

**Cour
Pénale
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**International
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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

**Prosecution's Response to the Defence's "Requête de la Défense aux fins d'obtenir
de la Chambre de Première Instance III des décisions appropriées avant
l'ouverture du Procès prévue pour le 22 Novembre 2010"**

Source: The Office of the Prosecutor

Document to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Counsel for the Defence of Jean-Pierre Bemba

Mr Nkwebe Liriss

Mr Aimé Kilolo Musamba

Legal Representatives of Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other Participants

Introduction

1. During the Status Conference of 21 October 2010, Trial Chamber III (“Chamber”) issued an oral decision setting the trial date for 22 November 2010.¹ The Defence raised concerns in regards to the trial date and requested the Chamber to reconsider its decision if it deems appropriate. For that purpose, the Defence indicated its intention to provide very rapidly² additional information in writing to support its request.³ On 1 November 2010, the Defence filed an urgent application,⁴ outlining the difficulties it encounters in preparing its case.

Submissions

2. The Office of the Prosecutor (“Prosecution”) submits that the Defence request is groundless and, thus, should be rejected for the reasons set out below.

3. The Prosecution submits that the Defence application fails to provide any additional information, unknown or unconsidered by the Chamber at the time of rendering its decision setting the trial date. Therefore, the Defence fails to provide any ground for the Chamber to modify its earlier decision.

4. The Defence bases its submission on a misinterpretation of the Chamber’s decision of 5 November 2009,⁵ taking it out of context. In the Prosecution’s view, the Defence is not automatically given a five-month period to prepare its case once another piece of evidence is disclosed at any time in the proceedings. Had this been

¹ ICC-01/05-01/08-T-30-ENG, p. 4, lines 9-20.

² Translation of French words “dans les délais les plus brefs” : ICC-01/05-01/08-T-30-FRA, p. 21 line 14.

³ ICC-01/05-01/08-T-30-ENG, p. 30, lines 16-25 and p. 31, lines 1-6 and 11-16.

⁴ ICC-01/05-01/08-987, Requête de la Défense aux fins d’obtenir de la Chambre de Première Instance III des décisions appropriées avant l’ouverture du procès prévue pour le 22 novembre 2010, 1 November 2010. It is noted that the Defence, despite the urgency it attached to its application, does not explain why it waited 10 days to submit its filing.

⁵ ICC-01/05-01/08-598, Decision on the date of trial, 5 November 2009.

the intention of the Chamber, it would have applied this condition following any additional disclosure after the deadline of 30 November 2009.

5. The Prosecution recalls that the Chamber has already denied similar submissions made by the Defence.⁶ Noting the progress in circumstances, the Chamber stated that: “the defence is now properly funded, and counsel and their assistants are in place. The trial date has moved from 27 April 2010 to 5 July 2010 because of the accused's admissibility and abuse of process applications, and the defence has been in possession of the main elements of the prosecution evidence for a significant period of time.”⁷ It is noted that in addition to all the factors considered by the Chamber, the Defence benefits at present from additional time for preparation until the trial date currently set on 22 November 2010.

6. The Prosecution submits that the Defence's ability to prepare its case has not been affected by the disclosure process. The Prosecution has fully discharged its disclosure obligations in a timely fashion and sufficiently in advance of trial. Much of the evidence was disclosed to the Defence well over a year ago. With respect to evidence provided subsequent to the Confirmation Hearing, the Chamber noted that “the prosecution substantively met the deadline [for disclosure] of 30 November 2009.”⁸

7. After the deadline of 30 November 2009, the Prosecution in compliance with its ongoing disclosure obligation and the Chamber's orders continued to disclose

⁶ The Defence relied on the fixed period of preparation it requested from the Chamber during the Status Conference of 7 October 2009 as a ground to oppose introduction of additional evidence. Nonetheless, the Chamber denied the Defence's submissions and granted the introduction of the additional evidence on 10 May and 20 May 2010, less than two months prior to the commencement of the trial on 5 July 2010. See ICC-01/05-01/08-692-Conf-Exp, Réponse de la Défense à la Requête du Bureau du Procureur intitulée : «*Prosecution's Second Request Pursuant to Regulation 35 (2) of the Regulations of the Court* » du 27 Janvier 2010, 11 February 2010, at paras 24-25, referred to in ICC-01/05-01/08-767-Conf-Red, Confidential redacted version of "Decision on the prosecution's second application for disclosure of additional evidence", 7 May 2010, at para. 16.

⁷ ICC-01/05-01/08-767-Conf-Red, at para. 25.

⁸ ICC-01/05-01/08-743, 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, 1 April 2010, at para. 30.

materials of limited number and scope. Such materials consist predominantly of either evidence intended to assist the Defence in its preparation under Article 67(2) of the Rome Statute and Rule 77 of the Rules of procedure and evidence, or evidence that was already in the Defence's possession and re-disclosed after implementing the Chamber's orders on redactions.

