

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date: 16 July 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***

**URGENT  
Public**

**Decision on the timeline for the completion of the defence's presentation of  
evidence and issues related to the closing of the case**

**Order to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:**

**The Office of the Prosecutor**

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**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

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**Defence Support Section**

**Victims and Witnesses Unit**

**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* (the “Bemba case”), issues the following Decision on the timeline for the completion of the defence’s presentation of evidence and issues related to the closing of the case (“Decision”).

## I. Background and Submissions

1. On 7 June 2012, the Chamber issued its “Decision on the ‘Submissions on Defence Evidence’” (“Decision 2225”),<sup>1</sup> in which it, *inter alia*, granted the Defence for Mr Jean-Pierre Bemba’s (“defence”) requested 230 hours for questioning the 59 witnesses included in its list, and ordered the defence to use the allocated number of hours in the most efficient manner possible and, in any case, within a timeframe of eight months.<sup>2</sup> Although not ordering a reduction in the number of witnesses proposed by the defence, the Chamber observed that, on the basis of the information provided by the defence, several witnesses on the list appeared to give testimony on the same facts.<sup>3</sup> For this reason, the Chamber instructed the defence to review its list in order to determine whether there was “any room for reducing the number of witnesses and avoiding the presentation of overly repetitive evidence.”<sup>4</sup> In addition, in order to ensure an efficient presentation of evidence and the fairness and expeditiousness of the proceedings, the Chamber decided that the order of appearance of witnesses had to be adjusted to commence with the testimony of expert witnesses, followed by those witnesses who were in possession of, or did not face obstacles in obtaining, travel documents.<sup>5</sup>

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<sup>1</sup> Decision on the “Submissions on Defence Evidence”, 7 June 2012, ICC-01/05-01/08-2225.

<sup>2</sup> ICC-01/05-01/08-2225, paragraphs 8, 10, 11 and 23(a) and (b).

<sup>3</sup> ICC-01/05-01/08-2225, paragraph 12.

<sup>4</sup> ICC-01/05-01/08-2225, paragraphs 12 and 23(c).

<sup>5</sup> ICC-01/05-01/08-2225, paragraphs 14-17 and 23(a).

2. On 6 July 2012, the Chamber issued its “Decision on the ‘Third Defence Submissions on the Presentation of its Evidence’” (“Decision 2242”),<sup>6</sup> in which it noted, *inter alia*, that although the defence had repeatedly affirmed that it was ready to begin its presentation of evidence in July-August 2012, “by May 2012 almost half of the defence’s proposed witnesses – indeed the *first* half of the witnesses in the defence’s proposed order of appearance – still did not have passports or the ability to obtain them”.<sup>7</sup> In the same decision, the Chamber approved, on an exceptional basis, a request made by the defence to add four additional witnesses to its list, notwithstanding its suggestion in Decision 2225 that the defence reduce the number of witnesses called to testify.<sup>8</sup> However, the Chamber instructed the defence to adjust the questioning time of its witnesses in order not to exceed the total of 230 hours granted by the Chamber.<sup>9</sup> In addition, the Chamber ordered the defence and the Victims and Witnesses Unit (“VWU”) to start the preparation phase for witnesses to testify at trial as soon as possible, and to make “all practical arrangements necessary in order to ensure the efficient and continuous presentation of evidence by the defence within the time frame of eight months authorised for the defence’s presentation of evidence.”<sup>10</sup>
3. On 14 August 2012, the defence commenced its presentation of evidence by calling Witness D04-53.<sup>11</sup> During the remainder of 2012 the defence presented the testimony of a total of 14 witnesses. These were witnesses D04-53, D04-59, D04-60, D04-65, D04-07, D04-50, D04-57, D04-64, D04-51, D04-55, D04-48, D04-49, D04-16 and D04-66. Witnesses D04-66 concluded his testimony on 4 December 2012.<sup>12</sup> The Chamber notes that Witness D04-07 did not conclude

<sup>6</sup> Decision on the “Third Defence Submissions on the Presentation of its Evidence”, 6 July 2012, ICC-01/05-01/08-2242-Conf-Exp, a public redacted version of this decision was filed on 28 September 2012, ICC-01/05-01/08-2242-Red.

<sup>7</sup> ICC-01/05-01/08-2242-Red, paragraph 17.

