

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 29 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

Decision Setting the Date 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, Senior Trial Lawyer

Counsel for the Defence

Nkwebe Liriss
Karim A.A. Khan
Aimé Kilolo-Musamba

Legal Representatives of the Victims

Nganatouwa Goungaye Wanifiyo
Marie Edith Douzima-Lawson

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

**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. Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber III (the “Chamber”) of the International Criminal Court (the “Court”),¹ recalls that on 4 July 2008, at the first appearance hearing of Mr Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”), the Chamber scheduled the hearing on the confirmation of charges (the “Hearing”) for 4 November 2008,² which was subsequently re-scheduled for 8 until 12 December 2008.³

2. On 2 December 2008 the Single Judge issued the “Decision on the Postponement of the Confirmation Hearing” (the “Decision on Postponement”),⁴ whereby she decided to postpone the Hearing due to the Chamber being incomplete after a judge of the Chamber was granted leave of absence until January 2009, by reason of grave family circumstances.

3. In the Decision on Postponement, the Single Judge envisaged 12 January 2009 as the earliest possible date for conducting the Hearing, however, the exact date was to be determined in a decision to be issued by 29 December 2008.⁵ The Single Judge granted the parties until 17 December 2008 to submit their observations on the exact date of the Hearing.⁶

4. The Single Judge recalls that in the Decision on Postponement she ordered the parties to adhere to 12 January 2009 for the purpose of their disclosure obligations.⁷

5. On 2 December 2008 Judge Hans-Peter Kaul, acting as Single Judge for the Chamber on victims’ issues, decided that no further victim applications will be considered prior to the conclusion of the Hearing.⁸

¹ “Decision Designating a Single Judge”. ICC-01/05-01/08-293

² ICC-01/05-01/08-F-3-ENG ET WT 04-07-2008, p. 9, line 4

³ “Décision relative au report de l’audience de confirmation des charges”, ICC-01/05-01/08-170 and “Décision fixant la date de l’audience de confirmation des charges”, ICC-01/05-01/08-199

⁴ ICC-01/05-01/08-304.

⁵ ICC-01/05-01/08-304, para. 6.

⁶ ICC-01/05-01/08-304, p. 4

⁷ ICC-01/05-01/08-304, para. 7.

⁸ ICC-01/05-01/08-305.

6. On 4 December 2008 the Defence filed its observations on the new date of the Hearing⁹ and requested the Single Judge set, at the latest, 12 January 2009 as the new date, in order to respect Mr Jean-Pierre Bemba's right to be tried without undue delay pursuant to article 67(1)(c) of the Rome Statute (the "Statute").¹⁰

7. On 12 December 2008 the Prosecutor filed his observations on the new date of the Hearing (the "Prosecutor's Observations").¹¹ The Prosecutor submitted that 19 January 2009 was the most convenient date for him and his team since Court recess "implies that staff members involved will need to regroup and properly prepare".¹² However, he "support[ed] the Pre-Trial Chamber III's efforts to ensure expeditious proceedings and, therefore [did] not object to 12 January as a possible date for commencement of the Hearing".¹³

8. On 15 December 2008 the Defence responded to the Prosecutor's Observations and insisted that 12 January 2009 be the starting date of the Hearing. It emphasised the principle of expeditiousness and added that "because Mr. Bemba is privately funding his case, further delay (...) also imposes an unreasonable and unfair financial burden" upon him. Finally, the Defence asserted that if the Hearing was scheduled for 19 January 2008 the co-lead counsel Karim A.A. Khan would not be available due to a previous commitment before the International Criminal Tribunal for the former Yugoslavia.¹⁴

⁹ "Corrigendum aux Observations de la Défense conformément à la décision de la Chambre Préliminaire III du 2 Décembre 2008 intitulée 'Decision on the postponement of the Confirmation Hearing'", ICC-01/05-01/08-306-Corr

¹⁰ ICC-01/05-01/08-306-Corr, paras 1 and 6, and p 4.

¹¹ "Prosecution's Observations on the Exact Date of the Confirmation Hearing". ICC-01/05-01/08-317

¹² ICC-01/05-01/08-317., paras 3 and 4.

¹³ ICC-01/05-01/08-317., para 2.

¹⁴ "Defence Response to the 'Prosecution's Observations on the Exact Date of the Confirmation Hearing'", ICC-01/05-01/08-318, paras. 15 and 16

9. On 19 December 2008 the Prosecutor filed with the Chamber the "Prosecution's Submission of Updated List of Evidence".¹⁵

10. The Single Judge notes articles 61 and 67 of the Statute, rules 76 to 79, 121 and 122 of the Rules of Procedure and Evidence (the "Rules") and regulation 20 of the Regulations of the Court (the "Regulations").

11. In relation to the Prosecutor's disclosure obligations, the Single Judge notes that the time limits enshrined in rule 121(3), (4) and (5) of the Rules expired respectively, on 12 and 24 December 2008.

12. In relation to the Defence's disclosure obligations, the Single Judge notes that the time limit enshrined in rule 121(6) of the Rules expired on 24 December 2008.

13. The Single Judge emphasises that according to rule 121(8) of the Rules, the Pre-Trial Chamber shall not take into consideration evidence presented after the time limit has expired.

14. Having reviewed the observations of both parties, the Single Judge considers that (1) the Prosecutor's team which was already prepared for 8 December 2008 should be prepared at any time, (2) Mr Jean-Pierre Bemba has the right to conduct his defence through legal assistance of his full Defence team, including two co-lead counsels, one being French speaking and the other English speaking, and (3) Mr Jean-Pierre Bemba's right to be tried without undue delay is crucial and thus requires that the Hearing commence at the earliest date possible. Therefore, in light of the present circumstances, the Single Judge deems it appropriate to set 12 January 2009 as the starting date of the Hearing.

¹⁵ ICC-01/05-01/08-330 and its annexes.

FOR THESE REASONS, THE SINGLE JUDGE

a) **decides** to schedule the Hearing to begin on **12 January 2009**.

b) **orders:**

- 1) the Prosecutor to disclose to the Defence, through the Registry, all the evidence in his possession or control under article 67(2) of the Statute as soon as practicable and on a continuous basis.
- 2) the Prosecutor and the Defence, should they intend, pursuant to rule 121(9) of the Rules, to lodge no later than **8 January 2009** written submissions on points of fact or law, including grounds for excluding criminal responsibility set forth in article 31(1) of the Statute.
- 3) the Registry, pursuant to rule 121(9) of the Rules, to transmit a copy of the said submissions immediately to the party concerned.

Done in both English and French, the English version being authoritative.



Judge Ekaterina Trendafilova
Single Judge

Dated this Monday 29th December 2008

At The Hague, The Netherlands