

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 28 November 2008

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova (Single Judge)

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

CONFIDENTIAL

Prosecutor's Request to Establish an Effective System of Communication

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**

Nkwebe Liriss

Karim Khan

Aimé Kilolo-Musamba

Legal Representatives of Victims**Legal Representatives of Applicants****Unrepresented Victims****Unrepresented Applicants for
Participation/Reparation****The Office of Public Counsel for
Victims****The Office of Public Counsel for the
Defence****States Representatives****Amicus Curiae****REGISTRY**

Registrar

Silvana Arbia

Defence Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section****Other**

Procedural Background

1. On 31 August 2008, in the First Decision on the Office of the Prosecutor's (the "Prosecution") request for redactions (the "First Decision on Redactions"), the Single Judge ordered that Jean-Pierre Bemba's non-privileged telephone communications be monitored after he found that "there are reasonable grounds to believe that the detained person may be attempting to interfere with or intimidate a witness or to breach an order for non-disclosure of the Single Judge".¹

2. On 22 September 2008, in the Decision on the Monitoring of Jean-Pierre Bemba's Non-Privileged Communications (the "Decision on the Monitoring of Communications") the Single Judge maintained that order but refused to extend the measures because it would make the conditions of Jean-Pierre Bemba's detention "particularly difficult".² The Single Judge reserved its right to prolong the monitoring if it deemed it necessary. As part of the order, the Registrar was required to report to the Pre-Trial Chamber III (the "Chamber") and the Prosecution any matter concerning the protection of the witnesses by 6 October 2008 at the latest, and to make a second listening report, under conditions specified in paragraph (c) of the decision, to the Chamber and the Prosecutor by 20 October 2008 at the latest.³

3. On 6 November 2008, the Chamber ordered the disclosure of the identity of a number of crime-based victims in the ongoing case against Jean-Pierre Bemba (the "Third Decision").⁴ The disclosure of the identities of a number of the witnesses was followed by a review of the protective measures

¹ ICC-01/05-01/08-85-Conf, paragraph 40.

² ICC-01/05-01/08-118-Conf, paragraph 20.

³ ICC-01/05-01/08-118-Conf-tENG, page 8

⁴ ICC-01/05-01/08-215-Conf.

in place relating to witnesses. In this decision, the Chamber referred to the last report filed by the Registry on monitoring and quoted it as follows: “the Registrar has not identified direct threats to victims or witnesses. There is no clear information indicating that the disclosure of the witnesses’ identities to the Defence (...) has triggered any reactions that could indicate the will to intimidate or harm witnesses. In particular, there is no information at this period of time that Jean-Pierre Bemba has disclosed the names of witnesses to a third party”.⁵

4. On 10 November 2008, the Registrar issued a decision (the “Registrar’s Decision”) increasing the monitoring of Jean-Pierre Bemba in various ways. The Registrar indicated that it has reasonable and probable grounds to believe Jean-Pierre Bemba is using visits to “interfere with the administration of justice” and/or “jeopardize the interests of public safety or the rights or freedom of any person”.⁶ As a result, the Registrar decided to (i) continue to monitor Jean-Pierre Bemba’s non-privileged telephone calls unless told otherwise by the Chamber; (ii) refuse him all private visits for the next 14 days; (iii) regularly review his incoming and outgoing mail; (iv) monitor all visits to detained persons for the next 14 days; (v) provide a written report on the above at the end of the 14 day period; and (vi) reserve its right to continue to do so.⁷

5. On 10 and 11 November 2008, the Defence complained, under Regulation 106, against the Registrar’s Decision and asked that the order be overturned or altered.⁸

⁵ ICC-01/05-01/08-215-Conf, paragraph 20

⁶ ICC-01/05-01/08-231-Conf-Corr, page 3.

⁷ ICC-01/05-01/08-231-Conf-Corr.

⁸ ICC-01/05-01/08-233-Conf and ICC-01/05-01/08-236-Conf respectively.

6. On 13 November 2008, the Presidency issued an urgent order (the "Presidency's Order") which continued the Registrar's decision pending the Presidency's decision.⁹

7. On 13 November 2008, the Presidency ordered the Chief Custody Officer to explain the reasons behind the reductions in the frequency and duration of non-privileged visits to the applicant.¹⁰

8. On 14 November 2008, the Registrar provided to the Presidency, in an Annex 2 *ex-parte* Registrar only, the explanations of the Chief Custody Officer of the reasons behind the reductions in the frequency and duration of non-privileged visits (the "Registrar's Explanations").¹¹

9. On 21 November 2008, the Presidency's decision upheld in part the Registrar's decision in so far as it concerns the non-authorization of private visits and the monitoring of the non-privileged communications and visits to the applicant.¹²

10. On 24 November 2008, the Registrar issued an Order for the renewal of the monitoring of the non-privileged communications and visits of Jean-Pierre Bemba with an Annex *ex parte* Presidency and Registry only (the "Registrar's Renewal Order").¹³ The Registrar's Renewal Order states that the "examination of the monitoring of the non-privileged communications of Jean-Pierre Bemba provides indication and reasonable grounds to believe that the latter may be attempting to "interfere with the administration of justice", and/or "jeopardize the interests of public safety or the rights or freedom of

⁹ ICC-01/05-01/08-242-Conf.

¹⁰ ICC-01/05-01/08-245-Conf.

¹¹ ICC-01/05-01/08-248-Conf

¹² ICC-01/05-01/08-272-Conf

¹³ ICC-01/05-01/08-279-Conf

any person".¹⁴ As a result the Registrar decided to renew the first order on monitoring of the non-privileged communication and visits for a period of 14 calendar days.

Request for Confidentiality

11. The Prosecution requests that this submission be received by the Chamber as Confidential. The Prosecution has taken notice of the fact that the submission and the content of the different decisions and orders referred therein are of confidential nature and contain information not known to the public.

Prosecution's Observations

13. Given the duty of the Court to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, the Prosecution is in agreement with the measures taken by the Registrar, in compliance of the Court's orders, in regard to the monitoring of the non-privileged communications of Mr. Jean-Pierre Bemba Gombo, as provided in the Registrar's Decision and Order of Renewal mentioned in paragraphs 4 and 10 above.

14. The Prosecution takes further notice of the Court's orders in the Decision on the Monitoring of Communications as specified in paragraph 2 of this filing, requiring the Registrar to report to the Chamber and the Prosecution any matter concerning the protection of the witnesses and of the

¹⁴ ICC-01/05-01/08-279-Conf pages 3 and 4

making of the listening report. The Prosecution notes that it has not received these reports.

15. The Prosecution respectfully submits that, as also acknowledged by the Chamber, the receipt of such reports would be of great assistance to the Prosecution to prepare in a timely and informed manner, its observations and submissions to the Chamber especially in regard to the statutory obligations under Article 68 (1) of the Rome Statute on issues concerning protection of victims and witnesses. The information contained in the referred reports, might, inter alia, assist the Prosecution's submissions to the Chamber on issues related to disclosure of witnesses' identities and/or their family member's identifying information.

Relief Sought

16. For the foregoing reasons, the Prosecution respectfully submits that the Chamber establishes an effective system of communication whereby the Prosecution receives on a timely manner all relevant reports and/or communications as the ones referred to in paragraph 2 of this filing. This would assist the Prosecution to take prompt and well-informed actions for the protection of witnesses and victims.



Luis Moreno-Ocampo, Prosecutor

Dated this Monday, 28 November 2008

At The Hague, The Netherlands