<sup>8</sup> ICC-01/05-01/08-2242-Red, paragraphs 21-22 and 31(iii).

<sup>9</sup> *Ibid.*

<sup>10</sup> ICC-01/05-01/08-2242-Red, paragraphs 24-25 and 31(iv).

<sup>11</sup> Transcript of hearing of 14 August 2012, ICC-01/05-01/08-T-229-CONF-ENG CT.

<sup>12</sup> Transcript of hearing of 4 December 2012, ICC-01/05-01/08-T-281-CONF-ENG CT.

his testimony, leaving his accommodation in The Hague for an unknown destination, and the witness expected to testify after him, Witness D04-11, did not board the plane expected to take him to the seat of the Court, although it had been arranged and paid for by the Court.<sup>13</sup> During 2012, the Chamber issued six oral decisions to alter the order of appearance of witnesses at the request of the defence,<sup>14</sup> and convened four status conferences to discuss issues related to the defence's presentation of evidence.<sup>15</sup> Upon the conclusion of Witness D04-66's testimony, the Presiding Judge noted: "unfortunately we still don't have any information about the next witness to come".<sup>16</sup> No more witnesses were brought to testify before the start of the winter recess in 2012.

4. On 21 September 2012, the Chamber gave notice to the parties and participants that pursuant to Regulation 55(2) of the Regulations of the Court ("Regulations"), after having heard all the evidence, the Chamber might modify the legal characterisation of the facts ("Regulation 55 notification").<sup>17</sup> On 13 December 2012, the Chamber issued its "Decision on the temporary suspension of the proceedings pursuant to Regulation 55(2) of the Regulations of the Court and related procedural deadlines",<sup>18</sup> in which, taking into

<sup>13</sup> Transcript of hearing of 2 November 2012, ICC-01/05-01/08-T-252-ENG ET WT, page 4 line 6 to page 5 line 13.

<sup>14</sup> Transcript of hearing of 24 September 2012, ICC-01/05-01/08-T-251-CONF-ENG ET, page 4 line 25 to page 5 line 2; transcript of hearing of 2 October 2012, ICC-01/05-01/08-T-253-CONF-EXP-ENG ET, page 24 lines 11-12; transcript of hearing of 15 October 2012, ICC-01/05-01/08-T-254-CONF-ENG ET, page 2 line 9 to page 4 line 6; transcript of hearing of 8 November 2012, ICC-01/05-01/08-T-269-CONF-ENG ET, page 2 lines 3-20; transcript of hearing of 20 November 2012, ICC-01/05-01/08-T-271-CONF-ENG ET, page 62 line 15 to page 63 line 17; transcript of hearing of 3 December 2012, ICC-01/05-01/08-T-280-CONF-ENG ET, page 1 line 25 to page 3 line 4.

<sup>15</sup> *Ex parte*, prosecution, defence, Registry, CSS and VWU status conference transcript of hearing of 11 September 2012, ICC-01/05-01/08-T-241-CONF-EXP-ENG ET; public status conference, ICC-01/05-01/08-T-252-ENG ET WT; *ex parte*, defence and Registry only status conference, ICC-01/05-01/08-T-253-CONF-EXP-ENG ET; *ex parte*, defence and Registry only status conference, transcript of hearing of 11 December 2012, ICC-01/05-01/08-T-282-CONF-EXP-ENG ET.

<sup>16</sup> Transcript of hearing of 4 December 2012, ICC-01/05-01/08-T-281-CONF-ENG ET, page 15 line 22 to page 16 line 4. On the previous day, the Chamber ordered the defence and the VWU to do its utmost and take all measures to ensure that more witnesses were to be brought before the winter recess, *see* ICC-01/05-01/08-T-280-CONF-ENG ET, page 1 line 25 to page 3 line 4.

<sup>17</sup> Decision giving notice to the parties and participants that the legal characterization of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court, 21 September 2012, ICC-01/05-01/08-2324.

