

**Cour
Pénale
Internationale**



**International
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TRIAL CHAMBER III

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio-Benito
Judge Joyce Aluoch

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

Public document

**Prosecution's Consolidated Response to the Defence Applications of 13 and 19
April 2010 Informing the Chamber of New Procedural Developments in the
Central African Republic**

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 Gombo

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**

I. Introduction

1. Pursuant to the order of the Trial Chamber III (“Chamber”),¹ the Office of the Prosecutor (“Prosecution”) hereby files its Response to the Defence application of 13 April 2010 informing the Chamber of supposed new procedural developments in the Central African Republic (“CAR”).² In the interest of efficiency, the Prosecution herein also responds to the second application of the Defence filed on 19 April 2010³ as it deals with the same issue.

2. The central question is whether the Defence’s delayed efforts to challenge the judgments in the CAR national courts constitute the reopening of the investigation against Mr Jean-Pierre Bemba Gombo (“Accused”) in the CAR, and by extension, impact the Court’s determination of the present admissibility challenge.

3. The Prosecution submits that the mere initiation by a non-governmental actor of some legal action in the CAR domestic courts does not constitute a reopening of national investigation or prosecution. Consequently, the attempt by the Accused to pursue legal recourses in the CAR - “*en opposition*”,⁴ “*en rétractation*”⁵ and “*en cassation*”⁶ - (“Accused’s efforts”) does not affect the *status quo* of the present admissibility challenge before the Chamber. Rather, the situation remains the same as it was on 25 February 2010 when the Defence launched its admissibility challenge to the case.⁷

¹ Email sent on 13 April 2010 at 17:57 on behalf of the Chamber.

² “*Requête de la Défense aux fins d’informer la Chambre de Première Instance III de nouveaux développements de procédure judiciaire intervenus en République Centrafricaine*”, ICC-01/05-01/08-751 + Anxs A-D.

³ “*Deuxième Requête de la Défense aux fins d’informer la Chambre de Première Instance III de nouveaux développements de procédure judiciaire intervenus en République Centrafricaine en date du 16 Avril 2010*”, ICC-01/05-01/08-757 et 3 annexes.

⁴ Supra n. 2, ICC-01/05-01/08-751-AnxA, *Recours en opposition* filed on 6 April 2010.

⁵ Supra n. 2, ICC-01/05-01/08-751-AnxC, *Recours en rétractation* filed on 8 April 2010.

⁶ Supra n. 3, ICC-01/05-01/08-757-AnxA, *Pourvoi en cassation* filed on 16 April 2010.

⁷ “*Requête en vue de contester la recevabilité de l’Affaire conformément aux articles 17 et 19 (2) (a) du Statut de Rome*”, ICC-01/05-01/08-704-Conf-Exp.

4. Furthermore, there are substantial questions regarding the validity, and even more the likelihood of success, of the actions undertaken by the Accused. Anyone can initiate a legal action, but the mere act of filing a challenge does not mean the action is taken in good faith or has merit. Since the Defence bears the burden of proof on admissibility,⁸ it is incumbent upon it to establish that the Accused's efforts, as a purportedly legitimate ground for challenging admissibility, have a legal basis. The Defence has not provided the legal basis under the CAR national law for the Accused's standing to reopen a judgment in the investigative phase of national proceedings. Nor has the Defence established the Accused's right to challenge these final judgments years after their issuance.

II. The Prosecution's Response

The Accused's efforts in the CAR have no impact on the present admissibility challenge

5. As the Appeals Chamber noted, "... the admissibility of a case must be determined on the basis of *the facts as they exist at the time of the proceedings concerning admissibility challenge*".⁹ (Emphasis added) The Prosecution submits that the facts show that no action is being undertaken by the CAR authorities in relation to the Accused. The state of affairs today is the same as it was on 22 May 2007 when the Prosecutor opened his investigation into the CAR situation: there are no further investigations or prosecution of the Accused by the CAR authorities. Absent any decision by the CAR authorities that would suggest investigation or prosecution, the fact that the Accused has recently filed pleadings in the national courts cannot be relevant to a determination of the merits of the present admissibility challenge.

⁸ *Ibid.*, at para. 201.

⁹ "Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case", ICC-01/04-01/07-1497, para. 56.

The Defence fails to properly demonstrate the Accused's entitlement to file such pleadings in the CAR

6. The Court is not the forum for a discussion on the merits of the Defence efforts in the CAR national courts.¹⁰ Nevertheless, since the Accused raised these claims, the Prosecution notes that the Defence has not referenced the relevant and applicable national law and explain why its applications in the national courts are legally supportable and likely to affect the present admissibility challenge.