8. Similarly, the Prosecution submits that the disclosure of the expert report on 17 December 2010 will not affect the Defence's right to prepare its case, taking into account that it is intended to assist the Chamber, the parties and participants in understanding the case. In determining the date of disclosure, the Chamber considered the Defence's concerns and ensured that the report be disclosed well in advance of the testimony of the expert,⁹ in order to provide the Defence with sufficient time for preparation.

9. Furthermore, the Prosecution recalls that the Defence has previously expressed its readiness to start the trial as early as 27 April 2010 and objected to potential postponements. The Defence emphasized its repeated requests that the trial should commence as soon as possible, stating that: "En tout état de cause, le fait que le requérant est dans une démarche de se défendre [...] se matérialise par ses demandes répétées que le procès, s'il doit avoir lieu, se tienne dans les délais les plus courts".¹⁰ It also insisted that the trial should not be postponed, stating that: "J'aimerais surtout insister sur le fait que nous ne sommes pas demandeurs d'un report par rapport au début du procès, qui est prévu au 27 avril."¹¹ The Prosecution submits that the Defence, in its present application, fails to show any material

⁹ ICC-01/05-01/08-928, Decision on the Prosecution's Request for Approval of a Proposed Expert and for Extension of Time for the Submission of the Expert Report, 7 October 2010, at para. 14.

¹⁰ ICC-01/05-01/08-730, Soumissions de la Défense sur la Révision de la Détention avant le procès de Mr Jean-Pierre Bemba Gombo en vertu de la Règle 118(2) du Règlement de procédure et de preuve, 19 March 2010, at para. 48.

¹¹ ICC-01/05-01/08-T-20-CONF-FRA, 8 March 2010, p. 11, lines 17-18.

changes of circumstances warranting its new request to postpone the trial, in contradiction with its earlier position.

10. Absent compelling reasons to postpone the trial, the Defence should not alter its prior commitment as it will impact on the rights and interests of parties and participants to the proceedings including the right of the Accused to an expeditious trial. In particular, further delay will significantly affect the well-being of the vulnerable witnesses and may cause them to reconsider their decision to testify. Several have already expressed concerns about the delay. It will further hamper the process initiated by the Registry to prepare for the commencement of the trial, affecting the court resources and disturbing the lives of witnesses who made their arrangements to travel to the seat of the court according to the set date.

11. At the outset, the Prosecution notes that the financial matters raised by the Defence are no impediment for the commencement of the trial on 22 November 2010. Notwithstanding that, decisions on financial assistance to the Defence fall under the Registry's mandate, the Prosecution opposes the Defence's allegation of lack of funds for its preparation. Firstly, the Chamber has set the trial date in full awareness of the financial resources available to the Defence. Furthermore, the Prosecution understands that the Defence still disposes of a sufficient amount of unspent funds to conduct investigations.¹² In addition, the Defence team continues to receive financial assistance by the Court in the same amount it obtained at the time when it expressed its readiness for trial.¹³

¹² ICC-01/05-01/08-863-Red, Observations du Greffier relatives à la «Requête aux fins d'ajustement des frais et honoraires de la Défense avancés par le Greffe conformément à l'ordonnance de la Chambre de Première Instance III intitulée "Decision on legal assistance for the Accused" du 20 octobre 2009» déposée le 11 août 2010 par les Conseils de Jean-Pierre Bemba Gombo, 24 September 2010, at paras 15 and 17.

¹³ ICC-01/05-01/08-T-20-Red-ENG, 8 March 2010, p. 11, lines 4-8 and p. 13, lines 1-8 ; ICC-01/05-01/08-730 at para. 48.

12. The Defence contends that it has not had sufficient time and resources to conduct meaningful investigations. This argument cannot be sustained. The Prosecution recalls that the Defence team has a duty of diligence towards its client, pursuant to which it should have initiated its investigations at an earlier stage of the proceedings, particularly as it had the necessary means to do so. As stated by the Chamber earlier this year, the Defence has been in possession of the main elements of the Prosecution evidence for a significant period of time and it is properly funded to discharge its duties to prepare for trial.¹⁴

Relief sought

13. For the foregoing reasons, the Prosecution respectfully requests that the Chamber dismiss the Defence's application.



Luis Moreno-Ocampo, Prosecutor

Dated this 8th Day of November 2010

At The Hague, The Netherlands

¹⁴ ICC-01/05-01/08-767-Conf-Red, at para. 25. The Prosecution notes that the Chamber may impose, on a case-by-case basis, confined adjournments during trial to allow for further preparation in relation to a specific item of evidence or a particular witness.