

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 May 2013

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

Public redacted version of "Decision on the 'Registry's Observations in connection with the 'Decision requesting the VWU to provide further information in relation to the statement of Witness D04-64' (ICC-01/05-01/08-2394-Conf)'" of 14 November 2012

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

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Mr Jean-Jacques Badibanga, Trial Lawyer

Counsel for the Defence

Mr Aimé Kilolo Musamba
Mr Peter Haynes

Legal Representatives of the Victims

Ms Marie Edith Douzima-Lawson
Mr Assingambi Zarambaud

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence 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, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on the “Registry’s Observations in connection with the ‘Decision requesting the VWU to provide further information in relation to the statement of Witness D04-64’ (ICC-01/05-01/08-2394-Conf)” (“Decision”).

I. Background

1. On 13 July 2012, the defence filed its “Defence Request for Protective Measures”,¹ in which it requested, *inter alia*, in-court protective measures for Witness D04-PPPP-0064 (“Witness D04-64”).²

2. By way of email on 18 October 2012, the Victims and Witnesses Unit (“VWU”) submitted to the Chamber its security assessment in relation to Witness D04-64.³ The VWU attached to this email a document entitled “In court protection measures report CAR-D04-PPPP-0064” (“Protection Report”). In identifying the possible sources of risks for the witness’s security, the Protection Report provides that:

[REDACTED].⁴

3. During the hearing of 22 October 2012, when questioned by the defence as to how many times Mr Bemba had gone to Bangui during the period of “the fighting between October 2002 and March 2003”,⁵ Witness D04-64 replied: “I just saw him once”.⁶

¹ Defence Request for Protective Measures, 13 July 2012, ICC-01/05-01/08-2244-Conf.

² ICC-01/05-01/08-2244-Conf, paragraph 45(c).

³ Email from the VWU’s Associate Protection Officer to the Chamber of 18 October 2012 at 19.54.

⁴ [REDACTED].

⁵ Transcript of hearing of 22 October 2012, ICC-01/05-01/08-T-259-CONF-ENG CT, page 25, lines 17 to 20.

⁶ ICC-01/05-01/08-T-259-CONF-ENG CT, page 25, line 21.

4. The apparent inconsistency between the information provided in the Protection Report and the witness's testimony was explored by the Chamber during the hearing of 23 October 2012 in the following terms:

[REDACTED]⁷

5. On 26 October 2012, the Chamber filed its "Decision ordering the VWU to provide further information in relation to the statement of Witness D04-64" ("26 October 2012 Decision"),⁸ in which it requested the VWU to file, by 16.00 on 31 October 2012, a confidential report, available to the parties and participants, providing clarification as to:

- (i) Whether the information provided in the Protection Report to the effect that the witness informed the VWU that [REDACTED] is accurate;
- (ii) Whether the interview was video or audio recorded; and
- (iii) The language of the interview and the identities of the individuals who attended the interview.⁹

6. On 1 November 2012, after having been granted an extension of time,¹⁰ the VWU filed its *ex parte* Registry only "Registry's Observations in connection with the "Decision ordering the VWU to provide further information in relation to the statement of Witness D04-64" (ICC-01/05-01/08-2394-Conf)" ("VWU Report").¹¹

⁷ [REDACTED].

⁸ Decision ordering the VWU to provide further information in relation to the statement of Witness D04-64, 26 October 2012, ICC-01/05-01/08-2394-Conf.

⁹ ICC-01/05-01/08-2394-Conf, paragraph 4.

¹⁰ Email from the Assistant Legal Officer of the VWU to the Assistant Legal Officer of Trial Chamber III of 31 October 2012 at 15.45 and Email from the Assistant Legal Officer of Trial Chamber III to the Assistant Legal Officer of the VWU of 31 October 2012 at 17.03. The Chamber granted the VWU's request on an exceptional basis and instructed the VWU to submit its report by 16.00 on 2 November 2012.

¹¹ Registry's Observations in connection with the "Decision ordering the VWU to provide further information in relation to the statement of Witness D04-64" (ICC-01/05-01/08-2394-Conf), 1 November 2012, ICC-01/05-01/08-2400-Conf-Exp.

