

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 16 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

**Decision on the « 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 »**

Decision 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
Mr Aimé Kilolo Musamba

Legal Representatives of the Victims

Ms Marie-Edith Douzima Lawson

Legal Representatives of the 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**

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, hereby renders the following Decision on the “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”.

I. Background and Submissions

1. On 1 November 2010, the defence for Mr Jean-Pierre Bemba Gombo (Mr Bemba) filed the “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” (“defence Application”),¹ asking for an urgent ruling on sound solutions to guarantee the fairness of trial and equality of arms. According to the defence, the Chamber is no longer following the five months previously stated to be the sufficient time needed for the defence’s preparation.² In relation to that, the defence argues that the Office of the Prosecutor (“prosecution”) had at least six years to prepare the case, whereas the defence would have only one month dating from the oral decision of 21 October 2010, which scheduled the commencement of the trial on 22 November 2010.³
2. The defence also argues that only two months before the date set for the trial, it was called to analyse more than 900 applications for victims’ participation, and that even with the support of the Office of Public

¹ 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, ICC-01/05-01/08-987 ; and translation filed on 15 November 2010, ICC-01/05-01/08-987-tENG.

² ICC-01/05-01/08-987, paragraph 11.

³ ICC-01/05-01/08-987, paragraph 10.

Counsel for the Defence (“OPCD”),⁴ the defence is “significantly handicapped” by having to deal with such a “multitude of applications” at this stage.⁵

3. The defence further recalls that the issue related to its fees is unresolved,⁶ and that it has been unable to complete its investigations due to insufficient financial and human resources.⁷ The defence Application concludes by arguing that, if the prosecution is authorised to conduct an investigation for more than five years with the benefit of “immense financial and human resources”, then imposing on the defence a time limit of less than one month for its preparation, is inconsistent with both the principle of equality of arms and the fairness of the trial.⁸
4. On 5 November 2010, the Office of Public Counsel for Victims (“OPCV”) submitted its observations on the defence Application.⁹ According to the OPCV, the defence Application should be dismissed *in limine*, since it purports to review a decision of the Chamber, which is not procedurally permitted under the Court’s legal framework.¹⁰
5. On 8 November 2010, the prosecution filed its “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 de

⁴ The Chamber ordered the OPCD to support the defence team in dealing with the victims applications at the status conference held on 30 September 2010, *ex parte* OTP and OPCD only, ICC-01/05-01/08-T-27-CONF-EXP-ENG.

⁵ ICC-01/05-01/08-987, paragraph 11.

⁶ The “Decision on the Defence 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”, ICC-01/05-01/08-1007-Conf, was issued on 12 November 2010.

⁷ ICC-01/05-01/08-987, paragraph 13 a).

⁸ ICC-01/05-01/08-987, paragraph 14.

⁹ Observations du Représentant légal sur la « 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 », 5 November 2010, ICC-01/05-01/08-998.

¹⁰ ICC-01/05-01/08-998, paragraphs 6-7.

Procès prévue pour le 22 Novembre 2010”¹¹, requesting the Chamber to dismiss the defence Application. In the view of the prosecution, the defence request is groundless, as it fails to provide any additional information, not already known or considered by the Chamber at the time of rendering its decision setting the trial date.¹² The prosecution stresses that the defence fails to provide any grounds on which the Chamber could modify its earlier decision.¹³

6. The prosecution further argues that the defence has misinterpreted the Chamber’s decision of 5 November 2009, since it would not automatically give a five-month period for the defence to prepare its case, every time a piece of evidence is disclosed.¹⁴ The prosecution further asserts that it has disclosed all its evidence in a timely manner, sufficiently in advance of the trial and that the subsequent disclosure of a limited number of materials will not affect the defence’s right to prepare its case.¹⁵ The prosecution also recalls the previous defence opposition to any postponement of the commencement of the trial, and that it expressed its readiness to start the trial on the 27 of April 2010.¹⁶ Therefore, the defence would have been in possession of the main elements of the prosecution case for a significant period of time and it would be properly funded to discharge its duties to prepare for trial.¹⁷
7. In accordance with Article 21(1) of the Rome Statute (“Statute”), the Chamber has considered in making its determination Article 64(2), Article

¹¹ 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 de Procès prévue pour le 22 Novembre 2010, ICC-01/05-01/08-1000.

¹² ICC-01/05-01/08-1000, paragraphs 2-3.

¹³ ICC-01/05-01/08-1000, paragraphs 9-10.

¹⁴ ICC-01/05-01/08-1000, paragraph 4.

¹⁵ ICC-01/05-01/08-1000, paragraphs 7-8.