<sup>18</sup> Decision on the temporary suspension of the proceedings pursuant to Regulation 55(2) of the Regulations of the Court and related procedural deadlines, 13 December 2012, ICC-01/05-01/08-2480.

account the submissions of the parties and participants on the possible impact of the Regulation 55 notification,<sup>19</sup> it temporarily suspended the proceedings until 4 March 2013, in order to provide the accused with adequate time to effectively prepare his defence.<sup>20</sup> On 6 February 2013, pursuant to a defence motion to vacate the suspension,<sup>21</sup> the Chamber lifted the temporary suspension of the proceedings and ordered that the defence continue with the presentation of its evidence as soon as practicable.<sup>22</sup>

5. At an *ex parte* defence and Registry only status conference, held on 11 February 2013 in order to discuss the defence's planning for the continued presentation of its evidence,<sup>23</sup> the Chamber reminded the defence of its intention to adhere to its decision that the presentation of evidence by the defence not exceed the granted total of 230 hours, to be completed within a time frame of eight months.<sup>24</sup> That notwithstanding, the Chamber stressed that the suspension due to the Regulation 55 notification, and any periods during which hearings were cancelled for reasons not attributable to the non-availability of witnesses, would be discounted from this calculation, leaving

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<sup>19</sup> Prosecution's Submission on the Procedural Impacts of Trial Chamber's Notification pursuant to Regulation 55(2) of the Regulations of the Court, 8 October 2012, ICC-01/05-01/08-2334; Observations du Représentant légal Maître Zarambaud Assingambi sur la décision de la Chambre de première instance III du 21 septembre 2012 signalant aux parties et aux participants que la qualification juridique des faits pourrait faire l'objet de modification, conformément à la norme 55-2 du Règlement de la Cour (ICC-01/05-01/08), 3 October 2012, ICC-01/05-01/08-2328-Conf; Observations de la Représentante légale de victimes sur la décision de la Chambre de première instance III du 21 septembre 2012, 8 October 2012, ICC-01/05-01/08-2335-Conf; Defence Submissions on the Trial Chamber's Notification under Regulation 55(2) of the Regulations of the Court, 18 October 2012, ICC-01/05-01/08-2365-Conf, a public redacted version of this document was filed on the same day; and Defence further submission on the notification under Regulation 55(2) of the Regulations of the Court and Motion for notice of material facts and circumstances underlying the proposed amended charge, 30 November 2012, ICC-01/05-01/08-2451-Conf-Exp, a public redacted version of this document was filed on the same day, ICC-01/05-01/08-2451-Red and confidential *ex parte* defence only Annex A ICC-01/05-01/08-2451-Conf-Exp-AnxA.

<sup>20</sup> ICC-01/05-01/08-2480, paragraphs 13-15.

<sup>21</sup> Defence Motion to Vacate Trial Chamber's "Decision on the temporary suspension of the proceedings" of 13 December 2012 and Notification Regarding the Envisaged Re-Qualification of Charges Pursuant to Regulation 55, 28 January 2013, ICC-01/05-01/08-2490-Conf, a public redacted version of this document was filed on the same day ICC-01/05-01/08-2490-Red.

<sup>22</sup> Decision lifting the temporary suspension of the trial proceedings and addressing additional issues raised in defence submissions ICC-01/05-01/09-2490-Red and ICC-01/05-01/08-2497, 6 February 2013, ICC-01/05-01/08-2500, paragraph 34(i) and (ii).

<sup>23</sup> Transcript of hearing of 11 February 2013, ICC-01/05-01/08-T-283-CONF-EXP-ENG ET, page 2 line 23 to page 3 line 3.

<sup>24</sup> ICC-01/05-01/08-T-283-CONF-EXP-ENG ET, page 5 line 20 to page 6 line 3.

the defence – at that time – with roughly 17 weeks to complete its presentation of evidence.<sup>25</sup>

6. On 25 February 2013, the defence resumed its presentation of evidence by calling Witness D04-19.<sup>26</sup> Following Witness D04-19, the defence presented the testimony of Witnesses D04-45, D04-21 and D04-39. Witness D04-39 concluded his testimony on 24 April 2013.<sup>27</sup> During this time six oral decisions were taken in order to alter the order of appearance of witnesses at the request of the defence.<sup>28</sup> As no other witnesses were available to appear before the Chamber immediately following the testimony of Witness D04-39, the Presiding Judge stated that the “parties and participants will be informed in due time about when and at what time the Chamber will resume for the testimony of the next defence witness.”<sup>29</sup> During the month of May 2013, only one witness – Witness D04-56 – provided testimony before the Chamber, from 7 to 13 May 2013.<sup>30</sup>
  
7. At a public status conference held on 3 May 2013 in order to address the continuation of the presentation of evidence by the defence, the Chamber reiterated its intention to adhere to its decision that the defence’s presentation of evidence may not exceed eight months and noted that the defence “should be in a position to conclude the presentation of its evidence by approximately 19 July 2013, unless due to compelling reasons the Chamber decides

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<sup>25</sup> ICC-01/05-01/08-T-283-CONF-EXP-ENG ET, page 6 lines 4-13.

