



Original: **English**

No.: ICC-01/05-01/08
Date: **15 December 2008**

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Single Judge

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

Public Document

Defence Response to the 'Prosecution's Observations on the Exact Date of the Confirmation Hearing'

Source: Defence Team of Mr Jean-Pierre Bemba Gombo

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**Unrepresented Applicants for
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I. INTRODUCTION

Mr. Jean-Pierre BEMBA GOMBO, acting through Counsel pursuant to Articles 61 and 67(1)(c) of the Rome Statute and Rule 121 of the Rules of Procedure and Evidence, hereby submits his “Defence Response to the ‘Prosecution's Observations on the Exact Date of the Confirmation Hearing’”¹. In support of this Motion, Counsel states the following:

1. The Prosecution has been seized of this matter since 13 April 2006, when the Central African Republic first referred itself for investigation. A formal investigation was officially opened on 22 May 2007.
2. Mr. Bemba was arrested in Belgium on 24 May 2008,² and was transferred to the Netherlands on 3 July 2008.³
3. During his initial appearance before Pre-Trial Chamber III on 4 July 2008, the Pre-Trial Chamber set 4 November 2008 as the date on which the confirmation of charges hearing would begin.⁴
4. On 17 October, the Pre-Trial Chamber post-poned the 4 November hearing date *proprio motu* because the Prosecution had failed to complete their disclosure obligations.⁵ The hearing was subsequently scheduled for 8 December 2008.⁶
5. On 2 December 2008, the Pre-Trial Chamber again post-poned the hearing *proprio motu*, this time due to a grave family situation of one of the judges.⁷ Observations were invited by the parties as to the new date for a hearing, which would begin on 12 January 2009 at the earliest.

¹ ICC-01/05-01/08-317.

² ICC-01/05-01/08-8, para. 5.

³ ICC-01/05-01/08-T-3, page 4.

⁴ ICC-01/05-01/08-T-3, page .

⁵ ICC-01/05-01/08-170.

⁶ ICC-01/05-01/08-199.

⁷ ICC-01/05-01/08-304.

6. The Defence filed observations on 4 December 2008 requesting the hearing begin on 12 January 2009.⁸
7. The Prosecution filed observations on 12 December 2008 stating: “The Prosecution supports Pre-Trial Chamber III’s efforts to ensure expeditious proceedings, and therefore does not object to 12 January 2009 as a possible date for the commencement of the Hearing.” However, they go on to propose “19 January 2009 as the most convenient date for commencement of the confirmation proceedings”⁹ so that the Prosecution can “regroup” after the court recess.
8. No date has yet been set for the hearing.

II. APLICABLE LAW

ROME STATUTE

Article 61

Confirmation of the charges before trial

1. Subject to the provisions of paragraph 2, within a reasonable time after the person's surrender or voluntary appearance before the Court, the Pre-Trial Chamber shall hold a hearing to confirm the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the presence of the Prosecutor and the person charged, as well as his or her counsel.

3. Within a reasonable time before the hearing, the person shall:

(a) Be provided with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial; and

(b) Be informed of the evidence on which the Prosecutor intends to rely at the hearing.

The Pre-Trial Chamber may issue orders regarding the disclosure of information for the purposes of the hearing.

Article 67

Rights of the accused

⁸ ICC-01/05-01/08-306, paras. 5 and 10.

⁹ ICC-01/05-01/08-317, para. 3.

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

(c) To be tried without undue delay;

RULES OF PROCEDURE AND EVIDENCE

Rule 121

Proceedings before the confirmation hearing

1. A person subject to a warrant of arrest or a summons to appear under article 58 shall appear before the Pre-Trial Chamber, in the presence of the Prosecutor, promptly upon arriving at the Court. Subject to the provisions of articles 60 and 61, the person shall enjoy the rights set forth in article 67. At this first appearance, the Pre-Trial Chamber shall set the date on which it intends to hold a hearing to

confirm the charges. It shall ensure that this date, and any postponements under sub-rule 7, are made public.

III. RESPONSE TO THE PROSECUTOR'S OBSERVATIONS ON THE SECOND RE-SCHEDULING OF THE CONFIRMATION OF CHARGES HEARING

9. The Prosecution does not object, and the Defence must emphasize that the hearing to consider the confirmation of charges should take place at the earliest possible date.

10. The detailed procedures set out in Rule 121 requiring that a date be immediately set for the hearing on the confirmation of charges, thus triggering the timeline for disclosure of the charges and the evidence, is predicated upon the requirement for expeditious proceedings. Having been twice post-poned previously, neither time at the request or application of the defence,¹⁰ a third postponement of the confirmation hearing on the application of the Prosecution or arising from a decision of the Trial Chamber should, in the Defence submission, be exceptional and predicated upon the most compelling grounds.

¹⁰ ICC-01/05-01/08-170; ICC-01/05-01/08-304.

11. Article 61 requires that a hearing to consider the confirmation of charges be held within a reasonable time. What is reasonable must be decided on a case by case basis under the circumstances. The Prosecution having been ready for confirmation on 4 November and 8 December can hardly claim not to be ready on 12 January.
12. Where an accused person is in custody, the presumption must be that the hearing will be held at the first available date. That date is 12 January 2009.
13. The suggestion by the prosecution that a "Court recess" "implies that staff members involved will need to regroup and properly prepare after the Court recess"¹¹ is grossly insufficient to justify additional delay in the scheduling of the hearing. Indeed, to allow additional delay on such a basis would not be consistent with the duty to hold a confirmation hearing within a "reasonable time".
14. These delays, which Mr. Bemba has consistently opposed and for which he bears no blame, result in substantial legal costs which must be borne personally by Mr. Bemba and which keep mounting with each passing week.
15. As a final consideration, it should be noted that Co-Lead Counsel Karim A.A. Khan is scheduled to appear before the International Criminal Tribunal for the former Yugoslavia beginning 19 January 2009. This commitment will be of limited duration, but a critical witness will be the first witness called on 19 January. This is an additional factor which may be considered by the Trial Chamber and which strengthens the Defence submission that the hearing to consider the confirmation of charges should begin no later than 12 January 2009.
16. In summary, the Defence submits the following observations which should lead this Court to set 12 January 2009 as the start for the hearing to consider the charges in this case:
 - i. Mr. Bemba is entitled to expeditious proceedings and a prompt determination of the charges against him.
 - ii. This is especially true because he is in custody,

¹¹ ICC-01/05-01/08-317, para.4.

- iii. Because Mr. Bemba is privately funding his case, further delay, which appears unjustifiable on the face of the Prosecution's observations, also imposes an unreasonable and unfair financial burden upon Mr. Bemba.
- iv. The situation of Co-Lead Counsel lends additional weight to the need to begin the hearing on 12 January 2009.

Respectfully submitted,



Nkwebe Liriss
Co- Lead Counsel



Karim A.A.Khan
Co- Lead Counsel



Aime Kilolo Musamba
Associate Counsel

Dated this 15 December 2008

At The Hague, The Netherlands