¹⁶ ICC-01/05-01/08-1000, paragraph 9.

¹⁷ ICC-01/05-01/08-1000, paragraph 12.

67(1) and (2), Article 82(1)(d) of the Statute and Rule 155(1) of the Rules of Procedure and Evidence ("Rules").

II. Analysis and Conclusions

8. As a preliminary remark, the Chamber wants to assure the defence that it is mindful of its obligations under the Statute and the Court's legal framework. In particular, that the Chamber is aware of its duty to ensure that proceedings are conducted in a fair and expeditious manner, with full respect to the rights of the accused person and due regard to the protection of victims and witnesses in accordance with Article 64(2) of the Statute. The Chamber is also mindful of the fundamental rights of the accused person, as outlined in Article 67(1) and (2) of the Statute.
9. However, as rightly pointed out by the OPCV, the Chamber recalls the jurisprudence of the Court, and especially that of Pre-Trial Chamber II in the Situation in Uganda, which has stated that:

The instruments governing the Court's procedure make no provision for such a broad remedy as an unqualified "motion for reconsideration". Review of decisions by the Court is only allowed under specific circumstances, explicitly provided in the Statute and the Rules. Suffice it to mention here article 15, paragraph 5, of the Statute, allowing the Prosecutor to request the Pre-Trial Chamber to review its denial of authorisation of the investigation, based on new facts or evidence regarding the same situation; article 19, paragraph 10, of the Statute, allowing the Prosecutor to request a review of a decision of inadmissibility of a case when satisfied "that new facts have arisen which negate the basis on which the case had been previously found inadmissible"; article 61, paragraph 8, of the Statute, allowing the Prosecutor to request the Chamber to confirm a charge which had originally not been confirmed, based upon additional evidence; rule 118, sub-rule 2, of the Rules, allowing the person concerned or the Prosecutor to request the Pre-Trial Chamber to review its ruling on the release or detention of such person; rule 125, sub-rule 3, of the Rules, allowing the Prosecutor to request the Chamber to review its decision not to hold a hearing on the confirmation of the charges in the absence of the person concerned; rule 135, sub-rule 4, of the Rules, allowing the prosecution and the defence to request a review of the determination that the accused is unfit to stand trial. Outside such specific instances, the only remedy of a general nature is the

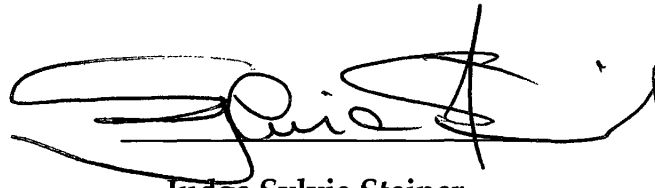
interlocutory appeal against decisions other than final decisions, as set forth in article 82, paragraph 1 (d) of the Statute (...).¹⁸

10. The Chamber further concurs with the prosecution and the OPCV views that, the time limit to lodge a proper request for leave to appeal against any decision issued during the above mentioned status conference of 21 October 2010 has expired, pursuant to Article 82(1)(d) of the Statute and Rule 155(1) of the Rules. The defence seems to intend to obtain from the Chamber a remedy not provided for in the Court's legal framework – namely the review of a decision which not otherwise allowed by specific circumstances.¹⁹ Such a request cannot be entertained by the Chamber.
11. As a matter of fact, the defence Application does not explicitly request the postponement of the date for the commencement of the trial, and as such, the purpose of the defence Application is unclear.
12. The Chamber will not entertain, since it is groundless, the defence allegations of alleged violations of the fundamental rights of the accused. However, the Chamber reminds the defence that while the trial was originally scheduled to commence on 27 April 2010, and was later postponed to 5 July 2010, no request for leave to appeal was lodged against any of the decisions previously setting or postponing the date for the commencement of the trial.
13. For all the foregoing reasons, the Chamber rejects the defence Application *in limine* as it lacks legal and factual basis.

¹⁸ Decision on the prosecutor's position on the decision of Pre-Trial Chamber II to redact factual descriptions of crimes from the warrants of arrest, motion for reconsideration, and motion for clarification, 28 October 2005, ICC-02/04-01/05-60, paragraph 18.

¹⁹ See ICC-02/04-01/05-60, paragraph 18, quoted in paragraph 9 above.

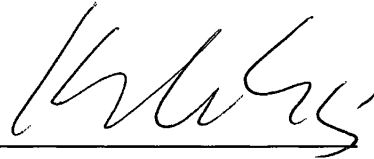
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this Tuesday 16 November 2010

At The Hague, The Netherlands