

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 7 March 2013

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

Public redacted version of “Decision on ‘Defence Motion for authorization to hear the testimony of Witness D-45 via video-link’” of 6 March 2013

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 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

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on “Defence Motion for authorization to hear the testimony of Witness D-45 via video-link” (“Decision”).

I. Background and Submissions

1. On 1 March 2013, the defence for Mr Jean-Pierre Bemba (“defence”) filed its confidential “Defence Motion for authorization to hear the testimony of Witness D-45 via video-link” (“Defence Motion”),¹ in which it requests that the testimony of the Witness D04-45 be heard *via* video-link.²[REDACTED].³ The defence also refers to the fact that Witness D04-45 would be willing to testify *via* video-link, and notes that the VWU recommends presenting the testimony of this witness prior to that of witness D04-21, i.e. directly after the testimony of Witness D04-19.⁴
2. Although reiterating its expressed preference for live testimony in The Hague, the defence submits that, based upon circumstances beyond its control as detailed in the information provided by the VWU, presenting the evidence of Witness D04-45 *via* video-link, from 11 March 2013, would provide the greatest chance of avoiding gaps in the presentation of evidence by the defence.⁵
3. On 4 March 2013, upon the Chamber’s oral instruction,⁶ the legal representative of victims, Maître Douzima-Lawson, filed her confidential “Observations de la Représentante légale de victimes relatives à la

¹ Defence Motion for authorisation to hear the testimony of Witness D-45 via video-link, 1 March 2013, ICC-01/05-01/08-2519-Conf.

² ICC-01/05-01/08-2519-Conf, paragraph 9.

³ ICC-01/05-01/08-2519-Conf, paragraph 5.

⁴ ICC-01/05-01/08-2519-Conf, paragraph 6.

⁵ ICC-01/05-01/08-2519-Conf, paragraphs 7-8.

⁶ Transcript of hearing of 1 March 2013, ICC-01/05-01/08-T-288-CONF-ENG ET, page 29, line 23 to page 30, line 9.

comparution du témoin D04-0045 par vidéo conférence”,⁷ leaving it to the Chamber to determine the modalities of Witness D04-45’s testimony.

II. Analysis

4. For the purpose of the present Decision, the Chamber has considered, in accordance with Article 21(1) of the Rome Statute (“Statute”), Articles 64(2), 67(1)(c) and (e), and 69(2) of the Statute, Rule 67 of the Rules of Procedure and Evidence (“Rules”) and Regulations 23 *bis*, 43 and 54 of the Regulations of the Court.
5. As previously stated, the term “given in person” used by Article 69(2) of the Statute does not imply that witness testimony shall necessarily, under any circumstances, be given by way of live testimony in court. Instead, the Statute and the Rules give the Court broad discretion, subject to the provisions of Rule 67 of the Rules, to permit evidence to be given *viva voce* by means of video or audio technology whenever necessary, provided that the Statute and the Rules are respected and such measures are not prejudicial to, or inconsistent with, the rights of the accused.⁸
6. The Chamber recalls that, according to Article 67(1)(e) of the Statute, the accused has the right “to obtain the attendance and examination of witnesses on his or her behalf”. Further, pursuant to Rule 67(1) of the Rules, the Chamber may allow a witness to give *viva voce* (oral) testimony by means of

⁷ Observations de la Représentante légale de victimes relatives à la comparution du témoin D04-0045 par vidéo conférence, 4 March 2013, ICC-01/05-01/08-2522-Conf.

