

**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 on the Schedule for the Confirmation of Charges Hearing**

Decision/Order/Judgment 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**

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Karim A. A. Khan  
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**Legal Representatives of the Victims**

Nganatouwa Goungaye Wanifiyo  
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**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**

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**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”),<sup>1</sup> follows up on the schedule for the confirmation of charges hearing (the “Hearing”).

## **I. Procedural History**

### **A. The Observations on a Schedule Proposed by the Chamber**

2. On 21 November 2008 the Chamber issued a “Decision Requesting Observations on the Proposed Schedule for the Confirmation of Charges Hearing” with a schedule annexed thereto (the “Proposed Schedule”)<sup>2</sup> providing each party approximately seven and a half hours to present its entire case.

3. On 25 November 2008 the Chamber received the “Defence’s Observations on the Proposed Schedule for the Confirmation of Charges Hearing” (the “Defence’s Observations”).<sup>3</sup> The Defence noted that its earlier estimation of six hours in total to present its case was insufficient and requested that it be granted twelve hours instead. The Defence specified that it would need eight hours for the presentation of its evidence including two hours of video.<sup>4</sup> In addition, the Defence asserted that the Proposed Schedule should be modified in order for the Prosecutor to present his entire case before it had to respond to it.<sup>5</sup> Accordingly, the Defence suggested a different schedule annexed to its observations (the “Defence’s Schedule”).<sup>6</sup>

4. On 25 November 2008 the Chamber also received the Prosecutor’s observations on the Proposed Schedule (the “Prosecutor’s Observations”)<sup>7</sup> in which he requested that the said schedule be amended to allow him to present his evidence supporting

<sup>1</sup> “Decision Designating a Single Judge”, ICC-01/05-01/08-293

<sup>2</sup> ICC-01/05-01/08-267-Anx.

<sup>3</sup> ICC-01/05-01/08-285.

<sup>4</sup> ICC-01/05-01/08-285, para. 6

<sup>5</sup> ICC-01/05-01/08-285, para. 7.

<sup>6</sup> ICC-01/05-01/08-285-Anx

<sup>7</sup> “Prosecution’s Observations on the Proposed Schedule for the Confirmation of Charges Hearing”, ICC-01/05-01/08-287.

the contextual elements for both charges – crimes against humanity and war crimes - first and then, his evidence for the specific elements of each crime.<sup>8</sup> The Prosecutor asserted that this methodology was consistent with the Chamber's "Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties" (the "Decision on Disclosure")<sup>9</sup> and would eliminate repetitive arguments.<sup>10</sup> The Prosecutor also noted the fact that the Proposed Schedule did not provide any time for him to orally respond to the Defence's arguments and asserted that fundamental fairness dictated that he has such an opportunity.<sup>11</sup> Finally, the Prosecutor requested that he have the ability to make "written submissions to the Chamber after the respective sessions, and after the closing of the Hearing to address any matter discussed in the Hearing."<sup>12</sup>

5. On 25 November 2008 the Chamber received the observations of the Registry concerning technical issues related to the organization and the conduct of the Hearing.<sup>13</sup>

6. On 15 December 2008 Judge Hans-Peter Kaul, acting as Single Judge on behalf of the Chamber with regard to victims' issues<sup>14</sup> took the "Fourth Decision on Victims' Participation"<sup>15</sup> deciding on modalities of participation for victims of the case and according them *inter alia* specific rights in regard to their participation in the Hearing.

## **B. The Decision on Disclosure and the Model Chart**

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<sup>8</sup> ICC-01/05-01/08-287, para. 8.

<sup>9</sup> ICC-01/05-01/08-55.

<sup>10</sup> ICC-01/05-01/08-287, para. 4.

<sup>11</sup> ICC-01/05-01/08-287 para. 15

<sup>12</sup> ICC-01/05-01/08-287, para. 16

<sup>13</sup> "Observations of the Registry on the Proposed Schedule for the Confirmation of Charges Hearing", ICC-01/05-01/08-291

<sup>14</sup> Pre-Trial Chamber III, "Decision Designating a Single Judge on Victims' Issues", ICC-01/05-01/08-204.

<sup>15</sup> ICC-01/05-01/08-320.

