

1 International Criminal Court

2 Trial Chamber III - Courtroom 1

3 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch and

4 Judge Kuniko Ozaki

5 Situation: Central African Republic - ICC-01/05-01/08

6 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo

7 Status Conference

8 Monday, 30 August 2010

9 (The hearing starts at 10.30 a.m.)

10 (Open session)

11 THE COURT OFFICER: All rise. The International

12 Criminal Court is now in session. (No interpretation).

13 PRESIDING JUDGE STEINER: So, good morning. First, I

14 would ask the court officer please to call the case.

15 THE COURT OFFICER: Yes, Madam President. This is the

16 situation in the Central African Republic in the case of the

17 Prosecutor versus Jean-Pierre Bemba Gombo, case reference

18 ICC-01/05-01/08.

19 PRESIDING JUDGE STEINER: Thank you very much. So

20 first I would like to welcome you all, the Prosecutor's team,

21 legal representatives of victims, the Defence, Mr Jean-Pierre

22 Bemba, and welcome after the summer judicial recess and we begin

23 by way of formally introducing the newly formed

24 Chamber - constituted Chamber - since our first hearing.

25 I am Judge Silvia Steiner and I will be the Presiding

1 Judge of this case. To my right we have Judge Joyce Aluoch,
2 that as you know was part of the former Trial Chamber III, and
3 to my left is Judge Kuniko Ozaki.

4 I would like now to invite the parties and participants
5 to introduce themselves and their teams, starting by the
6 Prosecutor.

7 MS KNEUER: Thank you, Mrs President, your Honours.
8 The Prosecution is represented today by Mr Massimo Scaliotti,
9 trial lawyer; Mr Hesham Mourad, associate trial lawyer;
10 Ms Marion Rabanit, assistant trial lawyer; Ms Horejah Bala-Gaye;
11 assistant trial lawyer; Frédérique Besse, case manager; and
12 myself, Petra Kneuer, the senior trial lawyer of the case.

13 PRESIDING JUDGE STEINER: Thank you. On the part of
14 victims participating in the proceedings?

15 MS MASSIDDA: Good morning, Madam President, your
16 Honours. A group of victims in this proceeding is represented
17 by the Office of Public Counsel for Victims. I am Paolina Massidda,
18 principal counsel of the Office, assisted today by Mr Orchlon
19 Narantsetseg and Ms Caroline Walter, both associate legal
20 officers. Thank you.

21 MS DOUZIMA-LAWSON: (Interpretation) Good morning.
22 Thank you, Madam Chair. I am Ms Marie-Edith Douzima. I am a
23 legal representative representing victims in this case. Thank
24 you.

25 PRESIDING JUDGE STEINER: Defence team, please.

1 MR LIRISS: (Interpretation) Your Honour, I would like
2 to introduce Kate Gibson, legal assistant; Jean-Jacques Kabongo,
3 case manager; Mr Nick Kaufman, associate counsel; Mr Kilolo;
4 and myself, main counsel, principal counsel. I am Mr Liriss.
5 Should I introduce the accused person?

6 PRESIDING JUDGE STEINER: (Interpretation) Please.

7 MR LIRISS: (Interpretation) Mr Jean-Pierre Bemba
8 Gombo.

9 PRESIDING JUDGE STEINER: Thank you very much. As you
10 know, as all of you have been informed, this status conference
11 of today is a specific issue of discussing a possible date for
12 the beginning of the trial of Mr Jean-Pierre Bemba Gombo.

13 So the Trial Chamber is aware that there are a number
14 of pending issues to be decided by the Chamber. For most of
15 them the Chamber has already all elements needed in order to
16 issue its decision, so the Chamber would like to kindly ask the
17 parties and participants, therefore, to confine themselves to
18 submissions in relation to the possible date for the beginning
19 of the trial.

20 With that, I would call upon the Prosecution first for
21 their views, the legal representatives of victims and lastly
22 the Defence. So the Prosecution has the floor.

23 MS KNEUER: Thank you, Madam President, your Honours.
24 The submission of the Prosecution will be very short. First
25 the Prosecution submits that it is ready to start with the trial,

1 and the second submission is that the Prosecution suggests to
2 start with the trial proceedings as soon as possible in order
3 to respect the interests of the victims, as well as the rights
4 of the accused.

