



Original: **French**

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

Date: **30 August 2010**

THE APPEALS CHAMBER

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

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

Public Document

**Defence Response to the Observations of the Office of Public Counsel for Victims
on the Defence Appeal against Trial Chamber III's Decision of 28 July 2010**

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:

The Office of the Prosecutor

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Marie-Edith Douzima Lawson

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

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Counsel Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. By order of 7 July 2010, Trial Chamber III invited the parties to submit their observations on the review of the detention of Mr Jean pierre Bemba Gombo.¹
2. On 15 July 2010, the Prosecutor² and the Representatives of the alleged victims³ filed their observations on the review of the detention of Mr Jean Pierre Bemba Gombo.
3. On 22 July 2010, the Defence also filed its observations and submitted three requests to the Chamber: 1) As principal request, the release of Mr Jean Pierre Bemba Gombo with or without conditions; 2) In the alternative, a modification in the detention regime allowing Mr Jean Pierre Bemba Gombo to be released at the weekends at a location within the Netherlands; 3) In any event, to order the Registry to assist the Defence for Mr Jean Pierre Bemba Gombo in securing a guarantee that the accused would appear at trial, and to open negotiations to that effect with States Parties.⁴
4. On 28 July 2010, Trial Chamber III issued its *Decision on the review of the detention of Mr Jean Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence*, by which it ordered that detention be maintained.⁵
5. On 29 July 2010, the Defence filed an appeal against the said decision under article 82(1)(b) of the Rome Statute.⁶
6. On 4 August 2010, the Defence furthermore submitted its document in support of the appeal against Trial Chamber III's aforementioned decision ordering detention to be maintained.⁷

¹ ICC-01/05-01/08-811 - *Order postponing the commencement of the trial*.

² ICC-01/05-01/08-828-Red - "Prosecution's Observations on the Review of the Pre-Trial Detention of Jean-Pierre Bemba Gombo".

³ ICC-01/05-01/08-825 - "Observations of the Legal Representative regarding the review of the detention of Mr. Jean-Pierre Bemba Gombo".

⁴ ICC-01/05-01/08-840-tENG - "Defence Submission on the Review of Mr Jean-Pierre Bemba Gombo's Detention".

⁵ ICC-01/05-01/08-843 - *Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence*.

⁶ ICC-01/05-01/08-844-tENG OA4 - "Defence Notice of Appeal Against the Decision of Trial Chamber III of 28 July 2010 entitled *Decision on the review of the Detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence*".

7. On 5 August 2010, Principal Counsel of the Office of Public Counsel for Victims⁸ filed a request to participate in the said appeal.⁹
8. On 10 August 2010, the Office of the Prosecutor filed its response to the document submitted by the Defence in support of its appeal.¹⁰
9. On 18 August 2010, the Appeals Chamber rendered its decision granting leave to Principal Counsel of the Office of Public Counsel for Victims to submit the views and concerns of victims.¹¹
10. On 24 August 2010, Principal Counsel for the Office of Public Counsel for Victims submitted the "Observations of the OPCV as Legal Representative of the Victims on the Defence's Interlocutory Appeal Against the Decision on the Continued Detention of the Accused".¹²
11. The Defence reiterates in their totality all of its observations contained in its document¹³ of 4 August 2010 in support of its appeal.
12. The Defence notes that the said observations of the OPCV concur with the observations already submitted by the Office of the Prosecutor and do not contain any significant new observations calling for a subsequent response from the Defence.

⁷ ICC-01/05-01/08-847-tENG OA4 - "Document in Support of the Defence Appeal against the Decision of Trial Chamber III of 28 July 2010 entitled *Decision on the review of the Detention of Mr Jean-Pierre Bemba Gombo pursuant to rule 118(2) of the Rules of Procedure and Evidence*".

⁹ ICC-01/05-01/08-848-tENG OA4 - "Application by the OPCV in its Capacity as Legal Representative of the Victims for Participation in the Interlocutory Appeal Filed by the Defence Challenging the Decision of Trial Chamber III of 28 July 2010".

¹⁰ ICC-01/05-01/08-850-Conf OA4 - "Prosecution response to Defence Document in support of the Appeal against *Decision on the review of the Detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence*".

¹¹ ICC-01/05-01/08-857 OA4 - *Decision on the Participation of Victims in the Appeal against the "Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence" of Trial Chamber III.*

¹² ICC-01/05-01/08-862-tENG OA04: "Observations of the OPCV as Legal Representative of the Victims on the Defence's Interlocutory Appeal Against the Decision on the Continued Detention of the Accused".

¹³ ICC-01/05-01/08-847-tENG OA4.

13. The Defence would, however, inform the Appeals Chamber that it has filed with Trial Chamber III a Request for reclassification of a document submitted by the Republic of South Africa in relation to the hosting of Mr Jean Pierre Bemba Gombo in the event of his interim release.
14. The Defence considers it necessary to inform the Appeals Chamber of this, since it submits in the said request that, in order to present a realistic alternative to pre-trial detention, it will be necessary to reclassify the said annexes and make them fully accessible to the Defence in order to establish as far as possible, by virtue of the right to a fair trial, both before the Appeals Chamber and the Trial Chamber, that there exists a State which is potentially prepared to guarantee that the Accused will appear at trial.
15. The Defence considers that this information, which it believes should be transmitted to the Appeals Chamber, is relevant in that it relates to the issue currently submitted to it for consideration. In effect, the Defence had asked the Trial Chamber to order the Registry to assist in securing a guarantee that the accused would appear at trial and to open negotiations with the States Parties to that effect.

For these reasons,

16. The Defence respectfully requests the Chamber to uphold its appeal of 29 July 2010 against Trial Chamber III's *Decision on the review of the detention of Mr Jean Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence*, as well as its subsequent document filed on 4 August 2010 in support of the said appeal.

[signed]

Aimé Kilolo Musamba
Associate Counsel

[signed]

Nkwebe Liriss
Lead Counsel

Dated this 30 August 2010

At The Hague, The Netherlands