

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 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
URGENT**

Order rescheduling the video-link testimony of Witness D04-56

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

Other

Victims Participation and Reparations Section

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 rescheduling the video-link testimony of Witness D04-56 (“Order”).

I. Background and Submissions

1. On 1 May 2013, the Chamber issued a “Public redacted version of ‘Order to hear the testimony of Witness D04-56 via video-link’ of 29 April 2013”.¹ The Chamber considered that “hearing the witness via video-link would be more appropriate to avoid gaps in the presentation of evidence by the defense and thus ensure the expeditious conduct of the trial proceedings” and determined that “the presentation of Witness D04-56’s testimony by means of video technology [would] not be prejudicial to, or inconsistent with, the rights of the accused”. Accordingly, the Chamber (i) decided that the testimony of Witness D04-56 would be given *viva voce* before the Chamber by means of video technology; and (ii) ordered the Registry to make the necessary arrangements for the conduct of the video-link testimony to start on Friday, 3 May 2013.

2. By email of 30 April 2013, the defence for Mr Jean-Pierre Bemba Gombo (“defence”) (i) informed the Chamber that the witness did not consent to testifying via video-link; and (ii) requested the Chamber to convene an urgent *ex parte* status conference in order to discuss the facilitation of this witness’s testimony.²

¹ Public redacted version of “Order to hear the testimony of Witness D04-56 via video-link” of 29 April 2013, 1 May 2013, ICC-01/05-01/08-2608-Red.

² Email sent from Legal Assistant of Mr Jean-Pierre Bemba to the Chamber and relevant members of the Registry on 30 April 2013 at 16.16.

3. On 1 May 2013, the Chamber issued its “Order suspending the testimony of Witness D04-56 and convening a status conference”³ (“1 May 2013 Order”), in which it (i) suspended the testimony of Witness D04-56; and (ii) convened a public status conference to be held on Friday 3 May 2013, to be followed, if deemed necessary, by a confidential or *ex parte* status conference.
4. During the public status conference, the Chamber stated that

[u]nless counsel for the defence is able to satisfy this Chamber that there has been a significant change in circumstances, or that new and compelling reasons to reconsider our decision exist, where Defence counsel is unable to convince his witness to testify in accordance with the order issued by this Chamber, the option remaining is for the Defence to proceed to the next witness.⁴
5. Further to this, the defence made submissions relating to (i) the importance of the testimony of Witness D04-56; (ii) Witness D04-56’s security fears relating to testifying via video-link from his current location; (iii) the fact that it would be “as fast for [the witness] to testify at the seat of the court, or via video-link”, and that one reason that testimony in person at the seat of the Court would cause delay was that the VWU suspended the modalities for obtaining a visa for Witness D04-56 prematurely; (iv) the impact upon the publicity of the trial of the use of closed session during Witness D04-56’s testimony, if given via video-link; (v) alleged psychological issues that would affect the witness’s testimony were he to testify from his current location; and (vi) problems concerning the relocation of the witness.⁵
6. The public status conference was followed by an *ex parte* hearing,⁶ in which the Chamber stated that

³ Order suspending the testimony of Witness D04-56 and convening a status conference, 1 May 2013, ICC-01/05-01/08-2609.

⁴ Transcript of hearing of 3 May 2013, ICC-01/05-01/08-T-311-CONF-ENG ET, page 5, lines 3 to 7.

⁵ Transcript of hearing of 3 May 2013, ICC-01/05-01/08-T-311-CONF-ENG ET, page 6, line 8, to page 11, line 24, and page 17, line 5 to page 19, line 6.

⁶ The Chamber underlines that the present Order, in line with the principle of publicity of the proceedings enshrined in Articles 64(7) and 67(1) of the Statute, is filed publicly. To the extent that this Order refers to submissions made in the context of an *ex parte* hearing, the Chamber considers that the information concerned does not warrant *ex parte* treatment at this stage.

[t]he Chamber is of the view that Defence has not provided any information indicating that there has been a significant change in the circumstances, or that there are new and compelling reasons to reconsider the Chamber's decision to hear the testimony of Witness D04-56 by means of video technology. Given that the testimony of Witness 56 was only suspended by the Chamber's decision 2609 of 1 May 2013, the Chamber informs the Defence and the registry that the Chamber will shortly issue a decision ordering the testimony to commence on 7 May 2013 at 9 in the morning, by video link. In addition, the Chamber instructs the VWU to inform the witness previously that the security concerns he has raised can be properly dealt with by in-court protective measures that may be granted by the Chamber and, if need be, that VWU provides the Chamber, on Monday, the 6th, with a new assessment on the witness security and, if possible, on his state of mind or whether he's prepared to start giving his testimony. If the witness, for any reasons, decides not to appear for his testimony at the video link location, the Chamber will decide in due time whether his name will be kept or not in the Defence list of witnesses.⁷

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, 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 stressed in its ruling made in the context of the *ex parte* status conference, the Chamber is of the view that the defence has not provided any information indicating that there has been a significant change in circumstances or that there are new and compelling reasons to reconsider the Chamber's decision to hear the testimony of Witness D04-56 by means of video technology. In particular, as stressed during the public status conference, the Chamber is not convinced by the defence's argument that in-court protective measures would not be sufficient for the witness to testify on the topics mentioned by the defence.⁸ Therefore, the Chamber will not reconsider its decision to hear Witness D04-56 via video-link.

⁷ Transcript of hearing of 3 May 2013, ICC-01/05-01/08-T-312-CONF-EXP-ENG ET, page 7, line 11 to page 8, line 2.

⁸ Transcript of hearing of 3 May 2013, ICC-01/05-01/08-T-311-CONF-ENG ET, page 12, line 20 to page 13, line 4.

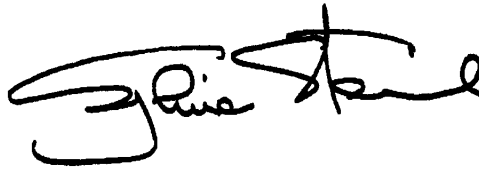
9. Given that the testimony of Witness D04-56 was only suspended by the 1 May 2013 Order, and in order to allow the defence a further opportunity to call the witness, the Chamber decides to reschedule the video-link testimony of Witness D04-56 to commence on Tuesday, 7 May 2013 at 09.00.

III. Conclusion

10. In view of the foregoing, the Chamber:

- a. ORDERS the Registry to make the necessary arrangements for the conduct of the video-link testimony to start on Tuesday, 7 May 2013, at 09.00; and
- b. INSTRUCTS the VWU to inform the witness that the security concerns he has raised can be properly dealt with by in-court protective measures that can be granted by the Chamber.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 3 May 2013

At The Hague, the Netherlands