<sup>26</sup> Transcript of hearing of 25 February 2013, ICC-01/05-01/08-T-284-CONF-ENG ET.

<sup>27</sup> Transcript of hearing of 24 April 2013, ICC-01/05-01/08-T-310-CONF-ENG ET.

<sup>28</sup> Transcript of hearing of 1 March 2013, ICC-01/05-01/08-T-288-CONF-ENG ET, page 1 line 23 to page 2 line 15; transcript of hearing of 13 March 2013, ICC-01/05-01/08-T-293-CONF-ENG ET, page 28 lines 1-24; transcript of hearing of 15 March 2013, ICC-01/05-01/08-T-295-CONF-ENG ET, page 24 line 17 to page 26 line 6; transcript of hearing of 20 March 2013, ICC-01/05-01/08-T-298-CONF-ENG ET, page 2 line 4 to page 3 line 18; transcript of hearing of 10 April 2013, ICC-01/05-01/08-T-304-CONF-ENG ET, page 69 lines 4-20; transcript of hearing of 12 April 2013, ICC-01/05-01/08-T-306-CONF-ENG ET, page 61 line 23 to page 62 line 12.

<sup>29</sup>, ICC-01/05-01/08-T-310-CONF-ENG ET, page 42 lines 6-8.

<sup>30</sup> Transcript of hearing of 7 May 2013, ICC-01/05-01/08-T-313-CONF-ENG ET to transcript of hearing of 13 May 2013, ICC-01/05-01/08-T-316.

otherwise.”<sup>31</sup> The Chamber stressed once more that the defence should bear in mind this timeframe when planning the continuation of its presentation of evidence, in order to avoid unnecessary delays or gaps in the proceedings.<sup>32</sup> The Chamber further stressed that it would not allow the trial to continue indefinitely due to the unavailability of defence witnesses and suggested once again that the defence carefully review its list of witnesses with a view to avoiding irrelevant and repetitive testimony and ensuring that the witnesses called were indeed available and willing to testify without conditions.<sup>33</sup>

8. On 10 May 2013, the defence filed its “Defence Submission on the remaining Defence witnesses”.<sup>34</sup> Despite the foregoing, the defence affirmed that “the order of presentation of witnesses during the Defence case has remained in the hands of the Chamber”,<sup>35</sup> and submitted that the ongoing obstacles to the presentation of its evidence were caused by the non-cooperation of the three countries in which the witnesses were located.<sup>36</sup> In addition, in the same filing the defence notified the Chamber of its intention not to call 13 witnesses from its list.<sup>37</sup>
  
9. On 14 May 2013, following the Chamber’s instruction,<sup>38</sup> the defence filed a tentative proposed order of appearance of witnesses to follow Witness D04-56.<sup>39</sup> According to this tentative proposal, the testimony of Witness D04-13 was to commence on 21 May 2013 and to be followed by that of Witnesses D04-18, D04-04, D04-03 and D04-02. The defence affirmed that these witnesses were willing and available to testify but observed that several obstacles in the

<sup>31</sup> Transcript of hearing of 3 May 2013, ICC-01/05-01/08-T-311-CONF-ENG ET, page 30 line 11 to page 31 line 2.

<sup>32</sup> ICC-01/05-01/08-T-311-CONF-ENG ET, page 31 lines 3-6.

<sup>33</sup> ICC-01/05-01/08-T-311-CONF-ENG ET, page 31 lines 7-12.

<sup>34</sup> Defence submissions on the remaining Defence witnesses, 10 May 2013, ICC-01/05-01/08-2624.

<sup>35</sup> ICC-01/05-01/08-2624, paragraph 4.

<sup>36</sup> ICC-01/05-01/08-2624, paragraph 6.

