

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 12 April 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

**Decision on “Defence Motion for authorisation to hear the testimony of
Witness D04-39 via video-link”**

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 (“Trial Chamber” or “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 authorisation to hear the testimony of Witness D04-39 via video-link” (“Decision”).

I. Background and Submissions

1. On 27 March 2013, the defence for Mr Jean-Pierre Bemba (“defence”) filed its confidential “Defence Motion for authorisation to hear the testimony of Witness D04-39 via video-link” (“Defence Request”),¹ in which it requests that the testimony of the Witness D04-39 be heard *via* video-link.² For that purpose, the defence submits that the witness “is neither in possession of a passport, or a visa to travel to the seat of the Court” and “consents to testifying via video-link.”³
2. While reiterating its expressed preference for live testimony in The Hague, the defence submits that “given circumstances beyond the control of the Defence, namely D04-39’s lack of preparedness to travel, the defence feels compelled to request authorization from the Chamber to present the evidence of Witness D04-39 via video-link [...], given the order and schedule approved by the Trial Chamber.”⁴
3. On 8 April 2013, further to the Chamber’s instruction to submit an update on the availability of Witness D04-39 to travel to the seat of the Court and to start his testimony on 12 April 2013,⁵ the Victims and Witnesses Unit (“VWU”)

¹ Defence Motion for authorisation to hear the testimony of Witness D04-39 via video-link, 27 March 2013, ICC-01/05-01/08-2566-Conf.

² ICC-01/05-01/08-2566-Conf, paragraph 10.

³ ICC-01/05-01/08-2566-Conf, paragraphs 6 to 7.

⁴ ICC-01/05-01/08-2566-Conf, paragraphs 8 to 9.

⁵ Email from the Assistant Legal Officer to the Trial Chamber to the VWU, the prosecution and the legal representatives on 2 April 2013 at 16.33.

filed its confidential “Victims and Witnesses Unit’s Report concerning the Appearance of Witness CAR-D04-PPPP-0039” (“VWU Report”),⁶ in which it submitted that the necessary documents had not yet been obtained. Subsequently, by email of 11 April 2013,⁷ the VWU submitted a further update, specifying that the witness would be available to start his testimony by means of video technology by 15 April 2013.

4. Neither the Office of the Prosecutor nor the legal representatives of victims filed a response to the Defence Request.

II. Analysis

The request to hear the testimony of Witness D04-39 via video-link

5. For the purpose of the present Decision, the Chamber has considered, in accordance with Article 21(1) of the Rome Statute (“Statute”), Articles 64(1), (2) and 7, 67(1), and 69(2) of the Statute, Rules 67 and 101 of the Rules of Procedure and Evidence (“Rules”) and Regulations 20, 23*bis*, 43 and 54 of the Regulations of the Court.
6. 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

⁶ Victims and Witnesses Unit’s Report concerning the Appearance of Witness CAR-D04-PPPP-0039, 8 April 2013, ICC-01/05-01/08-2575-Conf.

⁷ Email from the Associate Legal Officer, Division of Court Services, to the Assistant Legal Officer of Trial Chamber III of 11 April 2013, at 16.32.

the Rules are respected and such measures are not prejudicial to, or inconsistent with, the rights of the accused.⁸

7. 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 audio or video technology, provided that such technology permits the witness to be examined by the defence at the time the witness so testifies.
8. 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 In addition, the Chamber has taken the view 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.”¹⁰
9. In the present case, the Chamber notes that the request for the testimony of Witness D04-39 to be presented by means of video technology was submitted by the defence in order to avoid gaps in the presentation of evidence. Accordingly, hearing the witness *via* video-link would not be prejudicial to, or inconsistent with, the rights of the accused. Furthermore, in its update of 11

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; Public redacted decision on the “Prosecution request to hear Witness CAR-OTPPPPP-0036’s testimony via video-link”, 3 February 2012, ICC-01/05-01/08-2101-Red2, paragraph 6; 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.

⁹ 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, 7 March 2013, ICC-01/05-01/08-2525-Red, paragraph 7; 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-01/05-01/08-2525-Red, paragraph 7.

April 2013,¹¹ the VWU submits that in light of the information provided by the defence, Witness D04-39 will be available to testify as of 12 April and that the Registry will be ready to support the video-link as of 15 April 2013 if no other obstacles occur. The VWU further submits that since the witness is still not in possession of a passport, it would be impossible for Witness D04-39 to appear before the Court in The Hague before the week of 29 April or even 6 May 2013. In relation to this information, the Chamber notes the information provided in the VWU Report, according to which no passport application for the witness had been submitted by 3 April 2013.¹² The Chamber regrets that this delay in the submission of the application prevents the witness from appearing at the seat of the Court on time. In these circumstances, the Chamber considers that the logistical difficulties in arranging the witness's travel to testify at the seat of the Court in The Hague "would seriously impact upon the expeditious conduct of the proceedings" as they would result in a prolonged gap in the presentation of evidence by the defence. For these reasons, and on an exceptional basis, the Chamber grants the defence's request to hear the testimony of Witness D04-39 *via* video technology.

Classification of documents

10. The Chamber notes that the Defence Request and the VWU Report are classified as confidential in order to protect, *inter alia*, the psychological well-being, dignity and privacy of the witness, in accordance with Article 68(1) of the Statute. In striking a balance between the protection of Witness D04-39 and the Chamber's duty to ensure the publicity of the proceedings as enshrined in Articles 64(7) and 67(1) of the Statute, the Chamber finds, pursuant to Regulation 23*bis*(3) of the Regulations, that the related documents may be treated as public save for the information that might identify the witness, which should remain confidential.

¹¹ Email from the Associate Legal Officer, Division of Court Services, to the Assistant Legal Officer of Trial Chamber III of 11 April 2013, at 16.32.

¹² ICC-01/05-01/08-2575-Conf, paragraph 9.

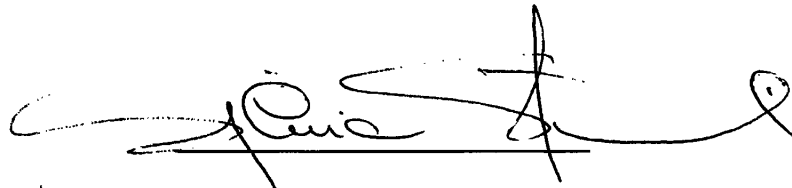
III. Orders

11. In view of the foregoing, the Chamber:

- a. GRANTS the Defence Request and authorises the testimony of Witness D04-39 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 to start on Monday, 15 April 2013; and
- c. ORDERS the defence and the Registry to file public redacted versions of their submissions¹³ in accordance with the guidance provided in paragraph 10 above, by no later than 17 April 2013.

¹³ ICC-01/05-01/08-2566-Conf and ICC-01/05-01/08-2575-Conf.

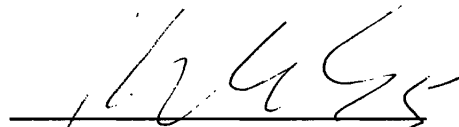
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 12 April 2013

At The Hague, the Netherlands