



Original: French

No.: ICC-01/05-01/08
Date: 1 November 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***

**Public Document
Urgent**

**Defence Application for Appropriate Decisions by Trial Chamber III Prior
to the Commencement of the Trial Scheduled for 22 November 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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Registrar and Deputy Registrar

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Defence Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Procedural Background

1. At the status conference held on 7 October 2009, the Prosecution indicated unreservedly, as did the Defence, that following full disclosure by the Prosecution, it was reasonable to grant the Defence 6 months to prepare its case.¹
2. On 5 November 2009, Trial Chamber III stated: “[...] The trial Chamber is of the view that 5 months, following **full disclosure**, provide the defense with sufficient time for preparation [...]”.²
3. On 7 October 2010, the Chamber granted the Prosecution an extension of the time for disclosure to 17 December 2010.³
4. Accordingly, pursuant to the Chamber’s Decision of 5 November 2009, recalled by the Defence at the status conference of 30 August 2010, the commencement of trial should have been scheduled for no earlier than 17 May 2011.
5. However, at the status conference on 21 October 2010, the Chamber, for its own honourable reasons, set the commencement date for the trial as 22 November 2010.
6. The Defence submits this application to seek urgent decisions and fair solutions of the concerns raised below prior to the commencement of trial.

Submissions

7. Under article 67(1)(4) of the Statute, “the accused shall be entitled to a fair hearing [...] [and] to have adequate time and facilities for the preparation of the defence”.

¹ ICC-01/05-01/08-T-14-FRA ET WT 07-10-2009 34/42 NB, page 34, lines 6 to 17.

² ICC-01/05-01/08-598.

³ ICC-01/05-01/08-928.

8. The Defence respectfully recalls that the Accused's case was referred on 22 December 2004; the investigation was opened by a decision of the Prosecutor on 22 May 2007; and, following the warrant of arrest of 9 May 2008, the Accused has been in detention in The Hague since 3 July 2009.
9. Prior to the Decision on the confirmation of charges, the case had already been under way for more than five years, and the investigation had been under way for two years.
10. By the time it makes its final disclosure on 17 December 2010, the Prosecution will therefore have had six years to prepare, whereas the Defence is being asked to limit itself to one month as from the oral decision of 21 October 2010.
11. Furthermore, at the same time as the distinguished Chamber decided that it would no longer take account of the 5-month time limit which it had previously accepted as being sufficient for the Defence's preparation, the Defence was ordered, less than two months prior to the date set for the trial, to analyse more than 900 applications for victim participation with a deadline of 8 December 2010 – that is, 16 days after the commencement of the trial – which appears difficult to reconcile with article 68(3) of the Statute. The support of the OPCD does not change in the slightest the fact that the Defence is significantly handicapped by the multitude of applications for victim participation. In fact, the Defence cannot merely accept the work carried out by the OPCD, but must conduct an in-depth assessment of all the contributions it receives.
12. The Defence further recalls that its application for an adjustment of its fees was rejected by the Registry, despite a binding order by the Chamber.
13. The Defence would respectfully underscore the following facts:

- a) It has been unable to complete appropriate and in-depth investigations due to financial and human resource constraints. Neither has this situation been improved by the Registry's resistance to implementing the Chamber's decision. The Defence is awaiting a decision on its request for a review of the Registrar's decision refusing to grant it the minimum funds required for a functional defence team at the trial stage and the funds required to conduct its investigations successfully.
 - b) It cannot avail itself of the 5 months of preparation time it was granted by the Chamber itself, since the Chamber – no doubt for honourable reasons – took no further account of this time in determining the date of commencement of the trial.
 - c) It is mired in the analysis of around one thousand applications for participation, which were received late because of the Registry, despite the requirements set out in article 68(3).
 - d) In any event, neither the Accused nor his counsel can be held responsible for any errors or omissions in the current state of affairs.
14. If the Prosecution, with its immense financial and human resources, is granted the right to conduct an investigation for more than five years, imposing on the Defence a time limit of less than one month for its preparation is inconsistent with the principles of equality of arms and fair trial.
15. The Defence would also inform the distinguished Chamber that, whilst preparing this application, it has received a further untimely disclosure from the Prosecution, in defiance of previous orders setting the disclosure dates for the reports.

Urgency of this application

16. The Defence requests that this application be treated as urgent in view of the need to settle the issues raised herein prior to the commencement of trial, which is scheduled for 22 November 2010.

For these reasons,

17. Whilst the Defence accepts the binding Decision of the distinguished Chamber, it would, nonetheless, request the Chamber to rule on urgent and sound solutions to guarantee – however minimally – the fairness and equality of the trial before its actual commencement, taking account of all of the facts set out above, its previous decisions, the fact that the Accused and his counsel have not been at fault in the conduct of the proceedings and, in particular, the Chamber's statutory obligation to rule on this application in a manner consistent with non-discriminatory, internationally recognised human rights and with the rights granted to the Accused under article 67(b) of said Statutes.

[signed]
Aimé Kilolo Musamba
Associate Counsel

[signed]
Nkwebe Liriss
Lead Counsel

Dated this 1 November 2010
At The Hague, The Netherlands