5 Thank you.

6 PRESIDING JUDGE STEINER: I very much appreciate the
7 objective submission of the Prosecution, but the Chamber would
8 like to insist a little bit in asking the OTP whether the OTP
9 would have some date in mind, or approximately a date in mind.
10 As soon as -- we know as soon as possible, but what means as
11 soon as possible for the Prosecution?

12 MS KNEUER: Thank you, Madam President. Considering
13 the necessary logistics to set up the first witnesses and also
14 considering some outstanding matters, in particular on the
15 conduct of proceedings, the Prosecution believes that
16 October/November should be feasible.

17 PRESIDING JUDGE STEINER: Thank you very much. Now I
18 turn to the legal representatives of victims, starting by OPCV.

19 MS MASSIDDA: (Interpretation) Thank you, Madam
20 President. We will be brief, as the OTP was. We have received
21 a number of documents and we have assessed the interests of our
22 clients. As legal representatives, we are ready to begin the
23 trial.

24 We have also conducted the victims in the field quite
25 recently and they would like to see the trial begin sooner, and

1 we are of the opinion that mid-October would be a realistic date
2 in terms of the number of issues that are currently pending before
3 the Chamber.

4 Thank you.

5 MS DOUZIMA-LAWSON: (Interpretation) I don't have
6 much to add, other than to confirm what my learned friend has
7 just said. Recently, as she said, we consulted our clients and
8 our clients would like the trial to begin as quickly as possible
9 because they have been waiting for years. I believe that
10 everything has been done so that the trial can begin by October.

11 PRESIDING JUDGE STEINER: (Interpretation) Defence?

12 MR LIRISS: (Interpretation) Your Honours, for more
13 than two years now Mr Jean-Pierre Bemba has been in detention
14 in the Court's custody. No one more than he would like the trial
15 to begin as soon as possible. Just last April he had the hope
16 that the trial would begin.

17 On this issue we remain entirely at your discretion.
18 However, for you to be in a position to determine in an efficient
19 way I would like to make four observations.

20 First of all, I would like to remind the Chamber of
21 the financial issues that the Defence team is grappling with.
22 The Chamber itself had to intervene with the Registry so a loan
23 could be made to Mr Bemba; a loan that does not even allow for
24 payment of the fees and other honorarium of the lawyers.
25 Furthermore there are the costs associated with conducting an

1 investigation.

2 In this regard we did make a filing, the Registry reacted
3 in its own manner and, furthermore, we have just made a request
4 for authorisation to respond to the totally erroneous arguments
5 from the Registry.

6 And, your Honours, when one considers that Mr Bemba
7 was placed in an impossible situation in that he had no access
8 to his own assets because of the actions taken by the Prosecution,
9 and we have always disputed the legal basis on which the
10 Prosecution seized his assets.

11 And then after that the Court decided not to deem him
12 to be indigent. This is a crucial issue, because one cannot
13 achieve equality of arms under such circumstances.

14 PRESIDING JUDGE STEINER: You mentioned that you filed
15 a request, but I checked that, at least until now, the Chamber
16 has not received any request from the Defence to respond to the
17 Registrar's information.

18 MR LIRISS: (Interpretation) Which request, for the
19 increase of fees? Or the request to obtain authorisation to
20 respond to the Registry?

21 PRESIDING JUDGE STEINER: The request to be authorised
22 to respond.

23 MR LIRISS: (Interpretation) Yes, that is underway.
24 Yes. Our case manager informs us that it is being sent.

25 PRESIDING JUDGE STEINER: Let's then wait for your

1 request to be analysed and decided upon by the Chamber, and so
2 the Chamber is not going to advance any decision on this topic
3 right now, so you can go to your second point.

4 MR LIRISS: (Interpretation) Agreed. A number of
5 issues are still pending and we have a great deal of problems
6 with the victims. I shall recall, for the Chamber's benefit,
7 that in October, if I'm not mistaken, the Chamber made a decision
8 ordering the legal representatives of victims to provide us with
9 the dates and the places of the alleged facts, the alleged crimes.

10 My colleague had agreed, upon instruction from the
11 Chamber that she would do so, but more than six months have gone
12 by and we do not have that information, neither the dates, nor
13 the places, and it is impossible for us to respond to the claims
14 being made by victims who are asking for reparations.

15 We too made a filing in this regard, asking that the
16 legal representatives of victims comply with your ruling
17 concerning the 182 new so-called victims -- correction, 192.
18 We have 86 other victims to deal with, and we call upon the Chamber
19 to comply with the order.