II. Analysis

1. Confidentiality

7. At the outset, the Chamber notes that the VWU Report was submitted by the VWU on an *ex parte* basis under Regulation 23bis of the Regulations of the Court.¹² This approach was approved by the Chamber by email on 1 November 2012.¹³

8. Having analysed the substance of the VWU Report, the Chamber is of the view that only part of the information provided is relevant to the parties and participants, in as much as it relates to issues raised during the hearing of 23 October 2012 and addressed in the Chamber's 26 October 2012 Decision. For these reasons, and pursuant to Article 64(6)(f) of the Rome Statute, the Chamber will share the relevant information with the parties and participants in the context of the present Decision.

2. The observations contained in the VWU Report

9. As a preliminary remark, the VWU states that the Protection Report attached to its email of 18 October 2012 was transmitted to the Chamber in error. In this context, the VWU underlines that its obligations are limited to submitting to the Chamber the relevant security assessments but not the full protection reports, which constitute internal VWU documents "contain[ing] information obtained from the witnesses on a confidential basis and under the clear understanding that they will not be used for other purposes than the security assessment."¹⁴

¹² ICC-01/05-01/08-2400-Conf-Exp, page 4.

¹³ Email from the Assistant Legal Officer of Trial Chamber III to the Registry Liaison Officer of the Immediate Office of the Registrar of 1 November 2012 at 16.53. In this email, the Chamber also indicated that further instructions as to the information to be transmitted to the parties and participants will be given in due course.

¹⁴ ICC-01/05-01/08-2400-Conf-Exp, paragraph 2.

10. Concerning the specific information in relation to Witness D04-64 as requested in the 26 October 2012 Decision, the Registry reports as follows:

[REDACTED].¹⁵

3. Assessment of the information transmitted by the VWU to the Chamber

11. As a preliminary matter, the Chamber regrets the unfortunate procedural error on the part of the VWU, whereby, in relation to four witnesses called by the defence,¹⁶ the Chamber received internal working documents from the VWU that should not have been transmitted to it. In the specific context of the testimony of Witness D04-64, this procedural error resulted in the Chamber questioning the witness on the basis of information which should have been used solely for the purpose of preparing a risk assessment. The Chamber further notes that the problem was compounded by the failure to record the meeting with the witness in its entirety.
12. That notwithstanding, having analysed the information contained in the VWU Report, the Chamber agrees with the VWU that the information contained in the Protection Report, which was provided by Witness D04-64 during the protection meeting, should not be used as evidence in the case as it was not given under oath and was obtained from the witness on a confidential basis and under the clear understanding that it would not be used for purposes other than the security assessment. Moreover, in the absence of a video or audio recording of the relevant portion of the meeting, the Chamber is not in a position to verify the information

¹⁵ ICC-01/05-01/08-2400-Conf-Exp, paragraphs 20 to 22.

¹⁶ As noted by the VWU, the same error was committed in relation to the Protection Reports of witnesses D04-51, D04-55 and D04-57, which were all transmitted to the Chamber. See ICC-01/05-01/08-2400-Conf-Exp, paragraph 3.

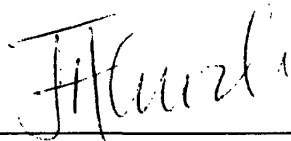
transmitted by the VWU. In this regard, the Chamber considers that the possibility of calling the involved VWU staff member as a witness would not be desirable in the present circumstances. Accordingly, the Chamber will not take the information contained in the Protection Report into account in its assessment of the witness's testimony.

13. In the same manner, the Chamber will disregard any information that was submitted to it in error in relation to Witnesses D04-51, D04-55 and D04-57. Given that the protection reports of those witnesses are VWU internal materials which are, in principle, not subject to disclosure, the Chamber is of the view that there is no need to share any of those documents, or the information contained therein, with the parties and participants.

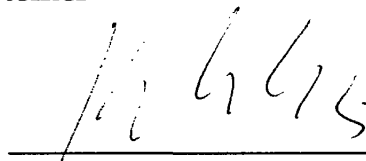
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 13 May 2013

At The Hague, The Netherlands