7. On 31 July 2008 the Chamber issued its Decision on Disclosure<sup>16</sup> setting forth the system of disclosure between the parties and requiring them to include an analysis of each piece of evidence, especially its relevance.<sup>17</sup>

8. On 10 November 2008 the Chamber issued a “Decision on the Submission of an Updated, Consolidated Version of the In-depth Analysis Chart of Incriminatory Evidence” with an annexed model chart outlining the manner in which the analysis of evidence should be presented in relation to the elements of the crimes and individual criminal responsibility (the “Model Chart”).<sup>18</sup>

9. On 24 November 2008 the Prosecutor submitted an analysis chart of all incriminatory evidence disclosed to the Defence (the “Prosecutor’s Chart”)<sup>19</sup> in accordance with the Model Chart.

10. On 5 December 2008 the Single Judge issued a “Decision on the Disclosure of Evidence by the Defence”<sup>20</sup> requesting that the Defence submit an analysis chart of the evidence it intends to use for the purpose of the Hearing, following the Model Chart. On 15 December 2008 the Defence complied with this request.<sup>21</sup>

## II. The Law

11. The Single Judge notes article 61 of the Rome Statute (the “Statute”), rule 122 of the Rules of Procedure and Evidence (the “Rules”) and regulation 64(1) of the Regulations of the Registry.

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<sup>16</sup> ICC-01/05-01/08-55

<sup>17</sup> ICC-01/05-01/08-55, letter (e) of the operative part, p. 22

<sup>18</sup> ICC-01/05-01/08-232-Anx

<sup>19</sup> ICC-01/05-01/08-278-AnxB.

<sup>20</sup> ICC-01/05-01/08-311.

<sup>21</sup> “Communication par la Défense de la Liste de ses Eléments de preuve ainsi que du ‘Chart Model of In-depth Analysis of defence evidences’ conformément à la décision de la Chambre Préliminaire III du 5 Décembre 2008 intitulée ‘Decision on the Disclosure of Evidence by the Defence’”, ICC-01/05-01/08-319.

12. The Single Judge recalls the principle of fairness which encompasses the notion of equality of arms and *inter alia* requires that the parties be placed on equal footing and that the Defence always has the final word as prescribed under rule 122(8) of the Rules.

13. Furthermore, while the Single Judge has taken the parties' observations into account to the extent possible, the parties should bear in mind the second sentence of rule 122(1) of the Rules which states that:

The Presiding Judge shall determine how the hearing is to be conducted and, in particular, may establish the order and the conditions under which he or she intends the evidence contained in the record of the proceedings to be presented.

### **III. Conclusions of the Single Judge**

#### **A. The Defence's Request for Additional Time**

14. As to the Defence's request for twelve hours in total to present its case, the Single Judge notes that there are two main differences between the Proposed Schedule and the Defence's Proposed Schedule. First, in relation to the time for opening and closing statements, the Defence asked for double the time proposed for each statement. Second, the Defence requested seven and half hours<sup>22</sup> to address jurisdictional and procedural matters as well as to respond and present its evidence while the Proposed Schedule allocated five and a half hours.

15. The Single Judge, with due consideration to the principle of equality of arms and the nature of the opening and closing statements, considers that the Defence should not have more than one hour for each of these statements, bearing in mind that this is the amount allotted for the Prosecutor, who concurred with the Proposed Schedule on this particular point.<sup>23</sup>

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<sup>22</sup> ICC-01/05-01/08-285-Anx.

<sup>23</sup> ICC-01/05-01/08-287, para. 9.

16. The Single Judge also considers that it is inappropriate to allow the Defence to have twelve hours to present its case as it would unduly disrupt the equality between the parties without sufficient justification. Nevertheless, the Single Judge is of the view that, compared to the Proposed Schedule, the Defence should have additional time to respond and present its evidence as this part represents the core of the proceedings. The Single Judge thus finds that giving the Defence seven hours to address jurisdictional and procedural matters as well as to respond and present its evidence, is fair and accommodates the Defence's request. The Single Judge notes that in contrast to the Defence, the Prosecutor did not request additional time in his observations. Accordingly, the Single Judge concludes that the Prosecutor is satisfied with the time allocations in the Proposed Schedule and no amendment is needed in that regard.

17. Furthermore, the Single Judge emphasizes that the final schedule for the Hearing is subject to change if developments in the proceedings necessitate it.

