

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **29 June 2016**

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 Redacted Version of

“Decision on the defence’s ‘Requête en mesures de protection du témoin CAR-D04-PPPP-0049’ and related issues”, ICC-01/05-01/08-2476 of 10 December 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
Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes
Ms Kate Gibson
Ms Melinda Taylor

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

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber III ("Chamber") of the International Criminal Court ("ICC" or "Court") in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* issues the following Decision on the defence's "Requête en mesures de protection du témoin CAR-D04-PPPP-0049" and related issues ("Decision").

I. Background and Submissions

1. On 21 November 2012, the Victims and Witnesses Unit ("VWU") informed the Chamber that on 16 November 2012 it had received a referral for protection of witness CAR-D04-PPPP-0049 ("Witness D04-49") from the defence.¹
2. On 6 December 2012, the defence filed its confidential and *ex parte* defence and VWU only "Requête en mesures de protection du témoin CAR-D04-PPPP-0049".² In the request, the defence refers to an email it received from Witness D04-49 detailing security concerns the witness holds in relation to his return to [REDACTED].³ The defence further states that the VWU has decided that Witness D04-49 will return to [REDACTED] subject to certain security measures.⁴ The defence asserts that the measures envisaged by the VWU were manifestly insufficient⁵ and requests that the Chamber suspend the implementation of the VWU's decision and convene a status conference to decide on the merits of the fears expressed by the witness.⁶
3. Subsequently, later on 6 December 2012, the Chamber ordered the VWU to provide it with a full assessment as to the security situation of Witness D04-49

¹ Victims and Witnesses Unit's Observations Pursuant to "Decision requesting the VWU's observations on the "Demande de mesures de protection en faveur du témoin D04-49 (Règle 87-1 du Règlement de procédure et de preuve)" (ICC-01/05-01/08-2420-Conf-Exp), confidential *ex parte* Duty Counsel, Registry, Defence and Office of the Prosecution only, 21 November 2012, ICC-01/05-01/08-2428-Conf-Exp, paragraph 1.

² Requête en mesures de protection du témoin CAR-D04-PPP-0049, confidential and *ex parte* defence and Victims and Witnesses Unit only, 6 December 2012, ICC-01/05-01/08-2468-Conf-Exp.

³ ICC-01/05-01/08-2468-Conf-Exp, paragraph 1.

⁴ ICC-01/05-01/08-2468-Conf-Exp, paragraph 2

⁵ ICC-01/05-01/08-2468-Conf-Exp, paragraph 3 ("manifestement insuffisantes" in the original French version).

⁶ ICC-01/05-01/08-2468-Conf-Exp, paragraphs 3 and 4.

and the status of the referral for protection.⁷ The Chamber ordered that this assessment, due to the urgency of the matter, be submitted initially by way of email by no later than 15.00 that same day, with a formal filing to be filed as soon as practicable thereafter.⁸

4. Accordingly, by way of an email of 6 December 2012,⁹ the VWU submitted a protection analysis concerning Witness D04-49 together with an update on the status of the referral for protection.
5. Later on the same day, the Chamber was informed by the VWU that Witness D04-49 had informed the defence—by way of email—that he had travelled to [REDACTED].¹⁰ Although this information was at that point not shared with all parties and participants, on 7 December 2012, the duty counsel appointed for Witness D04-49,¹¹ filed on a confidential basis, available to the parties and participants, the “Transmission du courriel de retrait de mandat du témoin D04-49”,¹² together with an annex containing an email from Witness D04-49 to the duty counsel in which the witness explained that he had travelled to [REDACTED].

⁷ Decision ordering the VWU to provide information relating to “Requête en mesures de protection du témoin CAR-D04-PPP-0049”, confidential and *ex parte* defence and Victims and Witnesses Unit only, 6 December 2012, ICC-01/05-01/08-2469 -Conf-Exp, paragraph 5.

⁸ ICC-01/05-01/08-2469-Conf-Exp, paragraph 5.

⁹ Email from the Associate Protection Officer of the VWU to the Assistant Legal Officer of Trial Chamber III on 6 December 2012, at 15.22.

¹⁰ Email from the Associate Protection Officer of the VWU to the Assistant Legal Officer of Trial Chamber III on 6 December 2012, at 16.10.

¹¹ See 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.

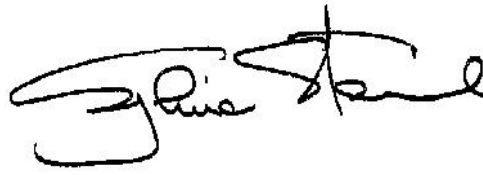
¹² Transmission du courriel de retrait de mandat du témoin D04-49, 7 December 2012, ICC-01/05-01/08-2470-Conf and Annex ICC-01/05-01/08-2470-Conf-Anx.

II. Analysis and Conclusions

6. For the purpose of the present Decision, the Chamber has considered Articles 43(6) and 68(1) of the Rome Statute and Rules 17(2)(a)(i) and (ii) of the Rules of Procedure and Evidence.
7. The Chamber notes that, in view of Witness D04-49's departure and travel to [REDACTED] on his own initiative, the Chamber is not in a position to ensure his protection at this stage. As such, a decision on the defence's requests for suspension of the VWU's decision regarding the return of Witness D04-49 to [REDACTED] and for a status conference¹³ to decide upon the merits of the witness's fears is no longer required.
8. In light of the above, the Chamber hereby DISMISSES the defence's Request as moot.

¹³ The Chamber notes that the defence requests the Chamber to convene a status conference pursuant to Rule 87(3) of the Rules of Procedure and Evidence, in order to rule on the merits of the fears expressed by the Witness. The purpose of the hearings referred to in Rule 87(3) is "to determine whether to order measures to prevent the release to the public or press and information agencies, of the identity or the location of a victim, a witness or other person at risk on account of testimony given by a witness". Since the defence's request aims to provide the witness with protective measures beyond to the protection of the witness's identity, Rule 87(3) could not serve as a legal basis for the request.

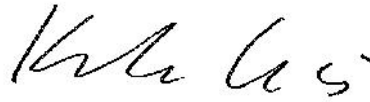
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 29 June 2016

At The Hague, the Netherlands