



ICC Victims' Rights Legal Update 1 September – 8 October 2010

Note: this is not a comprehensive summary; it only relates to key developments impacting on victims' rights within the ICC's jurisdiction between 1 September and 8 October 2010.

Situation in Democratic Republic of Congo (DRC)

Developments in the DRC Situation

- OTP submits observations on the Prosecutor's purported decision not to proceed with Bemba's alleged crimes in Ituri

Developments in the ongoing Lubanga Trial

- Appeals Chamber reverses decisions to stay the proceedings and release Thomas Lubanga
- Appeals Chamber orders the submission of observations on the reclassification as public of victims' observations on the appeal against the suspension of proceedings

Developments in the ongoing Katanga and Ngudjolo Trial

- TCII sets deadlines for missing additional information on victims' applications
- Victims' Representative raises concern about Defence obtaining a statement from his client
- Victims' Legal Representative requests leave for four of his clients to testify at Court
- Two applications for reparation are transmitted to the parties

Situation in Central African Republic (CAR)

Developments in the ongoing Bemba Case

- 1,000 victims await a decision on their application to participate in the proceedings following the expiry of the Chamber's deadline to receive new applications
- Bemba rejects 192 victims' applications transmitted to the Chamber
- Prosecution submits an updated list of witnesses
- Prosecution proposes new expert on sexual violence as a tool of war for Chamber's approval
- CAR submits its observations on admissibility and abuse of process
- TCIII rejects Bemba's request to reclassify a document from the South African Republic relating to his release

Situation in Kenya

Developments in the Kenya situation

- OTP to present two cases by the end of 2010

DRC situation

Developments in the DRC Situation

OTP submits observations on the Prosecutor's purported decision not to proceed with Bemba's alleged crimes in Ituri

[Background] On 16 August 2010, Judge Sanji Mmasenono Monageng ordered the Prosecutor to file observations on a request made by the legal representative of victims VPRS 3 and 6¹ regarding his apparent decision not to proceed in relation to crimes allegedly committed by Bemba in Ituri, DRC.²

¹ Order for the submission of observations in response to a request made by the legal representative of VPRS 3 and VPRS 6, 16 August 2010, ICC-01/04-572, <http://www.icc-cpi.int/iccdocs/doc/doc923962.pdf>. ; see also previous legal updates. The deadline of 15 September 2010 was extended to 29 September 2010 as a result of the Prosecutor's failure to comply. See Order setting a new time limit for observations, 24 September 2010, CC-01/04-580, <http://www.icc-cpi.int/iccdocs/doc/doc941588.pdf>.

On 29 September, the Prosecutor submitted that the request should be dismissed, firstly because victims lack the necessary legal standing to make such an application as their submissions do not relate to any judicial cause pending before the Chamber, and secondly because he has not *per se* rejected the possibility of investigating or prosecuting Bemba for crimes in Ituri.³ Thus, he argued that there is no decision for the Pre-Trial Chamber to exercise its powers of review over a decision not to investigate as provided by article 53.3 (b) of the Statute.

Developments in the ongoing Lubanga Trial

Appeals Chamber reverses decisions to stay the proceedings and release Thomas Lubanga

[Background] On 12 May 2010, Trial Chamber I (TCI) requested that the Prosecution disclose Intermediary 143's identity by 7 July 2010.⁴ In response, the Prosecution requested either an extension of time or a stay of proceedings in which to implement security measures.⁵ Following non-compliance with two further orders, TCI stayed proceedings for abuse of process and subsequently ordered Lubanga's release,⁶ granting the Prosecutor leave to appeal both decisions with suspensive effect.⁷

On 14 September 2010, the Prosecution applied to take testimony during the period of stay, following an offer to disclose Intermediary 143's identity to the Defence.⁸ On 24 September 2010, TCI rejected the request.⁹ It reiterated its reasons for having originally imposed the stay, which were not based on the non-disclosure alone but rather on the fact that, in its view, the Prosecutor did not consider himself bound by judicial decisions where he felt that these conflicted with his duty of protection.