<sup>37</sup> ICC-01/05-01/08-2624, paragraph 16. The witnesses the defence decided not to call are witnesses D04-40, D04-63, D04-67, D04-46, D04-61, D04-12, D04-62, D04-20, D04-43, D04-42, D04-47, D04-28 and D04-23.

<sup>38</sup> Transcript of hearing of 13 May 2013, ICC-01/05-01/08-T-316-CONF-ENG ET, page 54 line 21 to page 56 line 13.

<sup>39</sup> Defence Submissions on the Order of Witnesses, 14 May 2013, ICC-01/05-01/08-2628,



three countries where the witnesses were located left the defence “unable to provide with any accuracy a schedule of upcoming witnesses.”<sup>40</sup> On 15 May 2013, the Chamber issued its “Decision on the order of appearance of witnesses to be called by the defence following Witness D04-56”,<sup>41</sup> in which it approved the order of appearance proposed by the defence, but noted with regret that it would entail a gap of one week.<sup>42</sup>

10. On 28 May 2013, after Witnesses D04-13 and D04-18 had failed to appear as scheduled, the defence filed a further submission on the order of its witnesses, in which it submitted that the witnesses had not appeared due to the “ongoing failure of the authorities of Country 1 to provide authorisation”.<sup>43</sup> However, based upon “other considerations of efficiency and strategic assessments made on the part of the Defence” it requested authorisation from the Chamber to amend the order of appearance, so as to start with the testimony of Witness D04-02 on 3 June 2013, to be followed by that of Witnesses D04-04 and D04-03.<sup>44</sup> On 30 May 2013, the defence filed a further request,<sup>45</sup> proposing a new order of appearance of witnesses starting with the testimony of Witness D04-18 on 4 June 2013, to be followed by that of Witnesses D04-02, D04-09, D04-03, D04-04 and D04-06.<sup>46</sup> In addition, the defence informed the Chamber that, due to security concerns, it no longer intended to call Witness D04-08.<sup>47</sup>

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<sup>40</sup> ICC-01/05/01/08-2628, paragraph 11.

<sup>41</sup> Decision on the order of appearance of witnesses to be called by the defence following Witness D04-56, 15 May 2013, ICC-01/05-01/08-2630.

<sup>42</sup> ICC-01/05-01/08-2630, paragraphs 6-7.

<sup>43</sup> Further Defence Submissions on the Order of Witnesses, 28 May 2013, ICC-01/05-01/08-2638, paragraph 8.

<sup>44</sup> *Ibid.*

<sup>45</sup> Second Further Revised Defence Submission on the Order of Witnesses, 30 May 2013, ICC-01/05-01/08-2644.

<sup>46</sup> ICC-01/05-01/08-2644, paragraph 4.

<sup>47</sup> ICC-01/05-01/08-2644, paragraph 6.

11. On 31 May 2013, the Chamber issued a further decision,<sup>48</sup> in which, while regretting the gap in the proceedings following the completion of the testimony of Witness D04-56, it approved the revised order of appearance of witnesses proposed by the defence.<sup>49</sup> In addition, the Chamber ordered that the testimony of Witnesses D04-02, D04-09, D04-03, D04-04 and D04-06 be given *viva voce* by means of video technology and decided that, in order to hear the testimony of the witnesses included in the defence's revised order of appearance, the Chamber would sit for extended hours, that is to say six hours per day instead of four.<sup>50</sup>
12. On 5 June 2013, the defence resumed its presentation of evidence and, during the month of June 2013, presented the testimony of Witnesses D04-18, D04-02, D04-09, D04-03, D04-04 and D04-06. Witness D04-06 concluded his testimony on 25 June 2013. On 21 June 2013, in reply to a request by the Chamber,<sup>51</sup> the defence informed the Chamber by email that the next witness who would be able to testify following the completion of the testimony of Witness D04-06 would be Witness D04-15, who could commence his testimony on 8 July 2013 at the earliest. In addition, the defence informed the Chamber that, due to security concerns, it had decided not to call Witness D04-17.<sup>52</sup>
13. By decisions of 20 and 25 June 2013, the Chamber convened a public status conference to be held on 27 June 2013, in order to address issues relating to the timeline for the conclusion of the presentation of evidence by the defence and, in due course, the closing of the case.<sup>53</sup> The issues to be discussed during the status conference were: (i) the timeline for the completion of the defence's

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<sup>48</sup> Decision on the "Second Further Revised Defence Submissions on the Order of Witnesses" (ICC-01/05-01/08-2644) and on the appearance of Witnesses D04-02, D04-09, D04-03, D04-04 and D04-06 via video-link, 31 May 2013, ICC-01/05-01/08-2646.

