



Original: **French**

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

Date: **1 October 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

Defence Response to the Prosecution's Application entitled: "Prosecution's Motion to Reject the Defence's Request for Presentation of Additional Evidence and Extension of Time Limit" of 24 September 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:

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Procedural History

1. On 13 September 2010, the CAR authorities filed the “Brief by the State of the Central African Republic in Response to the Document in Support of the Defence Appeal Against the Decision of Trial Chamber III of 24 June 2010 on the Admissibility and Abuse of Process Challenge” (“the CAR Observations”).
2. On 20 September 2010, the Defence for Mr Jean-Pierre Bemba Gombo (“the Accused”) submitted its “Defence Response to the Observations of the Central African Republic of 13 September 2010” (“the Defence Response”).¹
3. On 24 September 2010, the Office of the Prosecutor submitted a “Motion to Reject the Defence’s Requests for Presentation of Additional Evidence and Extension of Time Limit”.²

Submission

4. Regulation 24(4) of the Regulations of the Court clearly prescribes that “[a] response referred to in sub-regulations 1 to 3 may not be filed to any document which is itself a response or a reply”. The Prosecution’s motion was thus filed in flagrant contravention of this regulation and was characterised as a motion with the intention of concealing the fact that it is – in fact – nothing more than an additional “response”.³
5. The purpose of the Prosecution’s motion is to raise an objection based on the Defence’s wish to rely on the views of a universally recognised expert⁴ in the law of criminal procedure of the Central African Republic (“the Expert Opinion”).

¹ ICC-01/05-01/08-899-Conf-tENG + Conf Anx-A-tENG.

² ICC-01/05-01/08-901.

³ Cf. paragraph 13 of the Prosecution’s motion, in particular, which simply repeats the Prosecution’s initial response to the Defence document in support of the appeal.

⁴ The Prosecution’s reference to Mr Edouard Franck as an “*alleged*” expert (cf. paragraph 2 of the Prosecution’s motion) lacks sincerity, given that Mr Edouard Franck had worked officially as the President of the Indictments Chamber of the Bangui Appeals Court.

6. The Prosecution clearly has a poor understanding of the Defence's submissions. The Defence reiterates that it does not seek to establish that the expert's view constitutes additional evidence for the purposes of the Appeals Chamber's decision. On the contrary: in the event that its other grounds of appeal should be dismissed, the Defence submits that the Appeals Chamber should refer the issue back to Trial Chamber III so that it may take the Expert Opinion into consideration.

7. The arguments contained in footnote 10 of the Defence Response are presented as an argument in the alternative with a view to anticipating a possible finding by the Appeals Chamber that leave under regulations 35(2) and 62 of the Regulations of the Court should have been sought beforehand. Given that the Defence honestly believes that it was not bound to seek such leave in the instant case, it therefore did not consider that this argument formed part of its principal submission, hence its relegation to a footnote.⁵

8. Furthermore, we would refer the Honourable Appeals Chamber to paragraph 7 of the Prosecution's motion, which cites the criticism of the Defence, at first instance, for not having appended a copy of its proposed Expert Opinion to the request for leave to submit the same. It would appear that Trial Chamber III ruled that it would have been more desirable and beneficial for it (Trial Chamber III) to base itself on a copy of the Expert Opinion, filed beforehand, in order to assess the "detail and extent of the expert's proposed submissions".⁶ It is for these additional reasons that the Expert Opinion has accordingly been submitted – in order to enable the Appeals Chamber to assess the "detail and extent" of the proposed Expert Opinion.

⁵ Cf. the criticism in paragraph 12 of the Prosecution's motion.

⁶ T-22, page 70, lines 5-23.

Conclusion

9. The Defence notes that the objective of a criminal court is both the determination of the truth and a fair and equitable trial. In these circumstances, it (the Defence) respectfully submits that it would be unjust for the Appeals Chamber to dismiss its second ground of appeal on the basis of a procedural technicality, in the event that it were to be considered that leave to bring additional evidence must obligatorily be sought. The Defence accordingly requests that the Appeals Chamber dismiss the Prosecution's motion.

_____[signed]_____

Aimé Kilolo Musamba
Associate Counsel

_____[signed]_____

Nkwebe Liriss
Lead Counsel

Dated this 1 October 2010
At The Hague, The Netherlands