18. The Single Judge also underlines that for the sake of efficiency, in case a party does not fully use the time allotted to it in the final schedule, the Chamber will automatically move to the next presentation even if it is scheduled for the following day. Thus, the Single Judge expects the parties to be prepared at any time and flexible.

## **B. The Order of the Presentations at the Hearing**

19. The Single Judge notes that both parties raised concerns with the order of the presentations in the Proposed Schedule. With respect to the Prosecutor's Observations and his suggested changes to the order of his presentation, the Single Judge recalls paragraphs 72 and 73 of the Decision on Disclosure. Although the

Prosecutor made a reference to paragraph 72 in support of his suggested changes,<sup>24</sup> he failed to notice that if the Chamber strictly adhered to the structure laid out in this section, then the presentations would be made count by count. This structure would have required the Prosecutor to repeat the contextual elements for each count. To avoid this problem, the Chamber adapted its approach, as evidenced by the organization of the Model Chart. Subsequently, the Prosecutor was asked to re-submit his analysis of the evidence following the Model Chart. As previously mentioned, the Prosecutor complied with this request and the Defence did so as well to the extent possible. The Single Judge notes that the order of the presentations in the Proposed Schedule was based on the Model Chart. Consequently, the Single Judge finds it reasonable to expect that both the Prosecutor and the Defence already have their evidence organised in that order.

20. With respect to the Defence's Observations, the Single Judge recalls that the Defence asserted that the Proposed Schedule should be modified in order for the Prosecutor to present his entire case before it had to respond to it. The Defence justifies its modification by stating that the burden of proof falls upon the Prosecutor. However, the Single Judge emphasises that the order in which the parties give their presentations does not reverse the burden of proof. Moreover, the Single Judge stresses that the Defence's right is safeguarded since, at the end of each session, it will be given the opportunity to respond to the Prosecutor's arguments and to speak last. Finally, the Single Judge considers that the Defence's request is of a purely organisational nature, which is not supported in law by any provision of the Statute, the Rules or in international law and internationally recognized norms and standards.

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<sup>24</sup> ICC-01/05-01/08-287, paras. 3-4.



21. Therefore, the Single Judge considers that, in accordance with the Decision on Disclosure, particularly part III, both parties should follow the order of the Model Chart when presenting their case.

### **C. Oral Responses in court and Written Submissions**

22. In response to the Prosecutor's concern that the Proposed Schedule did not designate a time for him to orally respond to the Defence's presentation, the Single Judge underlines that he will have an opportunity to comment on the Defence's presentation in his closing statement. Furthermore, the Single Judge notes that if the Chamber deems it necessary, the Prosecutor may respond to the Defence as long as the latter always has the opportunity to speak last. Finally, the Single Judge recalls that the final schedule can always be adapted according to the circumstances.

23. With regard to written submissions, the Single Judge, for the sake of expeditiousness and the effective conduct of the Hearing, will not allow parties to file written submissions after each session with the Chamber.

### **D. Technical Issues**

24. The Single Judge acknowledges the technical difficulties raised by the Registry and takes them into account. In particular, the Single Judge stresses that the parties, when calling evidence in court, must provide their EVD number plus the last 4 digits of their document ID number or, at a minimum, their page and paragraph numbers.

25. Finally, the Single Judge notes that for days where more than two sessions are scheduled, each session should not last for more than one hour and a half pursuant to regulation 64(1) of the Regulations of the Registry.

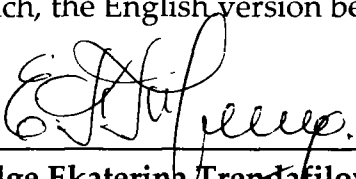
### **E. New Schedule**

26. In conclusion, having considered observations from the parties and the Registry, the Single Judge is proposing a new schedule set out in an annex to the present decision which takes into consideration the "Fourth Decision on Victims' Participation" and has been modified accordingly.

### **FOR THESE REASONS, THE SINGLE JUDGE**

**a) establishes** the schedule of the Hearing to begin on 12 January 2008 as set out in the annex to the present decision.

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

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**Judge Ekaterina Trendafilova**  
**Single Judge**

Dated this Monday 29 December 2008

At The Hague, The Netherlands