Cour
Pénale
Internationale

International
Criminal
Court

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

Date: **3 December 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 Document

Registry's Observations on the Prosecution's Request for Additional Software

Source: Registrar

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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THE REGISTRAR of the International Criminal Court (the "Court");

NOTING the "Prosecution's Request to Install Additional Software in the Courtroom" submitted by the Prosecution on 22 November 2010 ("the Request");[1]

NOTING the "Registry Submission on the Installation of Additional Software in the Courtrooms and Certain Modalities of Evidence Presentation" filed by the Registrar on 1st October 2010 ("the Submission of 1st October 2010");[2]

NOTING the "Registry Submission on the Feasability of CaseMap Installation in the Courtrooms" filed by the Registrar on 8 November 2010 ("the Submission of 8 November 2010");[3]

NOTING the "Report of the Court on Measures to Increase Clarity on the Responsibilities of the Difference Organs"[4] referred to by the Prosecutor at paragraph 21 of the Request ("Governance Report"), and in particular its "Annex I - Corporate Governance Statement of the International Criminal Court" ("Governance Statement");

NOTING Article 21, 43(1), 67 of the Rome Statute, Regulations 3, 23, 24*bis* and 26 of the Regulations of the Court ("RoC"), Regulation 10.1(c)(iii) of the Financial Regulations and Rule 101.1(b) of the Financial Rules;

RESPECTFULLY SUBMITS THE FOLLOWING OBSERVATIONS TO THE TRIAL CHAMBER:

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[1] ICC-01/05-01/08-1024.
[2] ICC-01/05-01/08-920.
[3] ICC-01/05-01/08-1004.
[4] ICC/ASP/9/CBF.1/12, 18 March 2010.

1. Under Regulation 24*bis* of the RoC, the Registrar finds necessary for the proper discharge of her function, in particular the implementation of a reliable, secure, efficient electronic system which supports the Court's daily judicial and operational management and its proceedings in accordance with Regulation 26 of the RoC, to submit the present observations in relation with the Prosecution's Request.

On the substance of the Request

2. On the substance of the Request, the Registrar has nothing to add to her two earlier submissions of 1st October and 8 November 2010. In particular, the Registrar confirms the requested software's compatibility in principle with the Court's technical standards,[5] the fact that a total of approximately four months are needed to have the required technical infrastructure and support in place,[6] the fact that the total costs of the operation is currently estimated at approximately 93,500 Euros,[7] and the risks for technical breakdowns inherent to the installation of the requested software.[8] Contrary to the Prosecution's allegation that the above evaluations of the time and resources required for the installation of the requested software are unsubstantiated,[9] the Registrar detailed at paragraph 5 of her Submission of 8 November 2010 the necessary steps that shall be undertaken for this operation. The Registrar observes that the Prosecution does not challenge this list of required steps and remains at the disposition of the Chamber, should it require further details as to the cost and time needed to implement the different steps identified at paragraph 5 of her Submission of 8 November 2010.

[5] ICC-01/05-01/08-1004, par. 2.
[6] ICC-01/05-01/08-1004, par. 6.
[7] ICC-01/05-01/08-1004, par. 8.
[8] ICC-01/05-01/08-920, par. 5 ; ICC-01/05-01/08-1004, par. 9.
[9] ICC-01/05-01/08-1024, par. 18.

3. The Registrar also insists that her recommendation on the request to make the requested software available in the Courtroom is not based, as alleged by the Prosecution,[10] on the argument that this would open the door to the installation of additional software, but on the feasibility of such installation, especially in light of time and resources required. The argument of possible requests for additional software was always made in relation to the risks for technical breakdowns inherent to the installation of the requested software and constitutes a secondary, though actual, concern expressed by the Registrar.

On the absence of legal basis for the Request

4. On the legal basis of the Request, the Registrar observes that the Prosecution fails to specify its legal basis, as required under Regulation 23(1)(d) of the RoC.