20 Thirdly --

21 PRESIDING JUDGE STEINER: If you allow me, I would like
22 to listen from the legal representatives if they have any comment
23 on this specific topic.

24 MS MASSIDDA: (Interpretation) Thank you, Madam.
25 While my learned friend was speaking, I was checking the decision

1 made by the Chamber and I can provide the information from the
2 earlier decision and, in any event, there was a ruling from the
3 Chamber, Trial Chamber III, dismissing the request for the dates
4 and the places, and I understand that was an expunged -- a redacted
5 version, and I understand.

6 Now, we do not have all the requests as they have been
7 redacted so far. We are still awaiting verification. But there
8 is a ruling from the Chamber to the effect that there is -- that
9 it is not necessary to comply with this request from the Defence
10 because the Defence had all the necessary information to provide
11 information to the Chamber in accordance with Rule 89 of the
12 Rules of Evidence and Procedure. And with leave of the Chamber,
13 I will provide the number of the decision, and the date later,
14 immediately after. Excuse me, perhaps one of my colleagues has
15 found the reference. Thank you.

16 Indeed, it is document 589 of 4 November 2010. And
17 I remain at your disposal, if you require further information.
18 Thank you. Correction: The year 2009. Correction: The year
19 2009.

20 Your Honour, we are sending the link that will send
21 the legal officer of the Chamber to that particular decision.

22 PRESIDING JUDGE STEINER: (Interpretation) Thank you.
23 Sir, please proceed.

24 MR LIRISS: (Interpretation) Your Honour, in light of
25 our observations regarding the 192 victims, and this is reference

1 number 889 of 20 August 2010, we will send the information. It
2 is the oral decision from the Judge called expressly upon the
3 legal representative of victims to disclose the dates and the
4 places of the alleged events no more than one week later. And
5 we can look in the transcript and you will see there's really
6 no problem.

7 PRESIDING JUDGE STEINER: The Chamber will check this
8 information coming from the Defence, from the legal
9 representatives of victims, and, in any case, we'll decide as
10 an urgent matter as soon as possible, so you'll be sure that
11 the Chamber will pay attention to your information.

12 So you can go maybe to the third point.

13 MR LIRISS: (Interpretation) The third point is one
14 of the fundamental aspects that this Chamber set out as a
15 prerequisite for commencement of the trial. I make reference
16 to your ruling of 5 November 2009, paragraph 5, document 08598.

17 The terms of the ruling were follows: That the
18 Chamber -- that the Trial Chamber is of the opinion that five
19 months after the last disclosure from the Prosecution is necessary
20 to allow the Defence to conduct its investigations, and for the
21 trial to begin.

22 I would stress that the five months began as of the
23 last disclosure from the Prosecution, as of that date. And that
24 was 30 November 2009. With leave, I would remind the Prosecution.
25 They say that they are ready, that their last disclosure dates

1 back to June 2010.

2 Furthermore, I would add that the Prosecution has not
3 completed this disclosure. The Prosecution has asked you for
4 four or five statements, statements from four or five experts:
5 one in linguistics; a so-called expert in sexual violence; a
6 military expert; and yes, a linguistics expert. One person who
7 is an expert on sexual violence; one crime expert; and one expert
8 on SSPT.

9 Now, without receiving the statements, the statements
10 made by these experts, we cannot begin a trial. It is the last
11 disclosure of the Prosecution that we are speaking of, and we
12 do not yet have it. In fact, your --

13 PRESIDING JUDGE STEINER: Just to give the Prosecution
14 the opportunity to make comments on this topic.

15 MR LIRISS: (Interpretation) Of course.

16 MS KNEUER: Thank you, Madam President. With regard
17 to disclosure, I have two observations to submit: The first
18 one is that the material that was disclosed in June 2010 does
19 not relate to any new material; it is disclosure of documents
20 in a different redacted version, based on the Trial Chamber III's
21 instruction. Meaning, the same document was disclosed again
22 but with different and actually more restrictive redactions.

23 The second observation is that, as your Honours know,
24 the obligation on the Prosecution to disclose - in particular
25 I'm referring to potentially exculpatory material as well as

1 Rule 77 material - is an ongoing obligation which goes beyond
2 a given cut-off date by the Trial Chamber. And as we can see
3 in other cases before this Court, even during a trial, disclosure
4 continues.

