



Original: French

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

Date: 19 April 2010

**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  
Urgent  
With Three Public Annexes**

**Second Defence Application Informing Trial Chamber III of a Further  
Development on 16 April 2010 in Judicial Proceedings in the Central African  
Republic**

**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:

**The Office of the Prosecutor**

Fatou Bensouda  
Petra Kneuer

**Counsel for the Defence**

Nkwebe Liriss  
Aimé Kilolo Musamba

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

Marie-Edith Douzima Lawson

**Unrepresented Applicants**

**(participation/representation)**

**The Office of Public Counsel for  
Victims**

Paolina Massidda

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

Xavier-Jean Keita

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar and Deputy Registrar**

Silvana Arbia and Didier Preira

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

1. On 25 February 2010, the Defence filed an application challenging the admissibility of the case pursuant to articles 17 and 19(2)(a) of the Rome Statute.<sup>1</sup>
2. On 29 March 2010, the Office of the Prosecutor filed its observations.<sup>2</sup>
3. On 29 March 2010, one of the Legal Representatives of certain victims filed her observations.<sup>3</sup>
4. On 6 April 2010, the Defence received notice of the observations of the Office of Public Counsel for Victims.<sup>4</sup>
5. On 13 April 2010, the Defence filed an application informing Trial Chamber III of new developments in judicial proceedings in the Central African Republic.<sup>5</sup>
6. That same day, namely 13 April 2010, the Defence sent a letter to the Office of the Prosecutor asking, as a matter of urgency, for the disclosure of an item of evidence relevant to admissibility which had never been disclosed to it, and to which the Office of the Prosecutor had referred for the first time in its public response of 29 March 2010.<sup>6</sup>
7. On 13 April 2010, the Office of the Prosecutor responded favourably to the Defence's request by disclosing the evidence requested thereby, namely a letter sent on 11 December 2004 by Mr Goungaye, counsel for President Bozizé, to the President of the Bangui *Cour criminelle*.<sup>7</sup>

---

<sup>1</sup> ICC-01/05-01/08-704-Conf-Exp.

<sup>2</sup> ICC-01/05-01/08-739 + Anxs.

<sup>3</sup> ICC-01/05-01/08-740.

<sup>4</sup> ICC-01/05-01/08-742 + Anxs.

<sup>5</sup> ICC-01/05-01/08-751+ Anxs A~D.

<sup>6</sup> ICC-01/05-01/08-739 + Anxs, at paragraph 18.

<sup>7</sup> ICC-01/05-01/08-753 and Conf-Exp-AnxA.

8. The Defence would emphasise that the Office of the Prosecutor referred to that letter in paragraph 18 of its public response of 29 March 2010 and quoted a part thereof,<sup>8</sup> so much so that its classification as confidential is no longer justified.
9. The Defence has received this letter only at the present stage of the proceedings, even though it has repeatedly sought disclosure of any additional evidence relevant to admissibility, particularly as this evidence clearly proves interference in the course of justice by the political authorities in order to have President Bozizé's political adversaries brought before the International Criminal Court.
10. This item of evidence also illustrates political interference designed to block the decision of the Bangui Senior Investigating Judge who dismissed the charges against Mr Jean-Pierre Bemba Gombo.
11. On 14 April 2010, the Defence filed its reply to the observations of the Prosecutor and the Legal Representatives of the Victims on its application challenging the admissibility of the Case.<sup>9</sup>
12. In effect, in the letter at issue President Bozizé's counsel, acting under a written authorisation signed by the Head of State of the Central African Republic, which he appends thereto, advises the President of the *Cour criminelle* that he should order the war crimes to be severed from the blood crimes and in particular send Mr Jean-Pierre Bemba for trial before the International Criminal Court, at a time when the *Cour criminelle* was in the process of ruling on the appeal by the Public Prosecutor concerning the same facts.

---

<sup>8</sup> ICC-01/05-01/08-739 + Anxs, at paragraph 18:

"18. On 11 December 2004, Wanjiyo sent a letter to the President of the Cour Criminelle in Bangui "suggesting" the separation of the case. In his letter, he pointed out that "should the ICC initiate an investigation, it would be carried out by the means that the CAR lacks".<sup>22</sup>"

<sup>9</sup> ICC-01/05-01/08-752 + Anxs.

13. The resulting decision of the Indictments Chamber faithfully followed Counsel Goungaye's recommendations.
14. Thanks to the discovery of this letter, the Defence now understands why the Indictments Chamber rendered a decision that included Mr Jean-Pierre Bemba five days after receiving the aforementioned letter from Mr Bozizé's personal counsel, namely on 16 December 2004,<sup>10</sup> even though there was no mention in the Public Prosecutor's notice of appeal of the decision concerning the applicant.
15. Furthermore, following the Prosecution's belated disclosure on 13 April 2010 of the letter at issue from Mr Goungaye to the President of the Bangui *Cour criminelle*, the Defence immediately, on 16 April 2010, filed an application for annulment [*pourvoi en cassation*] of the decision partially setting aside the dismissal of the charges and ordering the severance of the proceedings and committal for trial before the *Cour criminelle*, rendered on 16 December 2004 by the Indictments Chamber of the Bangui Appeals Court, a decision that has yet to be notified to Mr Jean-Pierre Bemba Gombo.<sup>11</sup>
16. The proceedings on the application for annulment instituted before the courts of the Central African Republic on 16 April 2010 are of the utmost importance as regards the treatment of the question of the inadmissibility of the Case currently before the International Criminal Court; consequently, the Defence has sought respectfully to inform Trial Chamber III of this further procedural development arising out of the discovery of Mr Gouganyé's letter, belatedly notified to the Defence on 13 April 2010.

---

<sup>10</sup> EVD-P-02749, ERN: CAR-OTP-0004-0148 to 0166.

<sup>11</sup> See Annexes A and B.

17. The Defence attaches hereto an extract from the Register of Applications for Annulment [*registre des pourvois en cassation*] held at the Bangui Appeals Court, issued by the judicial authorities of the Central African Republic on 16 April 2010,<sup>12</sup> as well as an extract from Organic Law No. 95.0011 of 23 December 2005 on the Organisation and Functioning of the Court of Cassation of the Central African Republic.<sup>13</sup>

**As to the urgency of this matter**

18. Given the significant impact of the application for annulment on the issue of complementarity and the principle of *ne bis in idem*, having regard in particular to articles 20, 21 and 23 of the aforementioned Organic Law on the Organisation and Functioning of the Court of Cassation appended hereto;<sup>14</sup>

19. Given the imminence of the status conference scheduled for 28 to 29 April 2010, and the need to enable the other participants urgently to submit their observations on this further procedural development, in all likelihood before the aforementioned hearing takes place, the Defence respectfully requests Trial Chamber III to treat this application as a matter of extreme urgency.

**For these reasons,**

20. The applicant respectfully requests Trial Chamber III to accept this application and declare it admissible and well-founded, and accordingly;

21. To join this application to that filed on 25 February 2010, treating it as an integral part thereof, and to take account of the aforementioned further development in judicial proceedings in the Central African Republic;

---

<sup>12</sup> See Annex A.

<sup>13</sup> See Annex C.

<sup>14</sup> *Idem*.

22. To rule, following the status conference scheduled for 28-29 April 2010, that the proceedings brought by the Office of the Prosecutor of the ICC in the case of Jean Pierre Bemba Gombo are inadmissible.

[signed]

Aimé Kilolo Musamba

Lead Counsel

Dated this 19 April 2010

At The Hague, The Netherlands