

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 August 2016

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 Redacted Document

Public redacted version of "Prosecution's Response to Defence Request for Leave to Reply to "Prosecution Response to 'Further Defence Request for Disclosure'", 31 July 2015, ICC-01/05-01/08-3277-Conf-Exp

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

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Mr Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit

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Detention Section

Victims Participation and Reparations Other Section

1. Pursuant to regulation 24(1) of the Regulations of the Court (“Regulations”), the Office of the Prosecutor (“Prosecution”) responds to the request of the Defence of Mr Jean-Pierre Bemba Gombo¹ (“Request for leave to Reply”) seeking leave to reply to the “Prosecution Response to ‘Further Defence Request for Disclosure’”.²
2. Pursuant to regulation 23(2)*bis* of the Regulations, the Prosecution requests that this document be received as “Confidential, *Ex Parte*, only available to the Prosecution and the Defence”, as it responds to the Defence Request for leave to Reply, which bears the same classification.
3. Contrary to the consistent jurisprudence of this Court, the Request for leave to Reply extensively discusses the merits of the issues on which the Defence is seeking leave to reply. For instance, in paragraphs 4 and 5 the Defence takes the opportunity to make submissions on, and draw Trial Chamber III’s (“Chamber”) attention to an alleged Prosecution’s inconsistency regarding information provided in the Article 70 case and in this case respectively.
4. Paragraphs 6 to 8 of the Request for leave to Reply also contain substantive submissions on what the Defence describes as “delayed disclosure” by the Prosecution of evidentiary items in the Article 70 case and its alleged effects in this case. The Defence submits arguments as to why the Prosecution has allegedly breached its disclosure obligations. Moreover, the Defence *de facto* responds to the Prosecution’s submission³ that the Defence request for immediate disclosure in this case of the evidentiary items above would undermine the authority of Trial Chamber VII that [REDACTED]. In short, the

¹ [REDACTED].

² [REDACTED].

³ [REDACTED].

Defence has already made the submissions it purports to seek leave to submit under item d).⁴

5. According to the Appeals Chamber's jurisprudence, the content of an application for leave to reply may not in fact constitute a substantive reply to issues raised in a response. The Appeals Chamber has deprecated the practice of the filing of a substantive reply prior to leave being granted by the competent Chamber and ruled that such a practice may, in and of itself, give rise to the rejection of an application for leave.⁵
6. The Defence has engaged in precisely this practice and the Prosecution accordingly submits that the Request for leave to Reply should be dismissed on this ground alone.

Relief sought

7. For the reasons set out above, the Prosecution therefore requests that the Chamber reject the Defence Request for leave to Reply.



Fatou Bensouda, Prosecutor

Dated this 18th Day of August 2016

At The Hague, The Netherlands

⁴ [REDACTED].

⁵ ICC-01/04-01/06-824, Judgement on the Appeal of Mr Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo", 13 February 2007, para.68.