<sup>49</sup> ICC-01/05-01/08-2646, paragraphs 6 and 13.

<sup>50</sup> ICC-01/05-01/08-2646, paragraphs 8-13.

<sup>51</sup> Email of 20 June 2013 at 17.02 from the Chamber's Associate Legal Officer to the defence team.

<sup>52</sup> Email of 21 June at 15.58 from the Legal Assistant of Mr Jean-Pierre Bemba to the Chamber's Associate Legal Officer.

<sup>53</sup> Order convening a status conference, 20 June 2013, ICC-01/05-01/08-2706 and Order rescheduling a status conference, 25 June 2013, ICC-01/05-01/08-2713.

presentation of evidence and the justifications, if any, for extending the deadline of 19 July 2013; (ii) the timeline for the submission of closing briefs by the parties and participants and the presentation of oral closing statements following the conclusion of the presentation of evidence; (iii) the language to be used by the parties and participants in their closing briefs; and (iv) court calendar and scheduling issues, including sitting hours.<sup>54</sup>

14. At the status conference held on 27 June 2013 (“27 June Status Conference”),<sup>55</sup> the defence stressed that by removing witnesses from its list it was “contributing to the streamlining of Defence evidence and to fully cooperating with VWU in order to ensure efficiency in the presentation of evidence.”<sup>56</sup> After setting out the difficulties it was facing in relation to the appearance of the remaining witnesses, located in two countries, the defence submitted that the witnesses located in Country 2 were “absolutely crucial for the Defence case in relation to their evidence in support of Mr Jean-Pierre Bemba”.<sup>57</sup> As such, allowing these witnesses to testify provided “a clear justification for extending the presentation of its defence case beyond the initially set date of 19 July 2013.”<sup>58</sup> The defence further submitted that “going by previous experience with witnesses, we therefore believe that from 19 August 2013 we might need an additional two months to be in a position to conclusively hear the Defence witnesses’ testimonies.”<sup>59</sup> It stressed that the proposed timeframe was “subject to the activities of the competent technical services of the Registry”.<sup>60</sup> In addition, the defence observed that after hearing the witnesses located in Country 2 “all crucial witnesses will have been heard and will have given their testimony”,<sup>61</sup> therefore “once these witnesses have

<sup>54</sup> ICC-01/05-01/08-2706, letter c).

<sup>55</sup> Transcript of hearing of 27 June 2013, ICC-01/05-01/08-T-331-CONF-ENG ET.

<sup>56</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 5 lines 2-4.

<sup>57</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 5 lines 21-22.

<sup>58</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 6 lines 1-2.

<sup>59</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 6 lines 23-25.

<sup>60</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 16 lines 17-20.

<sup>61</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 36 lines 19-20.

given their testimony, our minds will be at ease because we can say to ourselves, well, at least all the crucial witnesses have given testimony. After that we will be flexible and realistic.”<sup>62</sup> The Office of the Prosecutor (“prosecution”) and the legal representatives of victims agreed that 2 months was a reasonable timeframe.<sup>63</sup>

15. In relation to the specific witnesses included in the defence’s list who were still to appear, the defence informed the Chamber of its intention not to call Witnesses D04-13, D04-11 and D04-52.<sup>64</sup> In relation to Witness D04-07, who began but did not conclude his testimony, the defence initially stated its intention to drop the witness from its list. However, it later retracted this submission and asked the Chamber to consider Witness D04-07’s testimony as completed, given that he had concluded his testimony in relation to the defence’s and prosecution’s questioning (though not in relation to questioning by the Legal Representative of Victims).<sup>65</sup> The Chamber requested the defence to file a written request to this effect.<sup>66</sup> As for Witness D04-13, the defence extensively discussed the reasons underlying its decision to withdraw him from the defence list of witnesses, submitting that the defence had concerns relating to the witness’s security and that the witness had been subject to mistreatment and pressure in the country in which he was residing.<sup>67</sup> However, the representative of the VWU indicated that, after speaking with the witness, it appeared that the events described by the defence had not actually occurred,<sup>68</sup> and that the witness was ready to travel to The Hague to testify, that he had a visa, and that he did not express any special security concerns in relation to his appearance before the Court.<sup>69</sup> In relation to the

<sup>62</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 37 lines 4-7.