On 8 October 2010, the Appeals Chamber (AC) reversed both decisions,¹⁰ specifying that "a stay of proceedings is a drastic remedy", and should be applied on the basis of a high threshold such that it would be "impossible to piece together the constituent elements of a fair trial". The AC indicated that the Statute (art 71) as well as the Rules (Rule 171.4) provided for sanctions in cases of refusal to comply with an order; the Chamber should have sought to bring about party's compliance before resorting to the imposition of a stay of proceedings.

Nevertheless, the AC strongly emphasized that "orders of the Chambers were binding and should be treated as such by all parties and participants unless and until they are suspended, reversed or amended by the AC or their legal effects are otherwise modified by an appropriate decision of a relevant Chamber." The Trial Chamber's role as "the ultimate guardian of a fair and expeditious trial" was underlined. The AC also held that in the event of conflict between the orders of a Chamber and the Prosecutor's perception of his duties, the Chamber's orders must prevail, adding that there was no exception to this principle in relation to protection issues.

² Demande du représentant légal de VPRS 3 et 6 aux fins de mise en cause de Monsieur Jean-Pierre Bemba en sa qualité de chef militaire au sens de l'article 28-a du Statut pour les crimes dont ses troupes sont présumées coupables en Ituri, 28 June 2010, ICC-01/04-564, <http://www.icc-cpi.int/iccdocs/doc/doc902732.pdf>

³ Prosecution's Observations to the "Demande du représentant légal de VPRS 3 et 6 aux fins de mise en cause de Monsieur Jean-Pierre Bemba en sa qualité de chef militaire au sens de l'article 28-a du Statut pour les crimes dont ses troupes sont présumées coupables en Ituri", 29 September 2010, ICC-01/04-581, <http://www.icc-cpi.int/iccdocs/doc/doc943320.pdf>

⁴ Redacted Decision on Intermediaries, 31 May 2010, ICC-01/04-01/06-2434-Red2, <http://www.icc-cpi.int/iccdocs/doc/doc881407.pdf>

⁵ Prosecution's Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with VWU, 7 July 2010, ICC-01/04-01/06-2515, <http://www.icc-cpi.int/iccdocs/doc/doc905776.pdf>

⁶ Redacted Decision on the Prosecution's Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143, 8 July 2010, ICC-01/04-01/06-2517-Red, <http://www.icc-cpi.int/iccdocs/doc/doc906146.pdf>

⁷ Ibid; Also see Urgent Prosecution's Application for Leave to Appeal the Trial Chamber I's decision of 8 July 2010 staying the proceedings for abuse of process, 14 July 2010, ICC-01/04-01/06-2520-Red, <http://www.icc-cpi.int/iccdocs/doc/doc908167.pdf>; Prosecution's Appeal against Trial Chamber I's oral decision to release Thomas Lubanga Dyilo and Urgent application for Suspensive Effect, 16 July 2010, ICC-01/04-01/06-2522, <http://www.icc-cpi.int/iccdocs/doc/doc909257.pdf>

⁸ Prosecution's application to take testimony while proceedings are stayed pending decision of the Appeals Chamber, 14 September 2010, ICC-01/04-01/06-2565-Red, <http://www.icc-cpi.int/iccdocs/doc/doc937774.pdf>

⁹ Decision on the "Prosecution's application to take testimony while proceedings are stayed pending decision of the Appeals Chamber", 24 September 2010, ICC-01/04-01/06-2574, <http://www.icc-cpi.int/iccdocs/doc/doc941520.pdf>

¹⁰ Judgment on the appeal of Prosecutor against the oral decision of Trial Chamber I of 15 July 2010 to release Thomas Lubanga Dyilo, 8 October 2010, ICC-01/04-01/06-2583, <http://www.icc-cpi.int/iccdocs/doc/doc947862.pdf>; Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I of 8 July 2010 entitled "Decision on the Prosecution's Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with the VWU", 8 October 2010, ICC-01/04-01/06-2582, <http://www.icc-cpi.int/iccdocs/doc/doc947768.pdf>

On the same day, the AC reversed the decision to release Lubanga. As it was based on the decision to stay proceedings, now reversed, this decision should logically also be reversed.

