

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 12/10/2012

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

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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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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States' Representatives

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Mr. Esteban Peralta-Losilla

Victims and Witnesses Unit

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Detention Section

**Victims Participation and Reparations Other
Section**

A. BACKGROUND

1. In its *Decision on the "Prosecution Motion on Procedure for Contacting Defence Witnesses and to Compel Disclosure"*, the Chamber held as follows:¹

The Chamber reminds the parties that, in relation to witnesses to whom Rule 74 of the Rules may apply, the calling party has the obligation to notify the VWU of the identity of any such witnesses, in accordance with the relevant provisions of the Unified Protocol, which the Chamber considers applies mutatis mutandis throughout the presentation of evidence by the defence. In relation to witnesses to whom this paragraph applies, the calling party shall also notify the Chamber of their identity.

2. On 28 September 2012, the Defence provided VWU with a list of witnesses which it believed may be at risk of incriminating themselves, and thus fell within the scope of Rule 74 of the Rules of Procedure and Evidence ("Rules").

3. On 2 October 2012, the Defence provided the same list to the Counsel Support Section of the Registry.

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

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

5. The Defence files the following submissions pursuant to that order:

¹ICC-01/05-01/08-2293-Conf

² ICC-01/05-01/08-2329

³ICC-01/05-01/08-2329, para. 17.

B. APPLICABLE LAW

6. 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 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.

7. 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:

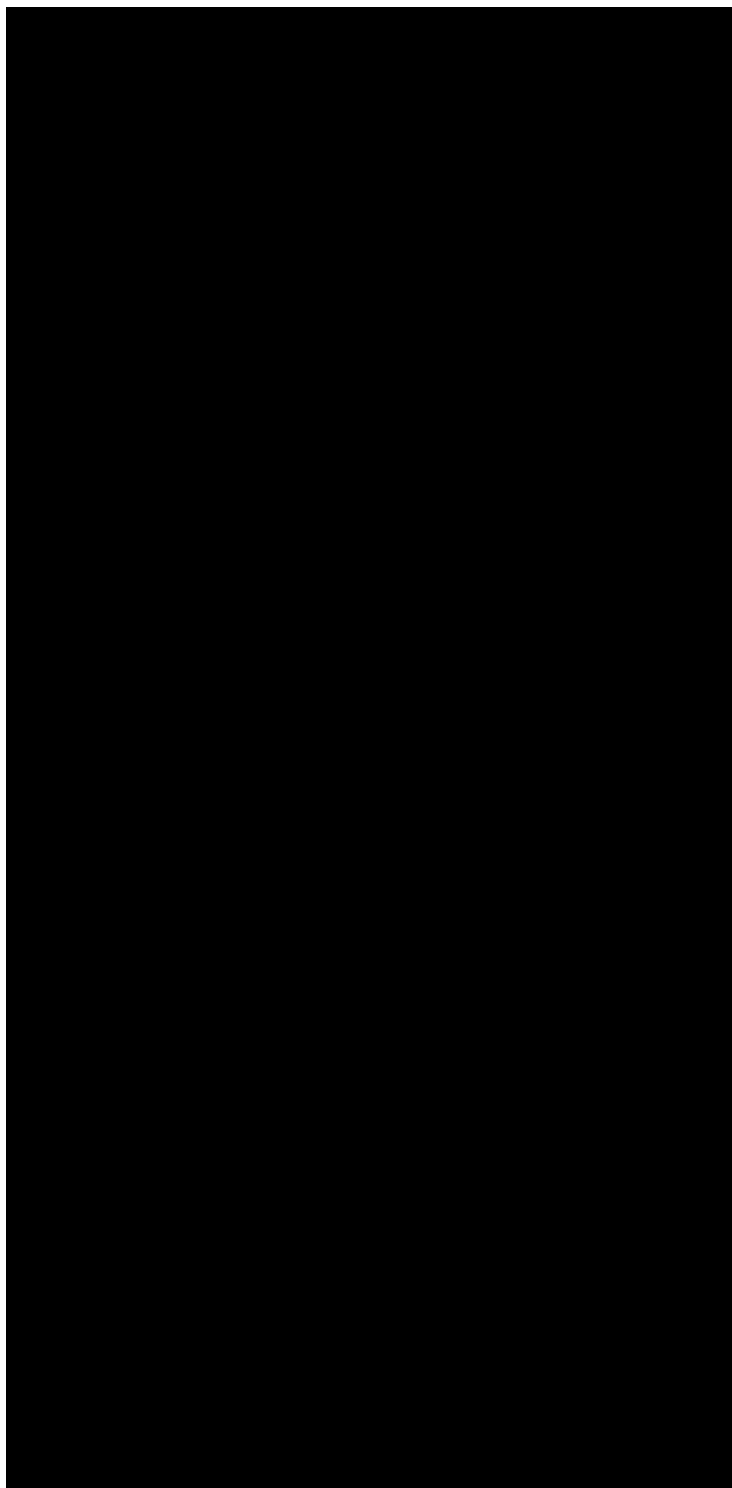
- (i) Will be kept confidential and will not be disclosed to the public or any State; and
- (ii) Will not be used either directly or indirectly against that person in any subsequent prosecution by the Court, except under articles 70 and 71...

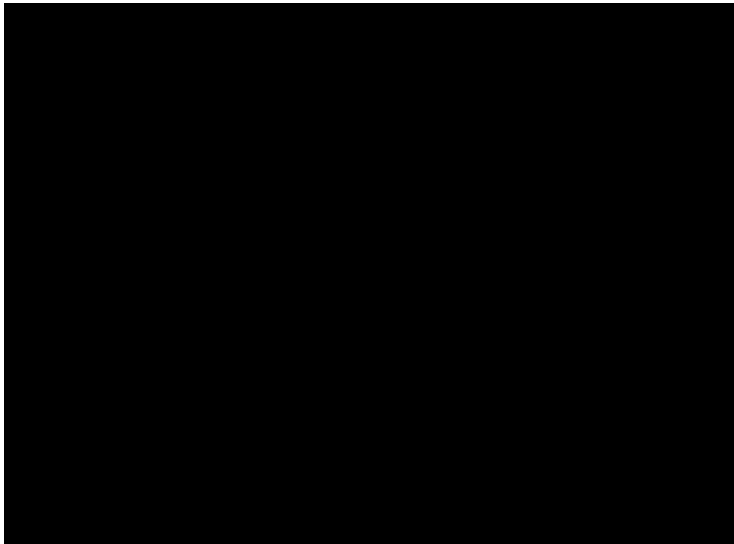
9. The accused, the defence counsel or the witness may advise the Prosecutor or the Chamber that the testimony of a witness will raise issues of self-incrimination before the witness testifies and the Chamber may take the measures outlined in sub-rule 7.

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

8. The Defence submits that, as to each of the witnesses identified below, assurances pursuant to Rule 74 should be given. The Defence notes that this list includes additional names to the list provided to VWU and CSS, and asks that this list be considered authoritative.





The whole respectfully submitted.

Aimé Kilolo Musamba
Lead Counsel

Peter Haynes
Co- Counsel

Done on the 12th of October 2012
At The Hague, The Netherlands