⁸ Decision lifting the temporary suspension of the trial proceedings and addressing additional issues raised in defence submissions ICC-01/05-01/08-2490-Red and ICC-01/05-01/08-2497, 6 February 2013, ICC-01/05-01/08-2500, paragraph 29; Decision on the “Prosecution request to hear Witness CAR-OTP-PPPP-0036’s testimony via video-link”, 2 February 2012, ICC-01/05-01/08-2101-Conf and its Public redacted decision on the “Prosecution request to hear Witness CAR-OTPPPP-0036’s testimony via video-link”, 3 February 2012, ICC-01/05-01/08-2101-Red2, paragraph 6; Decision on the “Request for the conduct of the testimony of witness CAR-OTP-WWWW-0108 by video-link”, 12 October 2010, ICC-01/05-01/08-947-Conf and its Redacted Decision on the “Request for the conduct of the testimony of witness CAR-OTPWWW-0108 by video-link”, 12 October 2010, ICC-01/05-01/08-947-Red, paragraph 10.

audio or video technology, provided that such technology permits the witness to be examined by the defence at the time the witness so testifies. In the present case, the Chamber notes that the request for the testimony of Witness D04-45 to be presented by means of video technology was submitted by the defence itself in order to avoid gaps in the presentation of evidence.

7. The Chamber has previously held that one of the relevant criteria to be considered in determining whether or not a witness should be allowed to give testimony by means of video technology is the witness's personal circumstances.⁹ However, as previously stressed by the Chamber, although personal circumstances have been interpreted as linked to the well-being of a witness, the Chamber is not confined by the Statute in considering other types of personal circumstances which might justify a witness testifying by means of audio or video technology.¹⁰ Similarly, the Chamber considers that other relevant circumstances, such as logistical difficulties in arranging a witness's travel to testify at the seat of the Court in The Hague, which would seriously impact upon the expeditious conduct of the proceedings, can also justify a witness to be heard by means of video or audio technology.

8. In relation to the merits of the Defence Motion, the Chamber observes that, according to the defence, Witness D04-45 is ready and willing to cooperate with the Court, [REDACTED] prevents him from travelling to The Hague in the near future. Notwithstanding these difficulties, the Chamber notes that the witness himself is willing to provide testimony *via* video-link. In addition, neither the prosecution nor the legal representatives of victims have objected to the presentation of the testimony by means of video technology.

⁹ ICC-01/05-01/08-2500, paragraph 30; ICC-01/05-01/08-2101-Red2, paragraph 7; ICC-01/05-01/08-947-Red, paragraph 13.

¹⁰ ICC-01/05-01/08-947-Red, paragraph 13.

9. In view of the above, the Chamber considers that the Defence Motion is well-founded and that presentation of Witness D04-45's testimony by means of video technology will not be prejudicial to, or inconsistent with, the rights of the accused.

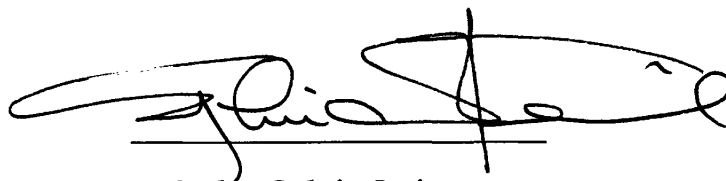
III. Orders

10. In view of the foregoing, the Chamber:

- a. GRANTS the Defence Motion and authorises the testimony of Witness D04-45 to be given *viva voce* before the Chamber by means of video technology;
- b. ORDERS the Registry to make the necessary arrangements for the conduct of the video-link testimony following the completion of the testimony of Witness D04-19; and
- c. ORDERS the defence and the legal representative of victims, Maître Douzima-Lawson, to file public redacted versions of their submissions,¹¹ and/or to ask for their reclassification if they consider that no redactions are necessary, by no later than 11 March 2013;

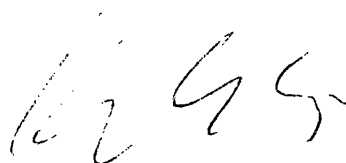
¹¹ ICC-01/05-01/08-2519-Conf and ICC-01/05-01/08-2522-Conf.

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



Judge Sylvia Steiner

Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 7 March 2013

At The Hague, the Netherlands