Appeals Chamber orders the submission of observations on the reclassification as public of victims' observations on the appeal against the suspension of proceedings

On 23 August 2010, victims' representatives filed their observations on the stay of proceedings confidentially, without indicating the factual or legal basis for having done so.¹¹ This was followed by a response from Lubanga, also filed confidentially but stating that there was no reason why filings should not be reclassified as public.¹² Following a request from the Chamber, victims' legal representatives indicated that confidentiality was necessary to protect the victims.¹³ Before making a decision on the reclassification, the AC ordered the Victims and Witnesses Unit (VWU) and the Prosecutor to submit their views on the matter by 1 October 2010.¹⁴

Developments in the ongoing Katanga & Ngudjolo Trial

TCII sets deadlines for missing additional information on victims' applications

[Background] On 16 March 2010, Trial Chamber II (TCII) ordered the Registry to contact the legal representatives of four victims applicants, for whom the Chamber requested additional information.¹⁵ On 18 May and 20 August 2010, the Victims Participation and Reparation Section (VPRS) transmitted the requested additional information relating only to victims a/0390/09 and a/0452/09, indicating that the legal representatives of the two remaining applicants had been unable to contact their clients.¹⁶ Counsel for Mathieu Ngudjolo observed that only the information concerning a/0390/09 was complete, and that he did not oppose his status as a victim in the case.¹⁷

On 6 September 2010, TCII ordered:¹⁸

- the Registry to transmit the information relating to victim a/0452/09 by the following day
- that the parties submit their observations by 16 September 2010
- that the legal representatives of the two remaining victim applicants submit the required additional documentation by 15 December 2010.

Victims' Representative raises concern about Defence obtaining a statement from his client

[Background] On 29 March 2010, counsel to Germain Katanga informed the Chamber that during the course of investigations he had obtained a statement signed by the father of a witness who, it transpired, was also a victim in the case.¹⁹ The Chamber advised the victims' legal representative to obtain a copy of the statement from the victim or the Defence.²⁰

Having not received it by 23 September 2010, the legal representative submitted a request outlining his concerns about the conditions in which his clients had been approached by the Defence. He also added that his client, a victim who has been granted the right to participate in the trial, should have had the right to be provided with a copy of his statement and to discuss it with his lawyer. Considering that proceedings are ongoing for the establishment of a protocol regulating the modalities of contact

¹¹They also filed a public redacted version. See: ICC-01/04-01/06-2559-Red-tENG, <http://www.icc-cpi.int/iccdocs/doc/doc942936.pdf>

¹² ICC-01/04-01/06-2563-Conf

¹³ ICC-01/04-01/06-2572, <http://www.icc-cpi.int/iccdocs/doc/doc940584.pdf>

¹⁴ Order on the filing of observations as to the confidential status of victims' observations dated 23 August 2010, 29 September 2010, ICC-01/04-01/06-2575, <http://www.icc-cpi.int/iccdocs/doc/doc943176.pdf>

¹⁵ Motifs de la troisième décision relative à 8 demandes de participation de victimes à la procédure, 16 March 2010, ICC-01/04-01/07-1967, <http://www.icc-cpi.int/iccdocs/doc/doc845824.pdf>; see also Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure, 22 December 2009, ICC-01/04-01/07-1737, <http://www.icc-cpi.int/iccdocs/doc/doc797065.pdf>

¹⁶ Sixième rapport du Greffe sur les informations supplémentaires reçues concernant des demandes de participation de victimes, 18 mai 2010, ICC-01/04-01/07-2104-Conf-Exp avec Annexe confidentielle *ex parte*; Septième rapport du Greffe sur les informations supplémentaires reçues concernant des demandes de participation de victimes, 20 août 2010, ICC-01/04-01/07-2307-Conf-Exp avec Annexe confidentielle *ex parte*

¹⁷ Observations de la Défense de Mathieu Ngudjolo sur les documents additionnels fournis par le demandeur a/0390/09, 4 June 2010, ICC-01/04-01/07-2163, <http://www.icc-cpi.int/iccdocs/doc/doc883020.pdf>

