

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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Date: **26 April 2010**

TRIAL CHAMBER III

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio-Benito
Judge Joyce Aluoch

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

Public document

Prosecution's Response to the "Requête de la Défense aux fins de faire intervenir un témoin-expert en Droit de Procédure Pénale de la République Centrafricaine"

Source: The Office of the Prosecutor

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

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I. Introduction

1. Pursuant to the order of the Trial Chamber III (“Chamber”),¹ the Office of the Prosecutor (“Prosecution”) hereby files its Response to the “Requête de la Défense aux fins de faire intervenir un témoin-expert en Droit de Procédure Pénale de la République Centrafricaine” (“the Application”), filed by the Defence on 23 April 2010.² The Defence is seeking to produce an expert witness report, and call the expert to testify at the hearing on the admissibility of the case, if necessary.

2. The Prosecution objects to both the Defence’s last minute attempt to call an expert witness as well as the introduction of any expert report for the following reasons: (i) the Application breaches procedural provisions and judicial orders setting time limits and modalities to introduce expert witness testimony; (ii) the opinion of the expert that the Defence seeks to introduce would not assist the Chamber in determining the issues because the Chamber has already addressed part of its questions for determination to the CAR Authorities, who are in control of their national judicial process; (iii) providing this evidence may undercut the efforts of the Chamber to stream-line the proceedings; and (iv) the Prosecution and the other Participants have not received any report at the time of submitting this filing and consequently are unable to provide effective examination regarding the expert’s qualifications, his conclusion, his methodology, and the sources/data which inform the conclusion reached.

¹ Information conveyed by the Legal Officer of Trial Chamber on 23. April 2010 in the evening.

² ICC-01/05-01/08-760

II. The Prosecution's Submission

3. The Defence's proffered expert evidence, on a subject for which the Chamber had ordered the participation of the CAR Authorities, would provide little or no assistance to the issues for determination. The Chamber has already drawn up and directed its questions to the CAR Authorities, who have control over the national judicial process. The questions are exhaustive and cover potentially all the issues relevant to both its determination of the issues at stake as well as its understanding of the context of past criminal proceedings in the CAR. The CAR authorities have both the factual knowledge of the state of their national proceedings, and the expertise on CAR national law to provide the answers and consequently enable the Chamber to make an informed decision.

4. Assuming that the expert's opinion may provide some valuable assistance to the Court, the failure to comply with procedures weakens the ability of the Chamber to properly assess the expert's conclusions. Specifically, the Defence failed to comply with the procedure for introducing and instructing expert witnesses, as established by the Trial Chamber I in *Lubanga*³, to which both parties agreed for this case,⁴ and by this Chamber. Trial Chamber I agreed that an expert should be given a minimum of three (3) weeks to submit an expert report before his oral testimony in court⁵ and directed the Parties and Participants to identify any supplementary questions for the expert's consideration, no later than two (2) weeks after receiving notification of the report.⁶ This Chamber has additionally directed that

³ ICC-01/04-01/06-1558, para 10.

⁴ Both the Prosecution and the Defence had submitted filings suggesting that this Chamber should not depart from the jurisprudence on expert witnesses developed by Trial Chamber I in *Lubanga*.

⁵ Ibid, paras. 6 and 10.

⁶ Ibid, para. 10.

“viii) counsel must ensure that for those experts who are not in the list of experts [maintained by the Registrar pursuant to Regulation 44 of the Regulations of the Court], they have applied to include their names on the list.”⁷

5. The Defence’s failure to produce a report from the proposed expert in a timely manner has prevented the Prosecution, the Participants and the Chamber from assessing not only the qualification of the proposed expert generally, but his qualification in relation to the subjects for which he is engaged by the Defence to provide expert opinion. It also deprives the Prosecution and the Participants of their ability to prepare for an effective cross-examination of the expert with a view to assisting the Chamber in resolving the issues for determination. To effectively cross-examine the proposed expert, the Prosecution would have to diligently study the (as yet not produced) report, to examine the information informing the expert’s conclusion, to assess the expert’s methodology and the sufficiency of the material relied upon by him, and perhaps to consult other experts to assist it in its preparation. Clearly, these procedures are not achievable within this limited time-frame.

III. Conclusion

6. For the above-mentioned reasons, the Prosecution respectfully requests that the Chamber dismiss the Defence’s Application, and consequently deny authorisation to file a report of Mr. Edouard Franck as an expert witness, and

⁷ ICC-01/05-01/08-695, “*Decision on the procedures to be adopted for instructing expert witnesses*”. It should be noticed that the Prosecution was ordered by the Chamber to provide names and qualification of the proposed experts over two months before the initial commencement of the trial

deny authorisation to introduce Mr. Edouard Franck to testify as an expert witness at the hearing on the admissibility of the case.



Luis Moreno-Ocampo, Prosecutor

Dated this 26th Day of April 2010

At The Hague, The Netherlands