

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **22 October 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***

CONFIDENTIAL

**Observations on the Application for Review of the Registry's Decision of 15
October 2010**

Source: Registry

Document 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
Ms Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Mr Nkwebe Liriss, Counsel
Mr Aimé Kilolo Musamba, Associate
Counsel

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Counsel Support Section

Esteban Peralta Losilla, Chief of Counsel
Support Section

Deputy Registrar

Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Marc Dubuisson, Director of Court
Services

THE REGISTRAR OF THE INTERNATIONAL CRIMINAL COURT (“the Registrar”),

NOTING the confidential “Application for Review of the Registrar’s Decision of 15 October 2010 on the Application for Adjustment of the Expenses and Fees of the Defence”¹ (“the Application”) and its confidential, *ex parte* – Registry, Defence annex (“the Annex”),² both filed with Trial Chamber III (“the Chamber”) by Counsel for the Defence of Mr Jean-Pierre Bemba Gombo (“the Defence”) on 20 October 2010 as “Urgent”;

NOTING the *Registrar’s Decision on the “Application for Adjustment of the Expenses and Fees of the Defence Advanced by the Registry Pursuant to the Order of Trial Chamber III Entitled Decision on legal assistance for the Accused of 20 October 2009”, filed on 11 August 2010 by Counsel for Jean-Pierre Bemba Gombo* (“the Registrar’s Decision”) notified to the Defence on 15 October 2010 and filed with the Chamber on 18 October 2010;³

NOTING the confidential, Prosecution and Defence only *Decision on the defence request for adjustment of fees advanced by the Registry pursuant to Trial Chamber III’s Decision on legal assistance for the accused of 20 October 2009* issued by Trial Chamber III (“the Chamber”) on 23 September 2010 (“the Decision of 23 September 2010”);⁴

NOTING the confidential “Application for Adjustment of the Expenses and Fees of the Defence Provided by the Registry Pursuant to the Order of Trial Chamber III Entitled *Decision on legal assistance for the Accused of 20 October 2009*” filed by Mr Jean-Pierre Bemba Gombo’s defence team (“the Defence”) on 11 August 2010 (“the Request”);⁵

¹ ICC-01/05-01/08-963-Conf-tENG.

² ICC-01/05-01/08-963-Conf-Exp-AnxA.

³ ICC-01/05-01/08-958-Conf-Anx1-tENG.

⁴ ICC-01/05-01/08-897-Conf.

⁵ ICC-01/05-01/08-852-Conf-tENG. Public redacted version: ICC-01/05-01/08-852-Red.

NOTING the *ex parte* Registry "Observations of the Registrar on the 'Application for Adjustment of the Expenses and Fees of the Defence Provided by the Registry Pursuant to the Order of Trial Chamber III Entitled *Decision on legal assistance for the Accused* of 20 October 2009', filed on 11 August 2010 by Counsel for Jean-Pierre Bemba Gombo" filed by the Registrar on 25 August 2010 ("the Registrar's Observations");⁶

NOTING the letter of 27 September 2010⁷ to Mr Nkwebe Liriss, Lead Counsel for the Defence of Mr Jean-Pierre Bemba Gombo, from the Chief of the Counsel Support Section, and the response contained in the e-mail of 28 September 2010;⁸

NOTING the under seal, *ex parte* Prosecution and Registry *Decision on Legal Assistance for the Accused* issued by the Chamber on 20 October 2009 ("the Decision of 20 October 2009");⁹

NOTING regulations 23 *bis*, 24 and 24 *bis* (1) of the Regulations of the Court and article 5 of the Code of Professional Conduct for counsel;

RESPECTFULLY SUBMITS AS FOLLOWS TO THE CHAMBER:

1. In its Application, the Defence seeks a review of the Registrar's Decision of 15 October 2010 on the basis of regulation 83(4) of the Regulations of the Court. The Defence raised two grounds in support of its application, namely (1) the violation of the Chamber's decision of 4 November 2009;¹⁰ and (2) the violation of the Chamber's decision of 23 September 2010.¹¹

⁶ ICC-01/05-01/08-863-Conf-Exp-tENG. Redacted version, *ex parte*, – Registry, Defence: ICC-01/05-01/08-863-Conf-Exp-Red. Redacted version, *ex parte*, – Registry, Prosecutor: ICC-01/05-01/08-863-Conf-Exp-Red2. Public redacted version: ICC-01/05-01/08-863-Red.

⁷ Annex I.

⁸ Annex II.

⁹ ICC-01/05-01/08-567-US-Exp. Public redacted version: ICC-01/05-01/08-567-Red.

¹⁰ ICC-01/05-01/08-596-US. Public redacted version: ICC-01/05-01/08-596-Red.

¹¹ ICC-01/05-01/08-897-Conf.

2. In view of its role as a neutral organ of the Court, the Registry does not consider itself to be in a position to enter into a debate with the Defence. Moreover, according to regulation 24 of the Regulations of the Court, the Registry, which is neither a party nor a participant in the proceedings, is not authorised to respond to the Application for review. However, the following submissions are made to the Chamber on the basis of regulation 24 *bis* (1) of the Regulations of the Court, since it appears necessary for the proper discharge of the Registrar's functions in the current proceedings in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* to provide certain clarifications, particularly on the Defence allegations of deliberate violations of the Chamber's decisions.¹² Naturally, the Registry is available to provide any further information that the Chamber may consider appropriate to request.
3. In accordance with regulation 23 *bis* (2) of the Regulations of the Court, the present submissions are filed with the same classification as the Defence Application to which they relate. The Registry is prepared to file a public redacted version of the submissions at the Chamber's request.
4. As regards the first and second grounds of the Application for review, the Registrar refers generally to the grounds for her Decision of 15 October 2010 and her Observations of 25 August 2010, which form an integral part of the grounds.¹³
5. The Registrar notes that the Application for review essentially relies on the Defence's and the Registry's divergent interpretations of the Decision of 23 September 2010. The Defence interprets the Decision of 23 September 2010 as meaning that the Registrar should have aligned the amount of Defence expenses advanced to Mr Jean-Pierre Bemba with the legal assistance scheme. By contrast, in her decision of 15 October 2010, the Registrar interpreted the decision of 23 September 2010 as drawing a distinction between, on the one hand, the modalities of administration and control of the advance payment of expenses, which must accord with the modalities of

¹² ICC-01/05-01/08-963-Conf-tENG, paras. 2, 5-6, 12, 18-20.