¹⁸ Décision invitant le Procureur et la Défense à présenter leurs observations sur une demande de participation de victime, 6 September 2010, ICC-01/04-01/07-2367, <http://www.icc-cpi.int/iccdocs/doc/doc933831.pdf>

¹⁹ ICC-01/04-01/07-T-125-CONF, p.9

²⁰ ICC—01/04-01/07-T-138-CONF, p.7-9

between victims and the parties, he asked that the Chamber bear his concerns in mind in its upcoming judgment on the protocol.²¹

Victims' Legal Representative requests leave for four of his clients to testify at Court

[Background] On 22 January 2010, TCII issued its Decision on the Modalities of Victim Participation at Trial²² recalling the possibility for victims to testify. This decision was confirmed on appeal.²³

On 15 September, Maitre Fidel Nsita requested leave to call four of his clients to testify in the Trial.²⁴ He submitted that their testimony on the Bogoro attack was not only relevant to the facts of the case but would also enable them to express their views and concerns and to describe the consequences of this attack on their lives. Their testimony would also shed light on the ethnic nature of the attack and would, overall, assist the Chamber in establishing the truth.²⁵

Two applications for reparation are transmitted to the parties

On 30 October 2010, the Registry transmitted to the parties two victims' applications for reparation.²⁶ This is the third notification of reparation applications in the case and brings the total number of reparation applications transmitted to the parties to 45.

Situation in Central African Republic (CAR)

Developments in the ongoing Bemba Case

1,000 victims await a decision on their application to participate in the proceedings following the expiry of the Chamber's deadline to receive new applications

On 7 September 2010, TCIII set 15 September 2010 as the deadline for the submission of new victims' applications to participate in the initial stages of the Bemba trial.²⁷ The Chamber considered this necessary in the interests of efficient trial preparation and in order not to further delay the commencement of trial. This deadline would only apply to new applications not yet received by the Registry, and any applications received thereafter would still be considered for the purpose of participating at later stages depending on the merits of each individual.

On 24 September 2010, the Registry transmitted 218 applications to the Chamber indicating that approximately 1,000 applications were being processed by VPRS, 10% of which had been received incomplete.²⁸

Bemba rejects 192 victims' applications transmitted to the Chamber

[Background] On 16 July 2010 PTCIII invited the parties to submit observations on 192 victims' applications by 20 August 2010.²⁹ Jean Pierre Bemba opposed all the applications,³⁰ claiming that the extent of redactions led to difficulties discerning the true facts and credibility of events. He also

²¹Requête aux fins d'obtention d'une déclaration d'une victime participante recueillie par la Défense de Germain Katanga, 24 September 2010, ICC-01/04-01/07-2416, <http://www.icc-cpi.int/iccdocs/doc/doc942119.pdf> (see also July-Aug legal update).

²² Decision on the Modalities of Victim Participation at Trial, 22 January 2010, ICC-01/04-01/07-1788-tENG, <http://www.icc-cpi.int/iccdocs/doc/doc831030.pdf>

²³ Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled "Decision on the Modalities of Victim Participation at Trial", 16 July 2010, ICC-01/04-01/07-2288, <http://www.icc-cpi.int/iccdocs/doc/doc909021.pdf>

²⁴Requête aux fins d'autorisation de comparution des victimes a/381/09, a/0018/09, a/191/08 et pan/0363/09 agissant au nom de a/363/09, 15 September 2010, ICC-01/04-01/07-2393-Red, <http://www.icc-cpi.int/iccdocs/doc/doc937059.pdf>

²⁵Réplique aux observations des Défenses de Mathieu NGUDJOLO et Germain KATANGA sur la requête aux fins d'autorisation de comparution de quatre victimes, 1 October 2010, ICC-01/04-01/07-2432, <http://www.icc-cpi.int/iccdocs/doc/doc944641.pdf>

²⁶ Notification des demandes en réparation aux parties, 30 October 2010, ICC-01/04-01/07-2430, <http://www.icc-cpi.int/iccdocs/doc/doc943657.pdf>

