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No.: 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 IN THE CENTRAL AFRICAN REPUBLIC
*IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO***

Public

**Prosecution's Observations on the Proposed Schedule
for the Confirmation of Charges Hearing**

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court*
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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

On 21 November 2008, the Pre-Trial Chamber III (hereinafter referred to as the “Chamber”) issued the “Decision Requesting Observations on the Proposed Schedule for the Confirmation of Charges Hearing”¹ (hereinafter referred to as the “Decision”), requesting the Defence, the Registrar and the Prosecutor (hereinafter referred to as the “Prosecution”) to submit observations on the presentation of evidence and the proposed schedule for the Confirmation of Charges Hearing (hereinafter referred to as the “Hearing”) as proposed by the Chamber and set out in the Annex² to its Decision.

The Prosecution respectfully submits its observations, as requested.

Prosecution’s proposed schedule for the Hearing

1. The Prosecution, supports the Chamber’s efforts to ensure expeditious proceedings, and is aware of the importance of presenting evidence in a concise and non-repetitive manner. In order to complete the Hearing within the time allocated by the Chamber, the Prosecution respectfully requests the following modifications to the proposed schedule:

2. As indicated in the status conference held on 22 October 2008, the Prosecution estimated that the presentation of its case requires approximately six hours³. This calculation was based on the understanding that both parties would present their evidence *en bloc*, a procedure that has been followed in the Confirmation of Charges Hearings in the *Lubanga* as well as in the *Katanga/Ngudjolo* cases⁴. It was also based on the understanding that the Parties would not need to “call out” evidence numbers, as adopted in the *Katanga/Ngudjolo* cases.

3. Further, the Prosecution proposed this methodology based on paragraph 72 of the “Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties” (hereinafter referred to as the “Disclosure Decision”), which states in pertinent part⁵:

¹ ICC-01/05-01/08-267. The Decision requests the Prosecution to file its observations no later than 25 November 2008.

² ICC-01/05-01/08-267-Anx

³ Transcript of status conference of 22 October 2008, ICC-01/05-01/08-T-8-CONF-ENG, page 53

⁴ See Decisions on the schedule in both cases: ICC-01/04-01/06-678; ICC-01/04-01/07-587, ICC-01/04-01/07-587-Anx1

⁵ ICC-01/05-01/08-55

4. The hearing will be conducted more efficiently if the parties have duly complied with the proposed methodology in that, pursuant to 122(1) of the Rules of Procedure and Evidence (hereinafter referred to as the “Rules”), the order in which the evidence contained in the record of the proceedings is presented at the confirmation hearing follows the order of the counts set out in the document containing the charges under article 61(3) of the Rome Statute (hereinafter referred to as the “Statute”).

5. The Prosecution’s proposed methodology follows the order of the counts set forth in the Prosecution’s Amended Document Containing the Charges⁶ and is consistent with the Chamber’s prior Disclosure Decision.

6. Further, this procedure will enable both parties to present their case within the timeframe established by the Chamber. In particular, a presentation conducted in this manner will eliminate repetitive arguments as the Prosecution would present evidence on the chapeau requirements of Articles 7 and 8 of the Statute only once and address the specific elements that apply to both offenses at the same time. For example, a presentation for rape charged as a crime against humanity and a war crime would include elements common to each count.

7. The Prosecution’s proposed methodology eliminates the necessity to present the same evidence twice as long as there is an understanding that the chapeau requirements apply to their respective underlying counts.

8. Based on the considerations outlined above, the Prosecution proposes to present its evidence in the following order:

- a. Jurisdiction/admissibility and other procedural issues
- b. Article 7 Contextual elements including Movements of MLC troops
- c. Article 8 Contextual elements
- d. Crimes
 - i. Rape
 - ii. Torture
 - iii. Outrages

⁶ ICC-01/05-01/08-264-Conf-AnxA and ICC-01/05-01/08-264-AnxB

- iv. Killing/Murder
- v. Pillaging
- f. Individual criminal responsibility

9. The Prosecution concurs with the Chamber's proposed schedule for the opening and closing statements.

Technical issues

10. Referring to paragraph 5 (vi) of the Decision, the Prosecution intends to use "flash presentations" for its Opening Statement as well as for Article 8 (Contextual elements), Article 7 (Contextual elements) including Movements of MLC troops, and Individual criminal responsibility as set forth above.

11. The "flash presentations" that the Prosecution has prepared are visual aides that incorporate animations, maps, video and audio features. They are pre-loaded onto a laptop and presented with the aide of one of the Prosecution's technical assistants, and do not require the use of Ringtail.

12. The purpose of the flash presentations, which are not evidence themselves, will serve to enhance the Chamber's understanding of the evidence and oral presentations. At this stage, the Prosecution preserves its right to present audio and video evidence in its case in chief. The Prosecution will provide the Chamber with detailed information regarding its intention to use such evidence, and the necessary time anticipated for presentation of evidence as soon as practicable.

Witness and confidentiality related issues

13. The Prosecution hereby informs the Chamber that it does not intend to rely on live witnesses. With respect to the preservation of anonymity of witnesses, the Prosecution concurs with the Chamber's position and will refer to all witnesses by their respective numbers when during the Hearing.

14. Further, at this time, the Prosecution is not requesting that any part of the Hearing be held in closed session. The Prosecution, however, reserves its right to request a closed session, if the need arises, such as if the parties present evidence that includes the identifying features of victims and witnesses.

Other observations and requests

15. The proposed schedule does not include the possibility for the Prosecution to respond to arguments made by the Defence. The Prosecution submits that fundamental fairness requires that both parties, the Defence as well as the Prosecution, have the opportunity to present oral arguments.

16. Furthermore, the Prosecution respectfully requests the opportunity to provide written submissions to the Chamber after the respective sessions, and after the closing of the Hearing to address any matter discussed in the Hearing.

Conclusion

The Prosecution respectfully requests that the Chamber give consideration to its observations in particular with regards to the suggested schedule as outlined in paragraph 8 above.



Luis Moreno-Ocampo, Prosecutor

Dated this 25th day of November 2008

At The Hague, The Netherlands