

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: 26/02/2014

**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**

*Confidential*

**Defence Request for Leave to Reply to the 'Prosecution's Response to "Defence Motion on Prosecution contact with its witnesses"'**

**Source: Defence 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**

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**Counsel for the Defence**

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**Legal Representatives of the Victims**

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**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented**

(Participation/Reparation)

**Applicants**

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Victims**

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Xavier-Jean Keita

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Herman von Hebel

**Defence Support Section**

**Deputy Registrar**

**Victims and Witnesses Unit**

Patrick Craig

**Detention Section**

**Victims Participation and Reparations  
Section Other**

## A. INTRODUCTION

1. Pursuant to Regulation 24(5) of the Regulations of the Court, the Defence seeks leave of Trial Chamber III (“the Chamber”) to reply to the ‘Prosecution’s Response to “Defence Motion on Prosecution contact with its witnesses”’ (“Prosecution Response”).<sup>1</sup> The Defence submits that a limited reply will assist the Chamber in its determination of the Defence motion.

## B. CLASSIFICATION

2. The Defence filed a public redacted version of its ‘Defence Motion on Prosecution contact with its witnesses’.<sup>2</sup> The Prosecution filed its Response confidentially, on the basis that “it refers to the Defence Motion and other decisions of the same classification.”<sup>3</sup> Despite a request from the Defence for a public redacted version of the Prosecution Response, this had not been produced at the time of filing of the present request. As such, the Defence files the current document confidentially, but submits that it could and should be reclassified as public.

## C. SUBMISSIONS

3. On 12 February 2014, the Defence filed its ‘Defence Motion on Prosecution contact with its witnesses’,<sup>4</sup> in which it seized the Trial Chamber with a request to:

**ORDER** that the Prosecution refrain from contacting any Defence witnesses outside the procedure set by the Trial Chamber in its ‘Decision on the “Prosecution Motion on Procedure for Contacting Defence Witnesses and to Compel Disclosure”’; and

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<sup>1</sup> ICC-01/05-01/08-2990-Conf

<sup>2</sup> ICC-01/05-01/08-2971-Red

<sup>3</sup> ICC-01/05-01/08-2990-Conf, para. 4.

<sup>4</sup> ICC-01/05-01/08-2971-Red

**ORDER** that if such contact has occurred, the Prosecution immediately disclose all interview notes, statements, or transcripts of interview generated during the course of this contact.

4. The Prosecution opposed the Defence motion in its entirety. In its Response, the Prosecution asserts that:<sup>5</sup>

The Defence request for disclosure of Article 70 material conflicts with its allegations that the Prosecution is attempting to “contaminate” this Chamber with Article 70 evidence **as it is fully aware that the E-Court Protocol requires communication of all disclosed materials to the Chamber, which can thereafter access this information [...]** The disclosure of any witness related Article 70 material is intrinsically linked to the Chamber’s decision on the relevance of any such evidence for the current trial proceedings.

5. The Defence respectfully seeks leave of the Chamber to respond to this limited and defined argument. The Defence submits that a focused reply may benefit the Chamber in its determination of an issue critical to the conduct of these proceedings, and is in the interests of justice.<sup>6</sup>

6. Moreover, in its Response, the Prosecution pleads allegations of which there is no evidence before the Chamber, asserting, for example: “[s]hould the Chamber allow, the Prosecution stands ready to provide evidence showing former lead Counsel dissuaded witnesses from meeting with the Prosecution. This information is contained in a report pending admission as additional evidence.” The Prosecution also alleges that the information it has collected from the Defence witnesses is “incriminating”,<sup>7</sup> and asserts that “[i]f the Defence made representations to witnesses that their association with the Court was over without

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<sup>5</sup> ICC-01/05-01/08-2990-Conf, paras. 3, 18, emphasis added.

<sup>6</sup> ICC-01/05-01/08-2942, para. 4.

<sup>7</sup> ICC-01/05-01/08-2990-Conf, para. 3.

explaining their obligation to tell the truth and the possible consequences flowing from false testimony, then it wrongly informed these witnesses.”<sup>8</sup>

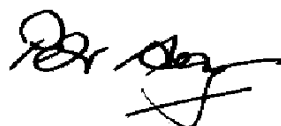
7. While appearing to breach confidentiality in Case ICC-01/05-01/13, of equal concern to the Defence is that Prosecution is making allegations which have no evidentiary foundation in this case. The Defence respectfully requests that it be allowed to submit short and focused pleadings on the propriety of these pleadings.

#### **D. REQUESTED RELIEF**

8. Given the above, the Defence respectfully requests that the Chamber:

**GRANT** the Defence request for leave to reply to the ‘Prosecution’s Response to “Defence Motion on Prosecution contact with its witnesses”’ on the limited grounds outlined above.

The whole respectfully submitted.



Peter Haynes QC  
Counsel for Mr. Jean-Pierre Bemba

The Hague, 26 February 2014

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<sup>8</sup> ICC-01/05-01/08-2990-Conf, para. 11.