²⁷ Decision setting a time-limit for the submission of new victims' applications for participation, 7 September 2010, ICC-01/05-01/08-875, <http://www.icc-cpi.int/iccdocs/doc/doc934437.pdf>

²⁸ Third transmission to the Trial Chamber of applications for participation in the proceedings, 24 September 2010, ICC-01/05-01/08-900, <http://www.icc-cpi.int/iccdocs/doc/doc941634.pdf>

²⁹ Order inviting the parties' observations on 192 victims' applications, 16 July 2010, ICC-01/05-01/08-833, <http://www.icc-cpi.int/iccdocs/doc/doc908681.pdf>

³⁰ Observations de la Défense sur les 192 demandes de participation à la procédure en qualité de Victimes, 20 August 2010, ICC-01/05-01/08-859, <http://www.icc-cpi.int/iccdocs/doc/doc925679.pdf> ; Observations de la Défense sur la demande de participation a/0666/09, 13 September 2010, ICC-01/05-01/08-882, <http://www.icc-cpi.int/iccdocs/doc/doc936156.pdf>

claimed that the Chamber had previously ordered the legal representatives to provide this information. At the same time, the Office for Public Counsel of Victims (OPCV) sought leave to respond to the parties' observations, arguing that this would be in the personal interests of the applicants and would enable effective participation.³¹

On 6 September 2010, TCIII rejected OPCV's request, stating that its submissions were not necessary for the proper determination of the applications.³² In the same decision, the Chamber rejected requests by the Defence for the disclosure of further information regarding victim applications rebutting the statement that it had supposedly already ordered that information to be provided.³³

Prosecution submits updated list of witnesses

On 21 September 2010, the Prosecution submitted an updated witness list indicating the order and timeframe for 40 witnesses, including four experts.³⁴ At the status conference of 24 September, the Chamber requested that the Prosecution shorten the time allocated for witness questioning. The Prosecution was of the view that it may be able to shorten the time required by as much as 50 per cent and was due to submit a new schedule on 1 October 2010.

Prosecution proposes new expert on sexual violence as a tool of war for Chamber's approval

On 23 September 2010, following the withdrawal of Dr Binaifer Nowrojee as expert witness on sexual violence as a tool of war, the Prosecution proposed a new expert from CAR, Dr André Tabo, to replace her.³⁵ This expert would be able to submit his report by 31 December 2010, which was granted.³⁶

CAR submits its observations on admissibility and abuse of process

[Background] On 25 February 2010, the Defence had contested the admissibility of the case and requested Trial Chamber III (TCIII) to adjourn for abuse of process on the basis that proceedings had already been initiated in CAR.³⁷ TCIII rejected the Defence's arguments, regarding both admissibility and abuse of process,³⁸ which the Defence sought leave to appeal.³⁹ The trial start date was postponed in view of ongoing appeals proceedings.⁴⁰

On 13 September 2010, the government of Central African Republic submitted observations relating to the appeal.⁴¹ It confirmed that the courts in CAR had not terminated proceedings against Bemba, but had referred the case to the ICC because its judiciary was neither financially nor technically equipped to deal with his trial. The OTP concurred with CAR's observations and with the Trial Chamber's findings that the domestic decisions in the courts of CAR that halted proceedings against

³¹ Demande du Bureau du conseil public pour les victimes de répondre aux observations du Bureau du Procureur et de la Défense concernant les 192 nouvelles demandes de participation de victimes aux procédures, 23 August 2010, ICC-01/05-01/08-860, <http://www.icc-cpi.int/iccdocs/doc/doc926019.pdf>

³² Decision on three issues related to victims' applications for participation in the Proceedings, 6 September 2010, ICC-01/05-01/08-871, <http://www.icc-cpi.int/iccdocs/doc/doc933931.pdf>

