹

2. The annex to that Decision set out a proposed schedule for the hearing to consider the confirmation of charges.²
3. It also requests “the Prosecutor, the Defence and the Registrar to submit, no later than 25 November 2008, their observations with regard to the issues raised in paragraph 5 and the proposed schedule for the confirmation of charges hearing as set out in the Annex.”
4. Briefly stated, the issues raised in paragraph 5 include the following:
 - a. That arguments be organised so as to follow the organisation of the issues as set out by the Court;
 - b. That arguments avoid repetition of arguments;
 - c. That any presentation of live witnesses and any issues related to protective measures should be raised as early as possible;
 - d. That protective measures should be respected;
 - e. That detailed information be provided as soon as possible with regard to the time needed by each party to present in-court audio- and video-based evidence, as well as geographical maps;
 - f. That all evidence should be referred to by its EVD number.

THE PROPOSED SCHEDULE

5. The schedule proposed by the Pre-Trial Chamber provides for each side to have approximately 7.5 hours within which to present its evidence. This proposal is in line with the representations made at the status conference held on 22 October 2008, as intended by the Court.³ At that hearing, the prosecution indicated they would need approximately 6 hours to present their case, allowing an hour for their opening statement and half an hour for their closing argument.⁴ On behalf of the Bemba Defence, Mr. van der Spoel informed the Court that the defence would probably need the same amount of

¹ ICC-01/05-01/08-267.

² ICC-01/05-01/08-267-Anx.

³ ICC-01/05-01/08-267 at para. 4

⁴ ICC-01/05-01/08-T-8-CONF-ENG at 53:5-9.

time as requested by the prosecution, although he cautioned that “of course I don't know the contents of the arguments at the moment, but that's just in general what I'm thinking.”⁵

6. Since the 22 October hearing, the review of evidence by the Bemba Defence has revealed that Mr. van der Spoel's estimate of the time needed to present the defence case significantly underestimates the amount of time that will be needed. Although it remains possible to conduct the hearing within one week, the defence requests 12 hours within which to present its case. This would include a 2 hour opening statement and a 2 hour closing argument, with 8 hours allowed for the presentation of evidence. No live witnesses will be called to testify. A proposed schedule is set out in the Annex to these observations.
7. In addition, because the burden of proof at the confirmation of charges hearing falls upon the prosecutor, the prosecution should be required to put on their entire case in support of confirmation prior to the defence having to respond to any part of it.
8. If this request is granted and the the defence is allowed to present its case following the full presentation of the prosecution case, the Bemba Defence would respect the Court's structure in relation to the issues and would avoid repetition of arguments. However, it should be noted that certain issues, such as the impeachment of witnesses, do not fall neatly within any single issue set out in the Court's model.
9. Although we are not yet able to provide detailed information as to video evidence, we hope to provide such information by 1 December. It is anticipated there will be at least 2 hours of video evidence.

⁵ ICC-01/05-01/08-T-8-CONF-ENG at p. 53:14-21.

CONCLUSION

10. For the foregoing reasons, it is respectfully requested that the Bemba Defence be granted 12 hours within which to present its case, and that the prosecution be required to fully present their own case prior to the start of the defence case.

Respectfully submitted,



Nkwebe Liriss
Co-Lead Counsel



Karim A.A.Khan
Co-Lead Counsel

Dated this 25th day of November, 2008

At The Hague, The Netherlands.