

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **23/10/2012**

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

Further Defence Submissions Regarding Potential Self-Incrimination at Trial

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

The Office of the Prosecutor

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Ms Petra Kneuer

Counsel for the Defence

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Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

(Participation/Reparation)

Applicants

The Office of Public Counsel for the Victims

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The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Deputy Registrar

Defence Support Section

Mr. Esteban Peralta-Losilla

Victims and Witnesses Unit

Ms. Maria Luisa Martinod -Jacome

Detention Section

**Victims Participation and Reparations Other
Section**

A. BACKGROUND

1. On 3 October 2012, in its *Decision on amended order of witnesses to be called by the Defence*,¹ the Chamber held that:²

In relation to witnesses to whom Rule 74 of the Rules may apply, it shall notify VWU and the Chamber of their identities. As regards this issue, the Chamber expects to be notified no later than 16.00 on 12 October 2012

2. On 12 October 2012, the Defence filed its confidential *Defence Submissions Regarding Potential Self-Incrimination at Trial*³ in which it listed [REDACTED] witnesses who the Defence submitted fell within Rule 74 of the Rules of Procedure and Evidence of the ICC.⁴

3. On the same day, the Prosecution filed its *Further Submission on the Issue of Self Incrimination*,⁵ in which it indicated that it the Prosecution does not currently intend to prosecute any individuals on the Defence witness list.

4. The Defence now makes a further submission in this regard.

B. APPLICABLE LAW

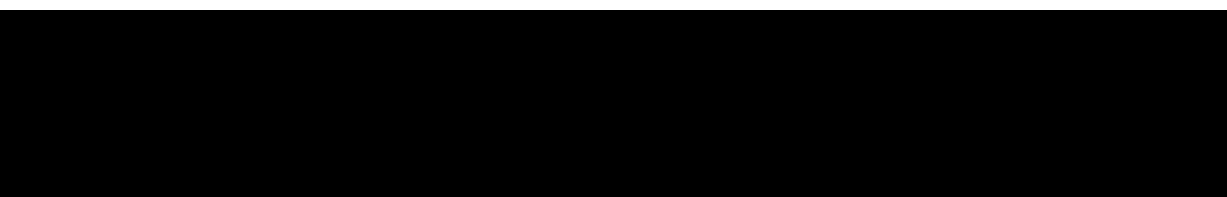
5. Article 93(2) provides:

The Court shall have the authority to provide an assurance to a witness or an expert appearing before the Court that he or she will not be

¹ ICC-01/05-01/08-2329

² ICC-01/05-01/08-2329, para. 17.

³



⁵ ICC-01/05-01/08-2341.

prosecuted, detained or subjected to any restriction of personal freedom by the Court in respect of any act or omission that preceded the departure of that person from the requested State.

6. Rule 74 of the Rules of Procedure and Evidence provides in relevant part:

1. Unless a witness has been notified pursuant to rule 190, the Chamber shall notify a witness of the provisions of this rule before his or her testimony.

2. Where the Court determines that an assurance with respect to self-incrimination should be provided to a particular witness, it shall provide the assurances under sub-rule 3, paragraph (c), before the witness attends, directly or pursuant to a request under article 93, paragraph (1) (e)...

3. (c) In the case of other witnesses, the Chamber may require the witness to answer the question or questions, after assuring the witness that the evidence provided in response to the questions:

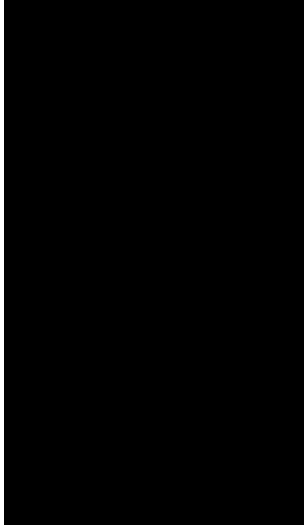
- (i) Will be kept confidential and will not be disclosed to the public or any State; and
- (ii) Will not be used either directly or indirectly against that person in any subsequent prosecution by the Court, except under articles 70 and 71...

9. The accused, the defence counsel or the witness may advise the Prosecutor or the Chamber that the testimony of a witness will raise issues of self-incrimination before the witness testifies and the Chamber may take the measures outlined in sub-rule 7.

10. If an issue of self-incrimination arises in the course of the proceedings, the Chamber shall suspend the taking of the testimony and provide the witness with an opportunity to obtain legal advice if he or she so requests for the purpose of the application of the rule.

C. SUBMISSIONS

7. The Defence submits that, in addition to the list of [REDACTED] witnesses set out in its filing of 12 October 2012, assurances pursuant to Rule 74 should also be given to the following [REDACTED] witnesses identified below, who have also been identified as being at risk of incriminating themselves during their testimony before the Court in the present proceedings:



The whole respectfully submitted.

Aimé Kilolo Musamba
Lead Counsel

Peter Haynes
Co- Counsel

Done on the 23rd of October 2012
At The Hague, The Netherlands