5. In its "Introduction" Section, the Prosecution alleges that "its rights include the use of CaseMap during its work in the courtroom",[11] without further substantiating such right. The Registrar fails to identify a possible legal basis for such right. Even when applying *mutatis mutandis* the rights of the Accused provided under Article 67 of the Rome Statute to the Prosecution, the Registrar fails to identify a proper legal basis for the procedural right alleged by the Prosecution.

[10] ICC-01/05-01/08-1024, par. 1, 14.
[11] ICC-01/05-01/08-1024, par. 2.

6. The Prosecutor further challenges the Registrar's authority to reject the Prosecution request,[12] without giving any indication as to the legal basis for its assertion. The Registrar first observes that she did not deny the Prosecution's request, but merely made recommendations based on feasibility. The Registrar reminds that, under Article 43(1) of the Rome Statute, the Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court. Under Regulation 26(2) of the RoC, relied upon by the Prosecution,[13] the Registry shall be responsible for the implementation of the electronic management system of the Court. Financial Regulation 10.1(c)(iii) provides that the Registrar shall ensure the economic use of the resources of the Court and, under Rule 101.1(b) of the Financial Rules, the Registrar is also responsible and accountable for ensuring that the Financial Rules are administered in a coherent manner by all organs of the Court, including the Office of the Prosecutor. The Registrar fails to understand how she could be responsible for servicing the Court and implementing the Court's electronic management system without having the authority to say what is feasible or not, and under which conditions, in terms of use of software. In the Registrar's view, the Prosecution's conception of the Registry as no more than a service provider fails to take into consideration the Registrar's responsibility under the above-mentioned provisions. A service provider is not responsible for the consequences of its customer's choices, whereas the Registrar is responsible for the servicing of the Court, the functioning of the Court's electronic management system and the finances of the Court.

7. In its "Relief sought" Section, the Prosecution eventually refers to Governance Report in support of its request to send, should the Chamber consider that the matter of the Request is an administrative issue, this issue for determination

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[12] ICC-01/05-01/08-1024, par. 2.
[13] ICC-01/05-01/08-1024, par. 17.

by the Presidency. The Registrar observes that the Governance Report is a report adopted by the President and the Prosecutor at a meeting of the Coordinating Council and submitted to the Court's Committee on Budget and Finances. Under Regulation 3(2) of the RoC, the Coordination Council's mandate is to discuss and coordinate on the administrative activities of the organs of the Court. As such, the Coordination Council is deprived of legislative, or even deliberative, authority. The Registrar eventually observes that reports such as the Corporate Governance Report do not form part of the law applicable before the Court under Article 21 of the Rome Statute. For all these reasons, the Registrar observes that the Prosecution's reliance on the Governance Report in the Request cannot constitute a legal basis for the Request.

8. Even though the Governance Report would be considered, in spite of the abovementioned observations, a legal basis for the Request or, at least, the relief sought, the Registrar observes that the consequences the Prosecution draws from it are inaccurate. Relying on the Governance Report, the Prosecution requests, should the Trial Chamber decide that the issue raised in the Request are of an administrative nature, to submit the issue to the Presidency.[14] Since the issue raised in the Prosecution's Request relates to the provision of services by the Registry, the Registrar observes that this specific aspect is addressed in Section 6 of the Governance Statement, which provides in sub-section 6(d) the following: "In case no agreement can be reached between the Registry and the OTP [...], then, as a last resort, the matter may be discussed between the President and Prosecutor, or may be brought before Chambers where applicable". In no case does the Governance Report or Statement provide a referral of such matters to the Presidency. The Presidency's jurisdiction on that matter, if any, shall be based on another

[14] ICC-01/05-01/08-1024, par. 21.

ground than the Governance Report. The Registrar eventually observes that the use of "or" in sub-Section 6(d) of the Governance Report seems to exclude any forum shopping on behalf of the Prosecutor: once he has elected to submit the matter to the Chamber, he should not be authorized to address the issue later on with the President, even less the Presidency, should the Chamber deny his claim.

RESPECTFULLY SUBMITTED,

Silvana Arbia, Registrar

Dated this 3 December 2010

At The Hague in the Netherlands