

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/05-01/08 OA 3

Date: 8 September 2010

THE APPEALS CHAMBER

Before:

**Judge Anita Ušacka, Presiding Judge
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Daniel David Ntanda Nsereko**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO

Public document

**Decision on the Central African Republic's request for an extension
of the time limit**

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor
Mr Fabricio Guariglia

Counsel for the Defence

Mr Nkwebe Liriss
Mr Aimé Kilolo Musamba

Legal Representatives of Victims

Ms Marie-Edith Douzima Lawson

The Office of Public Counsel for Victims

Ms Paolina Massidda

States Representatives

The Government of the Central African
Republic

REGISTRY

Registrar

Ms Silvana Arbia

A handwritten signature in black ink, appearing to be 'H. M. S.', located in the bottom right corner of the page.

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III entitled “Decision on the Admissibility and Abuse of Process Challenges” of 24 June 2010 (ICC-01/05-01/08-802),

Having before it the “Requête aux fins de communication de jugement et prorogation de délai” dated 2 September 2010 and registered on 6 September 2010 (ICC-01/05-01/08-873-Conf-Anx6),

Renders unanimously the following

DECISION

- 1) The time limit for the filing of the Central African Republic’s observations is extended to 12h00 on 13 September 2010.
- 2) The Registrar is instructed to notify this decision to the Central African Republic urgently.

REASONS

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 24 June 2010, Trial Chamber III rendered, in English, its “Decision on the Admissibility and Abuse of Process Challenges”¹ (hereinafter: “Impugned Decision”).
2. On 28 June 2010, Mr Jean-Pierre Bemba Gombo (hereinafter: “Mr Bemba”) filed the “Acte d’Appel de la Défense contre la décision de la Chambre de Première Instance III du 24 Juin 2010 intitulée ‘*Decision on the Admissibility and Abuse of Process Challenge*’”.²

¹ ICC-01/05-01/08-802.

² ICC-01/05-01/08-804. Mr Bemba filed two corrigenda on 28 June 2010 and 29 June 2010 respectively (ICC-01/05-01/08-804-Corr and ICC-01/05-01/08-804-Corr2).



3. On 29 June 2010, the Registrar notified the Impugned Decision to the Central African Republic.³

4. On 12 July 2010, the Appeals Chamber issued its “Instructions relatives à la soumission d’observations en vertu de l’article 19-3 du Statut de Rome et de la règle 59-3 du Règlement de procédure et de preuve”⁴ (hereinafter: “Instructions”), inviting, *inter alia*, the Central African Republic to submit its observations concerning Mr Bemba’s document in support of the appeal and the Prosecutor’s response to the document in support of the appeal within 10 days of the notification of the latter.

5. On 26 July 2010, Mr Bemba filed the “Mémoire à l’Appui de l’Appel de la Défense contre la décision de la Chambre de Première Instance III du 24 Juin 2010 intitulée ‘Decision on the Admissibility and Abuse of Process Challenge’”⁵ (hereinafter: “Document in Support of the Appeal”).

6. On 13 August 2010, the Registrar notified the translation into French of the Impugned Decision to Mr Bemba, to the Prosecutor, and to the victims participating in the proceedings.⁶

7. On 17 August 2010, the Prosecutor filed, in English, the “Prosecution’s Response to ‘Document in Support of the Defence Appeal Against the Decision of Trial Chamber III of 24 June 2010 *Decision on the Admissibility and Abuse of Process Challenge*’”⁷ (hereinafter: “Response to the Document in Support of the Appeal”).

8. On 26 August 2010, the Registrar notified the Response to the Document in Support of the Appeal, as well as its translation into French, to the Central African Republic.⁸

³ ICC-01/05-01/08-873-Conf-Anx7.

⁴ ICC-01/05-01/08-818.

⁵ ICC-01/05-01/08-841-Conf. A corrigendum to and a redacted version of that document were filed on 27 July 2010 (*see* ICC-01/05-01/08-841-Conf-Corr and ICC-01/05-01/08-Corr-Red, respectively). The English translation of this document was filed as ICC-01/05-01/08-841-Conf-Corr-tENG.

⁶ Notification email from Court Management-Court Records, dated 13 August 2010.

⁷ ICC-01/05-01/08-855-Conf. A public redacted version of the document was filed as ICC-01/05-01/08-855-Red. In the present decision, references are to the public redacted version.

