

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 February 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***

Confidential, *ex parte*, Prosecution and Victims and Witnesses Unit only

Decision on the Prosecution Request to contact Witness 15

Decision 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

Legal Representatives of the Victims

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

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod Jacome

Detention Section

**Victims Participation and Other
Reparations Section**

Trial Chamber III ("Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, ("Bemba case") issues the following Decision on the Prosecution Request to contact Witness 15.

1. On 3 February 2012, the Office of the Prosecutor ("prosecution") filed its "Prosecution Request to Contact Witness CAR-OTP-PPPP-0015"¹ ("Request"). The prosecution requests the Chamber's authorisation to speak with Witness 15 in the presence of the Victims and Witnesses Unit ("VWU") in order to verify allegations that the witness was contacted by a member of the defence team.²
2. The prosecution alleges that on 1 February 2012, during the familiarisation meeting with Witness 44 in the premises of the VWU, Witness 44 informed the prosecution that Witness 15 had contacted him.³ In the account of the prosecution, Witness 15 told Witness 44 that about two weeks earlier, Maître Nkwebe Liriss had contacted him (Witness 15) and asked him not to "*enfoncer*" Mr Bemba during his testimony, and reminded Witness 15 that he and Mr Bemba have known each other for a long time.⁴
3. The prosecution therefore request the Chamber's authorisation to contact the witness in order to determine (i) whether the witness has any residual security concerns that should be addressed; (ii) whether further investigation may be warranted with respect to offences pursuant to Article 70 of the Rome Statute ("Statute"); and (iii) whether the approach made to the witness has the potential for affecting his in-court testimony.⁵

¹ Prosecution Request to Contact Witness CAR-OTP-PPPP-0015, 3 February 2012, ICC-01/05-01/08-2118-Conf-Exp.

² ICC-01/05-01/01-08-2118-Conf-Exp, paragraph 2.

³ ICC-01/05-01/01-08-2118-Conf-Exp, paragraph 1.

⁴ *Ibid.*

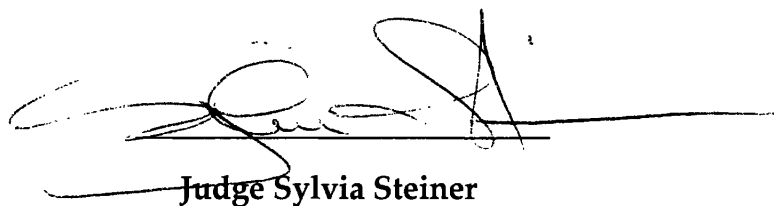
⁵ ICC-01/05-01/08-2118-Conf-Exp, paragraph 1.

4. In accordance with Article 21(1) of the Statute, the Chamber has considered the following provisions: Articles 64(2) and (6)(f) and 68(1) of the Statute and Rule 17(2)(b)(i) and (ii) of the Rules of Procedure and Evidence ("Rules").
5. The Chamber recalls that, in accordance with the Unified Protocol of Witness Familiarisation approved by the Chamber, once the process of witness familiarisation has commenced, *i.e.* as from the arrival of the witness in the Netherlands,⁶ any further meeting between the entity calling the witness and the witness is prohibited, unless it occurs in the premises of the VWU and for the strict and only purpose of acquaintance ("courtesy meeting").⁷
6. In the view of the Chamber, therefore, asking the witness whether he was contacted by a member of the defence team, or any other individual, properly falls within the mandate of the VWU at this stage, and not of the prosecution, given the potential impact on the witness' well being, security or testimony.
7. For these reasons the Trial Chamber hereby:
 - (i) REJECTS the prosecution Request;
 - (ii) ORDERS the VWU to discuss with Witness 15 whether he was contacted by any member of the defence team, or any other individual, who may have attempted to influence his testimony before the Court and/or any issues that may raise security concerns;
 - (iii) ORDERS the VWU to report to the Chamber via email without delay after discussing the matter with Witness 15 today. This report shall be followed by a formal filing to be submitted on an *ex-parte* basis, available to the VWU and the prosecution only, by 16.00 on 7 February 2012.

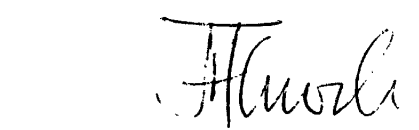
⁶ ICC-01/05-01/08-1081-Anx, paragraphs 28.

⁷ ICC-01/05-01/08-1081-Anx, paragraphs 27 and 30.

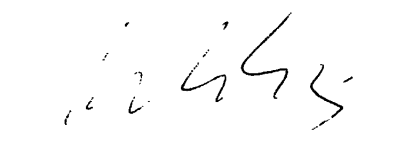
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this Monday 6 February 2012

At The Hague, the Netherlands