5 With regard to the expert witnesses, if my recollection
6 is not wrong, so far this Trial Chamber has not set yet any specific
7 date until the Prosecution is supposed to submit or provide the
8 expert reports. However, considering the Lubanga practice, it
9 is my understanding that in that case the Trial Chamber I directed
10 the Prosecution to provide its expert reports three months before
11 the expert would appear in court.

12 However, then later, the parties agreed that one month
13 would be sufficient, and I refer in particular to the Defence
14 agreement to a one-month deadline to provide the report. Thank
15 you very much, your Honour.

16 PRESIDING JUDGE STEINER: Thank you, Ms Kneuer.
17 Defence counsel.

18 MR LIRISS: (Interpretation) Your Honour, the
19 document that was disclosed to us in June of 2010, 08787, is
20 not a document that has already been disclosed. It is a document
21 that we required disclosure of. Unlike what the Prosecution
22 says, it is an exhibit that we ourselves asked to be disclosed.

23 With regard to the experts, I am very sorry, if you
24 look at the proposals from the Prosecution, after two or three
25 witnesses we would hear from one expert who would appear to give

1 testimony, and I will allow you to decide whether we will hear
2 this testimony before or not. But if we get the information
3 just before the trial begins.

4 Fourth point --

5 PRESIDING JUDGE STEINER: Counsel, if I may interrupt you
6 again, this decision on fixing the deadline for the Prosecutor
7 to disclose the experts' report is a pending issue before this
8 Trial Chamber. So, again, the Chamber ensures that reasonable
9 time will be given for the Defence to be prepared and, therefore,
10 the Defence will receive well in advance the reports the Defence
11 is mentioning.

12 MR LIRISS: (Interpretation) I thank you, Madam
13 President. I am appeased with regard to this matter.

14 We do have another issue at hand, which is also very
15 important in nature. This is the new document, the second
16 document containing the charges, the amended version. We thought
17 that we might file a submission in this regard. The Prosecution,
18 yet again, has not obeyed the Chamber's rulings on the matter.
19 Important paragraphs are outside of the remit of the decision
20 on the confirmation of charges and orders or decisions handed
21 down by your Chamber.

22 These were the submissions we wanted to make for you
23 to be able to determine the date of commencement of trial with
24 regard to a fair trial, bearing in mind equality of arms and
25 that, notwithstanding the decision from the Appeals Chamber,

1 the appeal that has been filed with regard to the admissibility
2 of this case remains pending. And I thank you, Madam President.

3 PRESIDING JUDGE STEINER: I thank you, Mr Liriss.

4 You mentioned the four points that are of concern for
5 the Defence. The Chamber would like to insist on asking the
6 Defence whether a part of the facts - the pending issues - whether
7 the Defence would have any idea on a possible date or a possible
8 time for the beginning of the trial.

9 MRLIRISS: (Interpretation) MadamPresident, I'mnot
10 in control of these issues, these issues which we have raised.
11 We are not in control and it is very difficult for us to determine
12 a date. So we defer to your wisdom, Madam President.

13 PRESIDING JUDGE STEINER: As said before, and more than
14 once, the Chamber will decide on all pending issues as soon as
15 practicable and very soon. That's why, in the view of the Chamber,
16 there would be the possibility of at least evaluating a possible
17 date for the trial, but the Chamber appreciates that to leave
18 this to the wisdom of the Chamber to decide upon.

19 The Chamber has one oral decision to be issued at this
20 point in time and just for the sake of a proper continuation
21 of the proceedings, and it's exactly the decision on continuation
22 of proceedings pending the outcome of the appeal against the
23 decision on the admissibility and abuse of process challenge.

24 The Chamber is mindful of the fact that there is an
25 appeal pending against Trial Chamber's decision on admissibility

1 and abuse of process of 24 June 2010. It's document 802.

2 In this regard the Chamber notes that on 5 July 2010,
3 the Defence made a request before the Appeals Chamber for a
4 suspensive effect to be given to this appeal. This is document
5 809.