7. First, the Accused does not substantiate his claim to a procedural right to notification in relation to both challenged decisions. Second, the Defence does not provide references showing the Accused's standing to file such pleadings - "*en opposition*", "*en rétractation*" and "*en cassation*" - to invalidate favourable decisions that confirmed that he would not be investigated or prosecuted in the CAR.

The Accused seeks to artificially reopen proceedings in the CAR

8. The Prosecution also notes that the Accused filed his three challenges to the CAR judicial decisions in April 2010, more than three years after they were issued, despite his awareness of those decisions. First, there was ample public notice of the two decisions he challenged, as well as specific indicia of his personal knowledge of the decisions. They were reported by International Non-Governmental Organisations.¹¹ Indeed, a Human Rights Watch report extracted from a file entitled "CPI" which was in the Accused's computer at the Defence request, expressly

¹⁰ See, "*Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006*", ICC-01/04-01/06-772 OA4, para. 41.

¹¹ See, for example, FIDH, February 2005, Rapport no. 410 "*Mission Internationale d'Enquête République centrafricaine, Fin de la transition politique sur fond d'impunité, Quelle réponse apportera la Cour pénale internationale?*", CAR-OTP-0004-0732 at 0763 and 0764, EVD-P-02097; FIDH, October 2006, Report No 457/2 "*International Fact Finding Mission Central African Republic; Forgotten, stigmatised: the double suffering of victims of international crimes*" CAR-OTP-0004-0409 at 0443 to 0450, EVD-P-00014.

mentions that on 11 April 2006, the CAR *Cour de Cassation* had relinquished jurisdiction to the Court for blood crimes during the 2002-2003 events in the CAR.¹² Second, the report in support of the Government referral of the situation to the Court was disclosed on 1 October 2008,¹³ more than 18 months ago. That report detailed the content of national judicial decisions relevant to the case, including 16 December 2004 order of the *Chambre d'Accusation*¹⁴ (which the Prosecution separately disclosed on 12 October 2009).¹⁵ The *Cour de Cassation* Decision of 11 April 2006 was disclosed to the Defence on 3 October 2008.¹⁶

9. Additionally, the Prosecution notes that the Accused filed his pleadings in the CAR courts more than six weeks after his motion challenging the admissibility of the case,¹⁷ which included specific reference to the national courts' decisions, and two weeks after the Prosecution response.¹⁸ Thus, the Defence seeks to artificially activate the national proceedings in the CAR¹⁹.

10. The Accused's efforts at this late stage, in the midst of an admissibility challenge, appears to be designed to shield the Accused from criminal responsibility before this Court, rather than a genuine attempt to determine the appropriate forum before which the case should be prosecuted.

¹² See, HRW, September 2007, Volume 19 No 14(A), "*État d'Anarchie, Rébellion et exactions contre la population civile*", CAR-OTP-0033-0086 at 0199.

¹³ CAR-OTP-0001-0139, EVD-P-0003; see also, Pre Confirmation INCRIM Package 1, ICC-01/05-01/08-132 + Conf-AnxA.

¹⁴ *Ibid*: CAR-OTP-0001-0139, EVD-P-0003 at 0150.

¹⁵ Pre Trial Rule 77 package 3, ICC-01/05-01/08-554+Conf-AnxA.

¹⁶ Pre Confirmation Rule 77 package 1, ICC-01/05-01/08-138 + Conf-AnxA.

¹⁷ *Supra* n. 7. filed on 25 February 2010.

¹⁸ "*Prosecution's Responses to Motion Challenging the Admissibility of the Case by the Defence for Jean-Pierre Bemba Gombo pursuant to Articles 17 and 19(2)(a) of the Rome Statute*", ICC-01/05-01/08-739, filed on 29 March 2010.

¹⁹ *Ibid*, at paras 51 to 56.

11. Finally, the Prosecution notes that, should the Chamber desire clarification in this regard, the CAR authorities plan to attend the upcoming admissibility hearing.

III. Conclusion

12. The Accused's efforts in the CAR have not resulted in the opening or reopening of further investigations, or proceedings, in the CAR. Consequently, the issue of its effect on the current proceedings does not arise.

13. For the above-mentioned reasons, the Prosecution respectfully requests the Chamber to:

- a. Dismiss both Defence applications as they have no bearing on the present admissibility challenge before the Court; and
- b. Decline the Defence requests to join both applications to its admissibility challenge.



Luis Moreno-Ocampo, Prosecutor

Dated this 23rd Day of April 2010

At The Hague, The Netherlands