

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 November 2012

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 the duty counsel's "Requête tendant à obtenir levée des mesures coercitives pesant sur le témoin D04-49 (Article 64-6-f du Statut de Rome)"

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

The Office of the Prosecutor

Ms Fatou Bensouda
Ms Petra Kneuer

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

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria-Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations Section

Other

Mr Ghislain M. Mabanga

Trial Chamber III (“Chamber”) of the International Criminal Court (“ICC”) in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* issues the following Decision on the duty counsel’s “Requête tendant à obtenir levée des mesures coercitives pesant sur le témoin D04-49 (Article 64-6-f du Statut de Rome)”.

1. On 19 November 2012, Maître Ghislain M. Mabanga, the duty counsel appointed by the Registry in order to ensure that witness CAR-D04-PPPP-0049 (“Witness D04-49”) was notified and informed of the provisions of Rule 74 of the Rules of Procedure and Evidence (“Rules”),¹ filed the “Requête tendant à obtenir levée des mesures coercitives pesant sur le témoin D04-49 (Article 64-6-f du Statut de Rome)” (“Request”),² in which he requested the Chamber to order the lifting of alleged coercive measures put in place by the Victims and Witnesses Unit (“VWU”), which according to the duty counsel would infringe on the individual freedom of the witness.
2. On the same day, the Chamber issued its “Decision requesting the VWU’s observations on the ‘Requête tendant à obtenir levée des mesures coercitives pesant sur le témoin D04-49 (Article 64-6-f du Statut de Rome)’”,³ in which it ordered the VWU to file its observations on the Request, no later than 16.00 on 21 November 2012.⁴ Accordingly, the VWU filed its confidential and *ex parte* observations.⁵
3. In deciding on the duty counsel’s Request, the Chamber has considered, in accordance with Article 21 of the Rome Statute (“Statute”), Articles 43(6),

¹ Enregistrement de la désignation de Maître Ghislain Mabanga en qualité de conseil de permanence, 11 October 2012, ICC-01/05-01/08-2338-Conf and Annex ICC-01/05-01/08-2338-Conf-Anx.

² Requête tendant à obtenir levée des mesures coercitives pesant sur le témoin D04-49 (Article 64-6-f du Statut de Rome), 19 November 2012, ICC-01/05-01/08-2416.

³ Decision requesting the VWU’s observations on the «Requête tendant à obtenir levée des mesures coercitives pesant sur le témoin D04-49 (Article 64-6-f du Statut de Rome)», 19 November 2012, ICC-01/05-01/08-2418.

⁴ ICC-01/05-01/08-2420-Conf-Exp, paragraph 2.

⁵ Victims and Witnesses Unit’s Observations Pursuant to « Decision requesting the VWU’s observations on the ‘Requête tendant à obtenir levée des mesures coercitives pesant sur le témoin D04-49 (Article 64-6-f du Statut de Rome)’ (ICC-01/05-01/08-2418) », 21 November 2012 (notified on 22 November 2012), ICC-01/05-01/08-2430-Conf-Exp.

64(6)(e) and 68(1) of the Statute, Rules 86 and 87 of the Rules and Regulations 83(2) and 89(2) of the Regulations of the Registry.

4. The Chamber reiterates that the mandate of the duty counsel appointed by the Registry to provide notification of the provisions of Rule 74 of the Rules to Witness D04-49 and other witnesses is strictly limited to the issue of self-incrimination.⁶ The duty counsel does not represent the witness, is not a party⁷ or participant⁸ in the proceedings and has no *locus standi* to appear before the Court. Accordingly, the duty counsel is not entitled to transmit to the Chamber on behalf of the witness any request falling outside the scope of the above mentioned mandate. The Chamber clarifies that the VWU, which is the specialised unit dealing with appropriate assistance measures for the witnesses, is the competent entity of the Court to communicate to the Chamber any concerns witnesses may have in relation to the arrangements made by the VWU to ensure their well-being.

5. Nevertheless, taking into account the information provided *ex parte* by the VWU,⁹ the Chamber is satisfied that the VWU's recommendations to the witness on the means of communication to be used during the period of his testimony were all justified by the need to protect the witness's security and that no violation of his individual freedom has occurred.

6. For these reasons, the Chamber **REJECTS** the duty counsel's Request *in limine*.

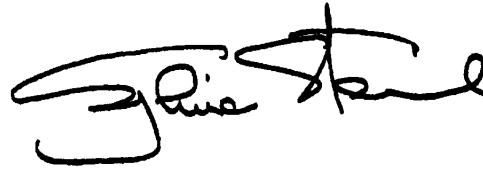
⁶ Decision on the duty counsel's « Demande de mesures de protection en faveur du témoin D04-49 (Règle 87-1 du Règlement de procédure et de preuves) », ICC-01/05-01/08-2436-Conf, paragraph 6.

⁷ Parties in the proceedings are exclusively the Prosecution and Defence, *see* Judgment on the appeals of the Prosecutor and the Defence against Trial Chamber I's decision on Victims' Participation of 18 January 2008, 11 July 2008, ICC-01/04-01/06-1432, paragraph 93.

⁸ Participants are only those specifically granted the right to participate in the proceedings by the relevant Chamber, e.g. legal representatives of victims or States.

⁹ ICC-01/05-01/08-2430-Conf-Exp.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 26 November 2012

At The Hague, The Netherlands