¹³ ICC-01/05-01/08-958-Conf-Anx1-tENG, para. 23.

administration and control governing legal assistance, and, on the other hand, the amount of expenses advanced, which the Chamber referred to the Registrar as the competent authority.¹⁴ This conflict of interpretation has now been remitted to the Chamber by the Application for review.

6. Irrespective of the Chamber's determination of this conflict of interpretation, the Registrar wishes to point out that her interpretation in the decision of 23 September 2010 was made in good faith and cannot be construed as an attempt to violate the Chamber's decisions. On the contrary, as stated in her decision, the Registrar sought to apply the Chamber's decisions strictly.¹⁵
7. The Registrar recalls that in her Observations of 25 August 2010, she had already made it clear that she was interpreting the Defence Request as contesting the Chamber's decisions of 20 October and 4 November 2009.¹⁶ The Chamber was therefore aware of this interpretation and noted it in its Decision of 23 September 2010¹⁷ without discounting it.
8. The Registrar further observes that this interpretation was never challenged by the Defence. The sole application for leave to reply ("*Demande d'autorisation aux fins de répliquer aux observations du Greffe sur la demande d'ajustement des frais et honoraires de la Défense*")¹⁸ filed by the Defence on 30 August 2010 contains no substantive legal or factual argument and cannot constitute a challenge to the Registrar's interpretation of the Request. In its e-mail of 27 September 2010, which makes express reference to the application for leave to reply, the Registry invited the Defence to provide it with any written observations that it considered would help the Registrar take an informed decision on the Request.¹⁹ By e-mail of 28 September 2010,²⁰ the Defence submitted

¹⁴ ICC-01/05-01/08-958-Conf-Anx1-tENG, paras. 16-17.

¹⁵ ICC-01/05-01/08-958-Conf-Anx1-tENG, para. 26.

¹⁶ ICC-01/05-01/08-863-Red, para. 11.

¹⁷ ICC-01/05-01/08-897-Conf, para. 11.

¹⁸ ICC-01/05-01/08-868.

¹⁹ ICC-01/05-01/08-958-Conf-Anx2.

²⁰ ICC-01/05-01/08-958-Conf-Anx3.

observations which do not call into question the interpretation set out by the Registrar in her observations of 25 August 2010, viz. that the Request was calling into question the decisions of 20 October and 4 November 2010. The fact that the Defence did not challenge this interpretation reinforced the Registrar's conviction as to its merits.

9. The Registrar observes that most of the arguments set out in the Application for review were not brought to her attention, whereas from the observations of 25 August 2010,²¹ the Defence was aware of the considerations on which the grounds for the Registrar's decision were based. In particular, such arguments include those at paragraphs 3 to 6 and 13 to 17 of the Application for review. The Defence did not, for instance, consider it worthwhile to bring these arguments to the Registrar's attention despite being invited to submit written observations to enable the Registrar to take an informed decision on the Request.²² These arguments, which the Defence failed to bring to the Registrar's attention at the time of her decision, should therefore not be admissible at the review stage. All of the factual considerations taken into account by the Registrar in her Decision of 15 October 2010 had already been included in her Observations of 25 August 2010.
10. Moreover, the Registrar notes that the arguments set out in paragraphs 20 (iii) to 22 of the Application for review and its annex relate to the administration and control of the use of monies advanced by the Court. This matter was adjudicated by the Chamber in its decision of 23 September 2010²³ and was not addressed in the Registrar's decision for which the Defence is seeking review. Accordingly, such arguments are of no relevance to the determination of the Application for review.

²¹ ICC-01/05-01/08-863-Conf-Exp-Red, paras. 10-11, 13, 31-34.

²² ICC-01/05-01/08-958-Conf-Anx2.

²³ ICC-01/05-01/08-897-Conf, para. 28.

11. Lastly, the Registrar reiterates her surprise and concern, as already expressed in her Observations of 25 August 2010,²⁴ at the allegation that the Defence has not yet had the opportunity to conduct meaningful investigations and is only intending to do so following the full disclosure of evidence by the Office of the Prosecutor.²⁵ Without wishing to interfere in any way in the preparation of the defence of Mr Jean-Pierre Bemba, the Registrar recalls that under article 5 of the Code of Professional Conduct for counsel, counsel have a duty of diligence towards their clients. The Registrar recalls that, as the Chamber quite correctly observed,²⁶ the Defence has been receiving the sum currently provided as advance payment for a year without raising any objection. The Defence cannot therefore now argue that it is impossible to conduct its investigations on the ground that insufficient funds have been advanced.

[signed]

Silvana Arbia
Registrar

Dated this 22 October 2010

At The Hague

²⁴ ICC-01/05-01/08-863-Conf-Exp-tENG, para. 23.

²⁵ ICC-01/05-01/08-963-Conf-tENG, para. 20(i).

²⁶ ICC-01/05-01/08-897-Conf, para. 20.