⁸ ICC-01/05-01/08-873-Conf-Anx5.



9. On 30 August 2010, the Office of Public Counsel for Victims, representing victims participating in the proceedings, filed the “Observations of the OPCV as Legal Representative to the Defence’s document in support of the Appeal against Trial Chamber III’s ‘Decision on the Admissibility and Abuse of Process Challenge’ of 24 June 2010”.⁹

10. On 3 September 2010,¹⁰ the Central African Republic filed with the Registrar its “Requête aux fins de communication de jugement et prorogation de délai”¹¹ dated 2 September 2010 (hereinafter: “Request”), requesting that the Appeals Chamber order the notification of the French translation of the Impugned Decision and requesting an extension of the time limit for submitting its observations to the Appeals Chamber.¹² The Central African Republic submits that because French is its working language, the French translation will assist in its understanding of the Impugned Decision and the articulation of its observations before the Appeals Chamber.¹³

11. On 6 September 2010, at 16h36, the Registrar filed “The Registrar’s transmission of the communication from the Central African Republic pursuant to the Appeals Chamber’s ‘Instructions relatives à la soumission d’observations en vertu de l’article 19-3 du Statut de Rome et de la règle 59-3 du Règlement de procédure et de preuve’ (ICC-01/05-01/08-818) dated 12 July 2010”¹⁴ (hereinafter: “Registrar’s Transmission”) annexing, *inter alia*, the Central African Republic’s Request. The Registrar’s Transmission was transmitted to the Appeals Chamber on that day at 18h46.

12. On 6 September 2010, the Registrar notified the French translation of the Impugned Decision to the Central African Republic.¹⁵ This was not done earlier due to “an oversight of the Registry”.¹⁶

⁹ ICC-01/05-01/08-867.

¹⁰ See “The Registrar’s transmission of the communication from the Central African Republic pursuant to the Appeals Chamber’s ‘Instructions relatives à la soumission d’observations en vertu de l’article 19-3 du Statut de Rome et de la règle 59-3 du Règlement de procédure et de preuve’ (ICC-01/05-01/08-818) dated 12 July 2010”, 6 September 2010, ICC-01/05-01/08-873, para. 7.

¹¹ ICC-01/05-01/08-873-Conf-Anx6.

¹² Request, p. 4.

¹³ Request, p. 4.

¹⁴ ICC-01/05-01/08-873.

¹⁵ ICC-01/05-01/08-873-Conf-Anx8.

¹⁶ Registrar’s Transmission, para. 8.

13. On 8 September 2010, Mr Bemba filed the “Defence Response to the Central African Republic’s ‘Requête aux fins de communication de jugement et prorogation de délai’”¹⁷ (hereinafter: “Mr Bemba’s Response to the Request”). He notes that the French translation of the Impugned Decision was available on the Court’s website as of 13 August 2010.¹⁸ Mr Bemba submits that in spite of the alleged “*ridiculously insignificant*” budget of the Central African Republic’s Ministry of Justice, it could itself have obtained a translation of the Impugned Decision, if the Court’s website was inaccessible to the Ministry.¹⁹ Mr Bemba thus objects to the Request.²⁰

14. Also on 8 September 2010, the Prosecutor filed the “Prosecution’s Response to the Appeals Chamber’s Order of 7 September 2010 on the filing of a response to the Central African Republic’s request”²¹ (hereinafter: “Prosecutor’s Response to the Request”). The Prosecutor notes that granting the Request will not have any impact on the commencement of the trial.²² The Prosecutor does not object to the Request provided that he has “adequate opportunity to respond to [the Central African Republic’s] observations”.²³

II. MERITS

15. The Appeals Chamber recalls that pursuant to its Instructions, the Central African Republic was invited to submit their observations on the Document in Support of the Appeal and the Response to the Document in Support of the Appeal within 10 days from the notification of the latter.²⁴ The Central African Republic was notified of the Response to the Document in Support of the Appeal on 26 August 2010.²⁵ Therefore, the time limit for the filing of the Central African Republic’s observations expired at 16h00 on Monday, 6 September 2010.

16. Regulation 35 (2) of the Regulations of the Court provides that:

¹⁷ ICC-01/05-01/08-877.

¹⁸ Mr Bemba’s Response to the Request, para. 1.

¹⁹ Mr Bemba’s Response to the Request, para. 2.

