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

Date: **30 August 2010**

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
*THE PROSECUTOR v. Jean-Pierre Bemba Gombo***

Public Document

**Corrected Version of the Defence Request for reclassification of a document
submitted by the Republic of South Africa relating to the issue of the interim
release of Mr Jean-Pierre Bemba Gombo**

Source: Defence Team for 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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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

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States' Representatives

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Registrar and Deputy Registrar

Silvana Arbia and Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. Pursuant to regulation 23bis(3) of the Regulations of the Court, the Defence seeks the reclassification of Annexes 2 of the document by which the Registry transmitted the observations of the Republic of South Africa on the issue of the conditional release of Mr Jean-Pierre Bemba ("the Accused") to the territory of the Republic of South Africa.

Procedural History

2. On 29 June 2009, the Single Judge of Pre-Trial Chamber II received a Defence request for the interim release of Mr Jean-Pierre Bemba ("the Accused") relating to the Kingdom of Belgium, the Republic of France and the Republic of Portugal. In her decision, Her Honour Judge Ekaterina Trendafilova ordered that the aforementioned States, as well as the Kingdom of the Netherlands as the host State, submit their observations on the matter by 10 July 2009.¹
3. On 2 July 2009, the Defence filed its "*Requête aux fins d'extension de la demande initiale en rapport avec les pays d'accueil dans Le cadre de la demande de mise en liberté de M. Jean-Pierre Bemba Gombo lors de l'audience du 29 Juin 2009*"² ("the Defence Request") in which it requested the addition of the Federal Republic of Germany, the Italian Republic and the Republic of South Africa to the list of States to which Mr Jean-Pierre Bemba seeks to be released.
4. On 10 July 2009, the Single Judge acceded to the Defence Request. According to that decision,³ which was notified on 13 July 2009, the Single Judge ordered the competent authorities of the Federal Republic of Germany, the Italian Republic and the Republic of South Africa to submit pertinent observations by Friday 7 August 2009 on (i) the request for interim release, and (ii) the conditions, if any, that would have to be met to enable the States to which the Accused has sought to be released to receive him on their territory.

¹ ICC-01/05-01/08-T-13-ENG; 29-06-2009, p. 64, lines 11-20.

² ICC-01/05-01/08-433.

³ ICC-01/05-01/08-446.

5. On 5 August 2009, the Republic of South Africa sought leave to submit its observations by 28 August 2009.⁴
6. On 12 August 2009, the Registrar submitted a document entitled "Transmission of the observations of the Republic of South Africa received on the Defence request for interim release of Mr Jean-Pierre Bemba Gombo".⁵ That document was accompanied by two annexes: Annex 1 was classified as confidential, and Annex 2 was classified as confidential, *ex parte*, only available to the Registry ("Annex 2").
7. On 14 August 2009, the Single Judge of Pre-Trial Chamber II issued her "Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic and the Republic of South Africa".⁶ In that decision, the Single Judge decided, *inter alia*, to release the Accused. On that same day, the Prosecutor gave notice of his appeal against the aforementioned decision on conditional release.⁷
8. In parallel with his appeal, the Prosecutor filed a request in which he claimed that, in order to lodge an appeal in full knowledge of the facts, he should have access to all the observations made by each State to which the Accused sought to be released - including those made by the Republic of South Africa in the aforementioned Annex 2.⁸ Accordingly, the Prosecutor, with the support of the Legal Representatives, sought, *inter alia*, to have the said Annex 2 reclassified.
9. In a decision rendered on 19 August 2009,⁹ the Single Judge was of the view that "the observations requested by the Prosecutor do not strictly pertain to the legal requirements of article 58(1) of the Statute - the core issue underlying [the] appeal". This was thus the basis for the Single Judge's finding that the

⁴ ICC-01/05-01/08-468.

⁵ ICC-01/05-01/08-473.

⁶ ICC-01/05-01/08-475.

⁷ ICC-01/05-01/08-476.

⁸ ICC-01/05-01/08-477.

⁹ ICC-01/05-01/08-478.

reason for confidentiality still applied and her resultant dismissal of the Prosecution's request for the reclassification of Annex 2.

Submissions

10. The Defence notes that over a year has now passed since the Single Judge's decision of 19 August 2009. For this reason, it (the Defence) now asks the Honourable Trial Chamber to reconsider the confidentiality attached to the aforementioned Annex 2.
11. The Defence submits that, in order to present a realistic alternative to pre-trial detention, it will be necessary to reclassify the said annexes so as to establish as far as possible, in accordance with the right to a fair trial, both before the Appeals Chamber and before the Trial Chamber, that there is a State that potentially is ready to guarantee that the Accused will appear at trial, given that the sole reason now for depriving the Accused of his freedom is the risk of his absconding.
12. Accessing the observations contained in the annexes above could potentially reveal whether or not the Republic of South Africa was, in principle, ready to discuss the guarantee that it could offer to host the Accused under conditions guaranteeing his appearance at trial.
13. Furthermore, although the Republic of South Africa previously identified certain obstacles to hosting the Accused on its territory, the Defence should have the right to know whether time has allowed such obstacles to be overcome.
14. It should be brought to the kind attention of Trial Chamber III that, according to information received by Lead Counsel, South Africa has stated that it is open to the possibility of hosting Mr Jean-Pierre Bemba Gombo on its territory on the sole basis of the conditions cited in rule 119 of the Rules of Procedure and Evidence.
15. The Republic of South Africa would thus be prepared to negotiate with the Registry the terms of the conditions guaranteeing Mr Jean-Pierre Bemba Gombo's appearance at trial. While South Africa's position was not

satisfactory at a time when the Accused was also being detained because of the risk that he might compromise the conduct of the investigation or put pressure on witnesses, it has now become pertinent in view of the change in the reasons for the detention of the Accused since the aforementioned observations by the Republic of South Africa.

16. Given their previous request for confidentiality to be lifted, the Defence considers that the Prosecution or the Legal Representatives will naturally have no objection to the present request for reclassification. Furthermore, the reasoning followed by the Single Judge in dismissing the Prosecution's own request does not apply in the current circumstances.

For these reasons,

In light of the foregoing, the Defence respectfully asks Trial Chamber III to order the said Annex 2 to be reclassified, at the very least as confidential, *ex parte* the Registry and the Defence, so that it may be made available to the Defence.

[signed]

Aimé Kilolo Musamba
Associate Counsel

[signed]

Nkwebe Liriss
Lead Counsel

Dated this 30 August 2010

At The Hague, The Netherlands