³³ See transcript of 30 August 2010, ICC-01/05-01/08-T-24-ENG ET WT, <http://www.icc-cpi.int/iccdocs/doc/doc931359.pdf>, page 7, lines 7-14; see also Defence observations of 20 August 2010, ICC-01/05-01/08-859, <http://www.icc-cpi.int/iccdocs/doc/doc925679.pdf>; The Chamber directed the Defence's attention to: Decision on the Defence Oral Request for disclosure of the dates of the events alleged by victims in their applications for participation, 4 November 2009, ICC-01/05-01/08-589, <http://www.icc-cpi.int/iccdocs/doc/doc775600.pdf>, paragraph 4

³⁴ The Prosecution's Updated Order of Witnesses, 21 September 2010, ICC-01/05-01/08-891, <http://www.icc-cpi.int/iccdocs/doc/doc939673.pdf>; ICC-01/05-01/08-891-AnxA, <http://www.icc-cpi.int/iccdocs/doc/doc939674.pdf>

³⁵ Prosecution's Request for Approval of a Proposed Expert and for Extension of Time for the Submission of the Expert Report, 23 September 2010, ICC-01/05-01/08-896, <http://www.icc-cpi.int/iccdocs/doc/doc940516.pdf>

³⁶ Decision on the Prosecution's Request for Approval of Extension of Time for the Submission of the Proposed Expert Report, 7 October 2010, ICC-01/05-01/08-928, <http://www.icc-cpi.int/iccdocs/doc/doc947018.pdf>

³⁷ Requête en vue de contester la recevabilité de l'Affaire, 25 February 2010, ICC-01/05-01/08-704-Red3, <http://www.icc-cpi.int/iccdocs/doc/doc875699.pdf>. See also Deuxième Requête de la Défense aux fins d'informer la Chambre de Première Instance III d'un nouveau développement de procédure judiciaire intervenu en République Centrafricaine en date du 16 avril 2010, 19 April 2010, ICC-01/05-01/08-757, <http://www.icc-cpi.int/iccdocs/doc/860732.pdf>

³⁸ Decision on the Admissibility and Abuse of Process Challenges, 24 June 2010, ICC-01/05-01/08-802, <http://www.icc-cpi.int/iccdocs/doc/doc899684.pdf>

³⁹ Corrigendum Acte d'Appel de la Défense contre la décision de la Chambre de Première Instance III du 24 Juin 2010 intitulée "Decision on the Admissibility and Abuse of Process Challenge", 28 June 2010, ICC-01/05-01/08-804-Corr2, <http://www.icc-cpi.int/iccdocs/doc/doc902692.pdf> and <http://www.icc-cpi.int/iccdocs/doc/doc903055.pdf> (English version)

⁴⁰ A new trial start date had not been yet decided at the time of writing. Order postponing the commencement of the trial, 25 June 2010, ICC-01/05-01/08-803, <http://www2.icc-cpi.int/iccdocs/doc/doc900817.pdf>; see also Order postponing the commencement of the trial, 7 July 2010, ICC-01/05-01/08-811, <http://www.icc-cpi.int/iccdocs/doc/doc905652.pdf>

⁴¹ The Registrar's transmission of the observations of the Central African Republic pursuant to the Appeals Chamber's «Decision on the Central African Republic's request for an extension of the time limit» (ICC-01/05-01/08-878) dated 8 September 2010, 13 September 2010, ICC-01/05-01/08-881, <http://www.icc-cpi.int/iccdocs/doc/doc936082.pdf>; Also see annexes at <http://www.icc-cpi.int/iccdocs/doc/doc939891.pdf> and <http://www.icc-cpi.int/iccdocs/doc/doc936083.pdf>

Bemba did not constitute 'decisions not to prosecute within the terms of Article 17(1)(b).' Proceedings brought in CAR had sought to sever blood crimes from financial crimes so that the latter might continue in domestic courts with the former being transferred to the ICC.⁴² Finally, it maintained that the recent appeal lodged by Bemba before CAR judiciary did not have any impact on the referral of the case to the ICC. Whether this formulation will satisfy the Appeals Chamber of its compliance with Article 17(12)(b) on admissibility remains to be determined.

The Defence opposed CAR's observations.⁴³ It insisted that the CAR courts had decided not to prosecute and rebuffed the argument that CAR had no capacity to deal with the case, claiming that this could have been supported by an expert on CAR law. The Defence requested the Chamber to allow another hearing to elaborate on its case and be permitted to call an expert.

