

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 26 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 the 'Prosecution's
Response to the 'Defence Motion on Privileged Communications'"**

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*, issues the following Decision on “Defence Request for Leave to Reply to the ‘Prosecution’s Response to the ‘Defence Motion on Privileged Communications’”.

1. On 6 February 2014, the defence filed its “Defence Motion on Privileged Communications” (“Defence Motion”),¹ in which it requests that the Chamber:²

- (i) ORDER that Mr. Bemba should enjoy privileged communications with members of his current Defence team;
- (ii) ORDER the cessation of any monitoring or recording of communication between Mr. Bemba and his current Defence team, including but not limited to the monitoring or recording of phone conversations, meetings at the UNDU or the holding cell at the ICC premises;
- (iii) ORDER the cessation of any monitoring of communication devices of members of the current team whether by the Registry, the Prosecution or any national authorities; and
- (iv) ORDER the Prosecution to respond to the questions set out in the Letter of 16 January 2014 concerning the monitoring of privileged communications and or communications devices of the members of the current Defence team.

2. On 19 February 2014, the Office of the Prosecutor (“prosecution”) filed its “Prosecution’s Response to the ‘Defence Motion on Privileged Communications’” (“Prosecution Response”),³ in which it requests that the Chamber reject the Defence Motion and provides a series of arguments for that purpose.

3. On 26 February 2014, the defence sought leave to reply to the Prosecution Response pursuant to Regulation 24(5) of the Regulations of the

¹ Defence Motion on Privileged Communications, 6 February 2014, ICC-01/05-01/08-2963 together with an annex A, ICC-01/05-01/08-2963-AnxA.

² ICC-01/05-01/08-2963, paragraph 12.

³ Prosecution’s Response to the “Defence Motion on Privileged Communications”, 19 February 2014, ICC-01/05-01/08-2984.

Court (“Regulations”).⁴ Specifically, the defence seeks leave to reply to three arguments set forth by the prosecution:⁵

- (i) No further order of the Chamber is required to protect the legitimately privileged communications between the Accused and his counsel and thus the order sought is superfluous;
- (ii) The second and third requests are moot. The Defence requests the cessation of monitoring or recording of its communications. As far as the Prosecution is aware, no entity is currently monitoring or recording the communications between the Accused and members of the Defence team entitled to legal privilege; and
- (iii) The fourth request is moot since, as far as the Prosecution is aware, no entity is monitoring privileged communications or the communication devices of the members of the current Defence team.

4. The defence submits that “a limited reply may benefit the Chamber in its determination of an issue critical to the fair trial rights of the accused, and is in the interests of justice”.⁶

5. The Chamber is of the view that it may benefit from the defence’s views on the three discrete issues set out in paragraph 3 above.

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

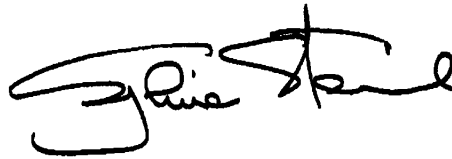
- a. GRANTS the defence’s request for leave to reply to the three discrete issues set out in paragraph 3 above, pursuant to Regulation 24(5) of the Regulations; and
- b. ORDERS that the defence’s reply be filed no later than 16.00 on Monday, 3 March 2014, pursuant to Regulation 34(c) of the Regulations.

⁴ Defence Request for Leave to Reply to the ‘Prosecution’s Response to the “Defence Motion on Privileged Communications”’, 26 February 2014, ICC-01/05-01/08-2993.

⁵ ICC-01/05-01/08- 2993, paragraphs 4 to 5 (internal footnotes omitted).

⁶ ICC-01/05-01/08- 2993, paragraph 6.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 26 February 2014

At The Hague, the Netherlands