

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 19 February 2014

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

**Decision on defence request for leave to reply to "Prosecution's Response
to 'Defence Request for Interim Relief'"**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes

Ms Kate Gibson

Legal Representatives of the Victims

Ms Marie-Edith Douzima Lawson

Legal Representatives of the 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**

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

**Victims Participation and Reparations
Section Other**

Trial Chamber III ("Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Bemba case"), issues the following Decision on defence request for leave to reply to "Prosecution's Response to 'Defence Request for Interim Relief'" ("Decision").

1. On 24 January 2014, the defence filed its "Defence Request for Interim Relief",¹ in which it requests that the Chamber:²

- i. Order the Prosecution to:
 - a. desist from accessing any materials, which emanated from Mr. Bemba or the defence team, or from utilising the contents of this material or the Prosecution's knowledge of the contents of this material in any manner; and
 - b. to prepare a log of any persons who have had access to the material, and whether this material has served as the basis for any investigative actions or submissions before the ICC or domestic authorities.
- ii. Order all States which have been requested to monitor Defence communications or seize Defence property, including but not limited to Belgium, France, the Democratic Republic of Congo, The Netherlands, and the United Kingdom, to immediately desist from taking any steps concerning the seizure, monitoring or disclosure of information concerning the Defence of Mr. Bemba; and
- iii. Request the Prosecution to request a suspension of the Article 70 proceedings in their entirety or in part pending full litigation as to the legality of the seizure of Defence material and the monitoring of Defence communications.

2. On 10 February 2014, the Office of the Prosecutor ("prosecution") filed its "Prosecution's Response to 'Defence Request for Interim Relief'"³ ("Prosecution Response"), in which it urges the Chamber to reject the Defence Request for Interim Relief in its entirety and provides a series of arguments for that purpose.

3. On 18 February 2014, the defence sought leave to reply to the

¹ Defence Request for Interim Relief, 24 January 2014, ICC-01/05-01/08-2945-Conf+Conf-AnxA. A public redacted version that was filed on 23 January 2014 was notified on the same day: Public redacted version of Defence Request for Interim Relief, 23 January 2014, ICC-01/05-01/08-2945-Red+AnxA-Red.

² ICC-01/05-01/08-2945-Red, paragraph 78.

³ Prosecution's Response to "Defence Request for Interim Relief", 10 February 2014, ICC-01/05-01/08-2965-Conf. A public redacted version was filed on 12 February 2014: Public Redacted Version of "Prosecution's Response to 'Defence Request for Interim Relief'", 10 February 2014, 12 February 2014, ICC-01/05-01/08-2965-Conf.

Prosecution Response (“Request for Leave to Reply”).⁴ Specifically, the defence seeks leave to reply to four arguments set forth by the prosecution:⁵

- i. The Defence assertion that the Prosecution is in possession of privileged materials is factually erroneous;
- ii. The definition of legal privilege employed by the Defence is too broad;
- iii. The Trial Chamber has no competence to adjudicate on the legality of measures to monitor the communications of the Defence and Mr. Bemba, or search and seizures pertaining to Defence property; and
- iv. The Defence has requested a stay rather than a suspension of the Article 70 proceedings, and is in any case, not prejudiced by its lack of standing as Mr. Bemba has standing in both cases.

4. The defence submits that there is “good cause to authorise leave to reply to the above issues”.⁶ In this regard, the defence submits that (i) “[i]n making these arguments, the Prosecution relied upon filings and information, which was not available to the Defence at the time it submitted its Request”; (ii) the prosecution “misconstrued Defence arguments”; and (iii) “through the reclassification of filings in the situation phase and issuance of decisions in the Article 70 case, it has come to the attention of the Defence that the Prosecution has advanced fundamentally contrary positions in the two cases” which “in the interests of justice [should] be brought to the attention of the Chamber”.⁷

5. As a preliminary matter, the Chamber notes that in its 20-page long Request for Leave to Reply, the defence sets out substantial submissions in reply to the prosecution’s arguments. In the view of the Chamber, this clearly runs counter to the requirement under Regulation 24(5) of the Regulations of the Court (“Regulations”) that “[p]articipants may only reply to a response with the leave of the Chamber [...]”. Accordingly, the Chamber will not consider the arguments provided in paragraphs 7 to 71 of the Request for

⁴ Defence Request for Leave to Reply to the “Defence Request for Interim Relief”, 18 February 2014, ICC-01/05-01/08-2983-Conf. A public redacted version was filed on the same day: Public Redacted Version of Defence Request for Leave to Reply to the “Defence Request for Interim Relief”, 18 February 2014, ICC-01/05-01/08-2983-Red.

⁵ ICC-01/05-01/08-2983-Red, paragraph 2.

⁶ ICC-01/05-01/08-2983-Red, paragraph 6.

⁷ ICC-01/05-01/08-2983-Red, paragraphs 3 to 5.

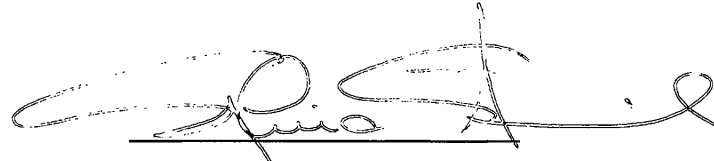
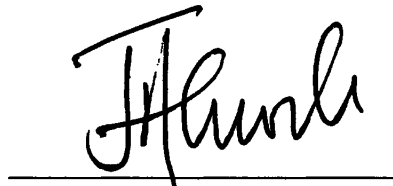
Leave to Reply.

6. That notwithstanding, considering the defence's assertion that part of the information relied upon by the prosecution was not available to the defence at the time of its request, the Chamber is of the view that it might benefit from the defence's views on the four discrete issues set out in paragraph 3 above. Leave to reply will therefore be granted.

7. In view of the above, the Chamber hereby:

- a. GRANTS the defence's request for leave to reply to the four discrete issues set out in paragraph 3 above, pursuant to Regulation 24(5) of the Regulations; and
- b. ORDERS that the defence's reply be filed no later than 16.00 on Friday, 21 February 2014, pursuant to Regulation 34(c) of the Regulations.

Done in both English and French, the English version being authoritative.


Judge Sylvia Steiner
Judge Joyce Aluoch
Judge Kuniko Ozaki

Dated this 19 February 2014

At The Hague, The Netherlands