TCIII rejects Bemba's request to reclassify a document from the South African Republic relating to his release

[Background] On 7 July 2010, TCIII requested submissions on the review of Bemba's detention.⁴⁴ The Defence argued that there had been a change of circumstances justifying his release and requested that the Registry negotiate with State parties to find terms on which they could accept Bemba and guarantee his attendance at Court.⁴⁵ The Chamber rejected these arguments⁴⁶ and the Defence sought leave to appeal.⁴⁷

On 30 August 2010, the Defence requested that a confidential document containing observations from the South African Republic on a prior request for interim release be reclassified.⁴⁸ The Defence believed that this document might contain information demonstrating the South African Republic's willingness to guarantee the accused's appearance at Court if granted provisional release. The Chamber rejected the request as the said document was to assist the Chamber in making its decision on release, not the parties.⁴⁹

Situation in Kenya

Developments in the Kenya Situation

OTP to present two cases by the end of 2010

On 21 September 2010, the Prosecutor announced that it would, by the end of the year, be presenting two cases against 4 to 6 individuals who, according to the evidence, bear the greatest responsibility for the most serious crimes committed during Kenya's 2007-2008 post-election violence. He confirmed that the current President, Prime Minister and Minister for Justice had expressed support for the investigation.

It is believed that these two cases will implicate the two main political parties, namely the Party for National Unity (PNU) and Orange Democratic Movement (ODM).

⁴² Prosecution's Response to the Observations of the Central African Republic on the appeal proceedings against Trial Chamber III's "Decision on the Admissibility and Abuse of Process Challenges", 16 September 2010, ICC-01/05-01/08-885, <http://www.icc-cpi.int/iccdocs/doc/doc937670.pdf>, classified as public by Chamber's order of 23 September 2010, ICC-01/05-01/08-895, <http://www.icc-cpi.int/iccdocs/doc/doc940408.pdf>

⁴³ Réponse de la Défense aux observations de la République Centrafricaine du 13 Septembre 2010, 20 September 2010, ICC-01/05-01/08-889-Red, <http://www.icc-cpi.int/iccdocs/doc/doc939508.pdf>

⁴⁴ Order postponing the commencement of the trial, 7 July 2010, ICC-01/05-01/08-811, para.7, <http://www.icc-cpi.int/iccdocs/doc/doc905652.pdf>

⁴⁵ Requête de la Défense sur la révision de la détention de M. Jean-Pierre Bemba Gombo, 22 July 2010, ICC-01/05-01/08-840, <http://www.icc-cpi.int/iccdocs/doc/doc911634.pdf>

⁴⁶ 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, 28 July 2010, ICC-01/05-01/08-843, <http://www.icc-cpi.int/iccdocs/doc/doc914784.pdf>

⁴⁷ Acte d'Appel de la Défense contre la décision de la Chambre de Première Instance III du 28 Juillet 2010, 29 July 2010, ICC-01/05-01/08-844, <http://www.icc-cpi.int/iccdocs/doc/doc915322.pdf>; see also Mémoire à l'Appui de l' Acte d'Appel de la Défense contre la décision de la Chambre de Première Instance III du 28 Juillet 2010, 4 August 2010, ICC-01/05-01/08-847, <http://www.icc-cpi.int/iccdocs/doc/doc918933.pdf>

⁴⁸ Requête de la Défense aux fins de reclassification d'un document présenté par la République Sud - Africaine relatif à la question de la liberté provisoire de M. Jean - Pierre Bemba Gombo, 30 August 2010, ICC-01/05-01/08-866, <http://www.icc-cpi.int/iccdocs/doc/doc931101.pdf>

⁴⁹ Decision on the « Requête de la Défense aux fins de reclassification d'un document présenté par la République Sud-Africaine relative à la question de la liberté provisoire de M. Jean-Pierre Bemba Gombo », 24 September 2010, ICC-01/05-01/08-899, <http://www.icc-cpi.int/iccdocs/doc/doc941292.pdf>