

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 1 May 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 "Order to hear the testimony of Witness D04-56 via
video-link" of 29 April 2013**

Order 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

Mr Herman van Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Patrick Craig

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 Order to hear the testimony of Witness D04-56 via video-link (“Order”).

I. Background and Submissions

1. On 12 April 2013, the Chamber issued an oral decision on the proposed order of witnesses to appear after the testimony of Witness D04-21. The Chamber approved the order of witnesses proposed by the defence, according to which Witness D04-56 was scheduled to testify following Witness D04-39, who concluded his testimony on 24 April 2013.¹
2. On 25 April 2013, upon the Chamber’s instruction,² the Victims and Witnesses Unit (“VWU”) submitted a report informing the Chamber, the parties and participants of the availability of Witness D04-56 to testify, both in person at the seat of the Court in The Hague and by way of video-link (“VWU Report”). The VWU informed the Chamber that, if no other “complications” were to occur, (i) the earliest date the witness would be ready to testify in person at the seat of the Court in The Hague would be 7 May 2013, and (ii) the earliest date the VWU would be able to organise the witness’s appearance via video-link would be 2 May 2013.³

¹ Transcript of hearing on 12 April 2013, ICC-01/05-01/08-T-306-ENG-ET, page 61, line 23 to page 62, line 12.

² Email sent from the Chamber to the parties, participants and relevant members of the Registry on 25 April 2013 at 11.19. In view of the urgency of the matter, the Chamber informed the VWU, the parties and participants that the VWU’s report and any observations thereto may be submitted by way of email.

³ Email sent from the VWU to the Chamber, parties, and participants on 25 April 2013 at 16.01 and follow-up email sent on 25 April 2013 at 17.25, wherein the VWU informed the Chamber, parties and participants that due to the fact that 1 May 2013 is a public holiday it would only be possible for the witness to commence giving his testimony via video-link as of 2 May 2013.

3. By email of 26 April 2013, the defence submitted its observations on the VWU Report, opposing the use of video-link testimony for Witness D04-56.⁴ The defence submits that the witness has expressed concerns for his security should he testify from the location of the video-link and therefore he does not consent to testifying via video-link. [REDACTED].
4. The prosecution and the legal representatives of victims did not submit any observations on the VWU Report.
5. By email of 29 April 2013, the VWU submitted an update on the organisation of the testimony of Witness D04-56, indicating that (i) the video-link could be organised as of 3 May 2013; and that (ii) the witness could only travel to The Hague on 8 May 2013, at the earliest.⁵
6. On the same day, pursuant to the Chamber's instruction,⁶ the VWU submitted a comprehensive security assessment in relation to Witness D04-56 ("Comprehensive Security Assessment").⁷ The VWU submits that [REDACTED] and therefore recommends that the witness be granted in-court protective measures which would be sufficient to mitigate the risk to the witness. The VWU further recommends that additional safeguards be in place [REDACTED].

II. Analysis

7. For the purpose of the present Order, the Chamber has considered, in accordance with Article 21(1) of the Rome Statute ("Statute"), Articles 64,

⁴ Email sent from Legal Assistant of Mr Jean-Pierre Bemba to the Chamber, parties, participants and relevant members of the Registry on 26 April 2013 at 11.42.

⁵ Email sent from the VWU to the Chamber, parties, and participants on 29 April 2013 at 12.33.

⁶ Email sent from the Chamber to the VWU on 26 April 2013 at 15.09.

⁷ Email sent from the VWU to the Chamber on 29 April 2013 at 13.20.

67(1), 68, and 69(2) of the Statute, Rule 67 of the Rules of Procedure and Evidence (“Rules”) and Regulations 43 and 54 of the Regulations of the Court.

8. As previously stated, the term “given in person” used in 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 wide discretion, subject to the provisions of Rule 67 of the Rules, to permit or order evidence to be given *viva voce* by means of video or audio technology where 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 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 questioned by the defence at the time the witness so testifies.

9. 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 held 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’s testimony being heard by means of video technology.¹⁰

⁸ See 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-OTP-PPPP-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-OTP-WWWW-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.

10. The Chamber notes in the present case that, based upon the information provided in the VWU, Witness D04-56 would only be able to travel to the seat of the Court in The Hague on 8 May 2013, at the earliest, while he would be available to start his testimony via video-link as of 3 May 2013. Considering the delays experienced during the presentation of evidence by the defence to date, the Chamber is of the view that any further delay in the proceedings should be avoided. As hearing the witness in person at the seat of the Court in The Hague would entail a further delay of at least 5 working days,¹¹ the Chamber is of the view that hearing the witness via video-link would be more appropriate in order to avoid gaps in the presentation of evidence and thus ensure the expeditious conduct of the trial proceedings.¹²

11. The Chamber further considers that the presentation of Witness D04-56's testimony by means of video technology will not be prejudicial to, or inconsistent with, the rights of the accused. In this respect the Chamber notes that the defence's objection to the video-link is based upon the security concerns allegedly expressed by the witness. Taking into account these concerns and in line with its duty under Articles 64(2) and 68(1) of the Statute to provide for the protection of witnesses, the Chamber instructed the VWU to submit a comprehensive security assessment in relation to Witness D04-56 considering both options of hearing the witness via video-link from the envisaged location or at the seat of the Court and to propose measures to minimise the identified risks. The Chamber notes the VWU's assessment that in-court protective measures, together with additional safeguards, would be sufficient to mitigate any risk to the witness, should he testify via video-link. As such, the Chamber is of the view that testifying via video-link would not

¹¹ This calculation takes into account the time required for the witness's travel, familiarisation session and courtesy meetings, as well the fact that 9 May 2013 is a public holiday.

¹² The Chamber notes that on previous occasions the defence has requested that witnesses present evidence via video-link technology in order to avoid gaps in their presentation of evidence. *See* for example, Public Redacted version of the "Decision on 'Defence Motion for authorisation to hear the testimony of Witness D04-21 via video-link'", 3 April 2013, ICC-01/05-01/08-2572-Red, paragraph 3.

expose the witness to a higher risk than testifying in person at the seat of the Court.

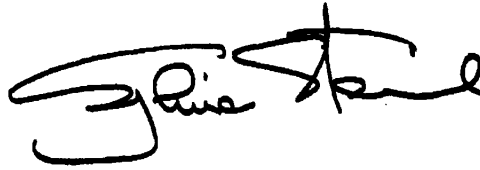
12. The Chamber further notes that in line with Rule 67(1) of the Rules, the available video technology permits the witness to be questioned by both parties as well as the legal representatives of victims at the time the witness so testifies.

III. Conclusion

13. In view of the foregoing, the Chamber:

- a. DECIDES that the testimony of Witness D04-56 will be given *viva voce* before the Chamber by means of video technology; and
- b. ORDERS the Registry to make the necessary arrangements for the conduct of the video-link testimony to start on Friday, 3 May 2013.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 1 May 2013

At The Hague, the Netherlands