



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**

Public

**Defence Request for Leave to Reply to the 'Prosecution's Response to the
"Defence Motion on Privileged Communications"'**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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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 the “Defence Motion on Privileged Communications”’ (“Prosecution Response”).¹ The Defence submits that a limited reply will assist the Chamber in its determination of the Defence motion.

B. SUBMISSIONS

2. On 6 February 2014, in its ‘Defence Motion on Privileged Communication’ (“Defence Motion”), the Defence asked the Chamber for the following order: 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

¹ ICC-01/05-01/08-2984.

² ICC-01/05-01/08-2963.

privileged communications and or communications devices of the members of the current Defence team.

3. In its Response, the Prosecution argued generally that the Chamber should reject the Defence Motion on the basis that “it rests on the false premise that privileged communications of the current Defence team are monitored or recorded.”³

4. In particular, the Prosecution argued that:

- (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;⁴
- (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;⁵ 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.⁶

³ ICC-01/05-01/08-2984, para. 2.

⁴ ICC-01/05-01/08-2984, para. 4.

⁵ ICC-01/05-01/08-2984, para. 5.

⁶ ICC-01/05-01/08-2984, para. 6.

5. The Defence seeks leave to present a focused and limited reply to arguments (i), (ii) and (iii) outlined above, in particular whether the Defence requests are “moot” in a situation where monitoring and recording of privileged conversations has occurred, and when the Prosecution’s knowledge does not extend to monitoring by national authorities. The Defence wishes also to address the Prosecution’s deliberate limitation of its submissions to “communications between the Accused and members of the Defence team entitled to legal privilege”.

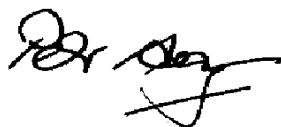
6. The Defence submits that a limited reply may benefit the Chamber in its determination of an issue critical to the fair trial rights of the accused, and is in the interests of justice.⁷

D. REQUESTED RELIEF

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

GRANT the Defence request for leave to reply to the ‘Prosecution’s Response to the “Defence Motion on Privileged Communications”’.

The whole respectfully submitted.



Peter Haynes QC
Counsel for Mr. Jean-Pierre Bemba

The Hague, 26 February 2014

⁷ ICC-01/05-01/08-2942, para. 4.