6 The Chamber recalls that Trial Chamber III, as
7 previously constituted, issued an order on 7 July 2010 postponing
8 the commencement of the trial, which was then scheduled to commence
9 on 14 July 2010. In this order, the Trial Chamber indicated,
10 inter alia, that the trial should not commence before the
11 application for suspensive effect was resolved, stating, and
12 I quote:

13 "The consequence of the application to the Appeals
14 Chamber for suspensive effect is that the trial, as a matter
15 of principle, should not commence, at least until the application
16 for suspension has been resolved. It would be inappropriate
17 for the Chamber to commence a trial when there is an outstanding
18 issue for determination by the Appeals Chamber as to whether
19 the proceedings (seemingly in their entirety) should be suspended,
20 pending the outcome of the substantive appeal. In addition,
21 as set out during a status conference of 8 March 2010, it is
22 in the interests of justice for this challenge to be resolved
23 prior to the commencement of the trial." This is document 811,
24 paragraph 5.

25 Since the Trial Chamber issued this order, the Appeals

1 Chamber has rendered its decision on 9 July 2010 on the Defence
2 request for suspensive effect of the appeal (document 817),
3 rejecting the request on the basis that the Defence had not made
4 its request as part of the appeal itself, and therefore it fell
5 outside of the expiry of the time limit for filing an appeal
6 under Rule 154(1) of the Rules of Procedure and Evidence.

7 Although the Appeals Chamber rejected the Defence
8 request for suspensive effect on a procedural basis, the Appeals
9 Chamber also considered that - and here I quote - "even if the
10 trial proceedings continue, this would neither lead to
11 irreversible situation nor defeat the purpose of the appeal since
12 the Appeals Chamber is able to reverse, confirm or amend the
13 impugned decision irrespective of whether the proceedings before
14 Trial Chamber III continue." This is on document 817-083,
15 paragraph 11.

16 The Appeals Chamber went on to add that - and here I
17 quote - "If the Appeals Chamber eventually decides to grant
18 Mr Bemba's appeal, any ongoing proceedings could be discontinued
19 at that time."

20 Prior to issuing its decision on admissibility, Trial
21 Chamber III, as formerly constituted, had previously opined on
22 the undesirability of commencing the trial before the challenge
23 to admissibility and abuse of process had been resolved. This
24 is in the transcript of hearing on 8 March 2010, page 14, line
25 11 to page 15, line 8.

1 This Trial Chamber is of the view that this comment
2 was made in advance of the Trial Chamber having rendered its
3 decision on the challenge to admissibility and can therefore
4 be distinguished from the present situation before the Trial
5 Chamber whereby the Trial Chamber has issued its decision on
6 the challenge to admissibility, and there is also decision from
7 the Appeals Chamber indicating that it's not necessary for the
8 Trial Chamber to suspend proceedings pending the outcome of the
9 appeal against the decision on the admissibility and abuse of
10 process challenge.

11 In all the circumstances the Chamber hereby decides
12 that proceedings shall continue, pending the outcome of the appeal
13 against the decision on admissibility and abuse of process
14 challenge and took the decision to hold this status conference
15 to hear the submissions from the parties and participants
16 regarding the new date for the commencement of the trial. So
17 this is, therefore, the decision of the Chamber.

18 If there is nothing else to be said by Prosecution,
19 legal representatives, Defence team, the Chamber would like to
20 thank everyone for their helpful submissions, which we will
21 consider in making our decision on fixing a new date for the
22 commencement of the trial, and this decision is going to be issued
23 soon as well. And of course, this decision will be notified
24 to all concerned in due course.

25 In the interim the Chamber intends to hold another status

1 conference to deal with some of the outstanding procedural matters
2 in two weeks' time. Can we say, maybe, Wednesday 15 September?
3 I would like to consult Prosecution, Defence and legal
4 representatives on whether 15 September would be convenient for
5 all parties and participants.

6 So, therefore, a new status conference to deal with
7 outstanding issues, if any at that point, will be held on Wednesday,
8 15 September at 2.30 in this courtroom.

9 I ask also the court officer whether this date can be
10 accommodated in the courtroom's agenda.

11 THE COURT OFFICER: Yes, Madam President.

12 PRESIDING JUDGE STEINER: Thank you very much. So an
13 agenda for this status conference will be distributed to all
14 parties and participants in advance nearer to this date.

15 So thank you very much. There are no other issues to
16 be discussed at this status conference. I thank, the Chamber
17 thanks very much the presence of the representatives of the
18 Prosecutor, representatives of the Defence, of Mr Jean-Pierre
19 Bemba Gombo, legal representatives of victims, and this status
20 conference hearing is adjourned.

21 (The hearing ends at 11.14 a.m.)