²⁰ Mr Bemba’s Response to the Request, para. 3.

²¹ ICC-01/05-01/08-876.

²² Prosecutor’s Response to the Request, para. 5.

²³ Prosecutor’s Response to the Request, para. 5.

²⁴ Instructions, para. 1.

²⁵ ICC-01/05-01/08-873-Conf-Anx5.

The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.

17. The Appeals Chamber notes that the Registrar transmitted the Request to the Appeals Chamber only at 18h46 on Monday, 6 September 2010, that is after the expiry of the time limit. However, the Central African Republic filed its Request with the Registrar on Friday, 3 September 2010²⁶ and therefore prior to the lapse of the time limit for the submission of the Central African Republic's observations. Thus the Appeals Chamber has only to determine whether good cause is shown for granting an extension of the time limit (regulation 35 (2), first sentence), but not whether the Central African Republic was unable to file the Request within the time limit for reasons outside its control (regulation 35 (2), second sentence). In this context, the Appeals Chamber notes that in light of regulation 33 of the Regulations of the Court, the Request should have been transmitted to the Appeals Chamber either on 3 September 2010 or on the next working day, that is, 6 September 2010. Even assuming that the Request was filed after 16h00 on 3 September 2010, the Registrar should not have waited until 18h46 on 6 September 2010 to transmit the said Request, in particular in light of the urgent nature of the filing.

18. Turning to the merits of the Request, the Appeals Chamber considers that, for the following reasons, good cause has been shown. The Appeals Chamber recalls that pursuant to article 50 (2) of the Statute, French is one of the two working languages of the Court and although the Impugned Decision was originally rendered in English, it was subsequently translated into French. The Appeals Chamber recalls furthermore that the Central African Republic was notified of the original version of the Impugned Decision in English on 29 June 2010.²⁷ However, the Appeals Chamber notes that although the French translation of the Impugned Decision was notified to Mr Bemba, to the Prosecutor and to the participating victims on 13 August 2010,²⁸ the Central

²⁶ Registrar's Transmission, para. 7.

²⁷ ICC-01/05-01/08-873-Conf-Anx7.

²⁸ See notification email from Court Management-Court Records, dated 13 August 2010.

African Republic was only notified of the French translation of the Impugned Decision on 6 September 2010.²⁹ This was “due to an oversight of the Registry”.³⁰

19. The Appeals Chamber finds that despite the fact that the French translation was available on the Court’s website, the delayed notification of the French translation of the Impugned Decision, which was the result of an oversight of the Registrar, provides good cause for a limited extension of the time limit.

20. Having found that good cause has been shown, the Appeals Chamber must determine the appropriate length of the extension of time.³¹ In this respect, the Appeals Chamber observes that the Central African Republic did not request any specific length of extension of time.

21. The Appeals Chamber recalls that “any departure from the time limits set by the Rules or Regulations of the Court must not derail the proceedings from their ordained course, requiring that they be conducted and concluded within reasonable time”.³² The Appeals Chamber notes that the proceedings in the present appeal are at an advanced stage, Mr Bemba, the Prosecutor and the participating victims having already filed their submissions on the merits. The Appeals Chamber thus considers that a limited extension of time is appropriate in the present circumstances to allow the Central African Republic the opportunity to peruse the French translation of the Impugned Decision before submitting its observations.

22. In light of the above, and considering that the French translation of the Impugned Decision was notified to the Central African Republic on 6 September 2010, the Appeals Chamber determines that the time limit for the filing of the Central African Republic’s observations is extended to 12h00 on 13 September 2010.

²⁹ ICC-01/05-01/08-873-Conf-Anx8.

³⁰ Registrar’s Transmission, para. 8.

³¹ Appeals Chamber, “Decision on the request for an extension of the time limit”, 15 July 2010, ICC-01/05-01/08-827, para. 6. *See also*, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Reasons for the “Decision on the ‘Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor’s Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation””, 27 June 2008, ICC-01/04-01/07-653 (OA 7), para. 6.

³² *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Reasons for the “Decision on the ‘Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor’s Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation””, 27 June 2008, ICC-01/04-01/07-653 (OA 7), para. 6.

23. The Registrar is instructed to notify the present decision urgently to the Central African Republic.

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



Judge Anita Ušacka
Presiding Judge

Dated this 8th day of September 2010

At The Hague, The Netherlands