<sup>63</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 16 lines 3-8 and lines 11-13.

<sup>64</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 24 lines 11-12 and page 28 lines 5-7.

<sup>65</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 28 line 5 and page 56 lines 1-12.

<sup>66</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 56 line 22 to page 57 line 1.

<sup>67</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 24 line 12 to page 27 line 4.

<sup>68</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 27 lines 15-16.

<sup>69</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 21 lines 11-15 and page 27 lines 13-25.

witnesses located in Country 2, the VWU stressed that it had twice requested that the defence organise an introduction by way of telephone, but that all meetings were cancelled by the defence. The next meeting was expected to take place on 1 July and the VWU expected the defence to introduce all their witnesses in order to facilitate preparation for their testimony.<sup>70</sup> The defence pledged that the introduction to the VWU of the witnesses located in Country 2 would take place by telephone on 1 July 2013.<sup>71</sup>

16. In relation to the timeline for the preparation of closing briefs, the prosecution recalled the time periods granted in the *Lubanga* and *Katanga* cases, and, taking into account the complexity of the *Bemba* case, requested that it be granted a 15-weeks period for the submission of its closing briefs, after the completion of the testimony of the last witness in the case.<sup>72</sup> In addition, again taking into account the complexity of the case and the number of witnesses presented, the prosecution requested a limit of 400 pages for its closing brief.<sup>73</sup> The prosecution further stated that its closing brief would be submitted in English and that it was ready to cooperate with the Registry in matters of translation.<sup>74</sup> The prosecution also asked to be granted the opportunity to respond to the defence's brief, in writing, within a timeframe of three weeks,<sup>75</sup> and with a limit of 75 pages.<sup>76</sup> In relation to its oral closing statement, the prosecution requested 3 hours and specified that it would present its oral closing statement in French.<sup>77</sup> The legal representatives of victims indicated that they intend to submit their final written submissions within the same timeframe as the prosecution.<sup>78</sup> The legal representatives submitted that they

<sup>70</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 22 lines 4-19.

<sup>71</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 39 line 17.

<sup>72</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 45 line 19 to page 46 line 17.

<sup>73</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 47 lines 10-24.

<sup>74</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 46 lines 18-21.

<sup>75</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 48 lines 6-8.

<sup>76</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 51 lines 17-18.

<sup>77</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 48 lines 10-14.

<sup>78</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 50 lines 16-17.

needed more than 150 pages for their submissions,<sup>79</sup> which would be filed in French.<sup>80</sup> A representative of the Registry stated that it was not advisable to support the practice of the Registry having to translate closing briefs in two or three weeks, as had been done in the *Lubanga* and *Katanga* cases, as this implied “translators work day and night in order to finish”.<sup>81</sup>

17. The defence submitted that it would file its closing brief in English.<sup>82</sup> Although deferring to the wisdom of the Court, the defence argued that if the prosecution was to be granted 15 weeks in which to prepare its closing brief, the defence would also request 15 weeks.<sup>83</sup> In addition, the defence requested that the time-limit within which it must submit its closing brief should start running upon the defence’s receipt of a French translation of the prosecution’s brief.<sup>84</sup> The defence requested a limit of 500 pages for its closing brief,<sup>85</sup> and requested 3 hours for its oral closing statement.<sup>86</sup>

18. In relation to potential sitting hours after the summer recess, the defence submitted that most of the remaining witnesses were victims who were either vulnerable or in poor health. As a result, mindful of the welfare of the witnesses, the defence submitted that these witnesses should not be subject to more than two sessions of two hours per day. In addition, the defence argued that the prosecution witnesses were not subject to six hours of examination per day and that to subject the witnesses called by the accused to extended sitting hours would infringe Mr Bemba’s right to examine witnesses on his behalf under the same conditions as those against him, as provided by Article

<sup>79</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 55 lines 6-8.

<sup>80</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 55 line 16.

<sup>81</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 53 line 19 to page 54 line 1.

<sup>82</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 45 line 9.

<sup>83</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 49 lines 5-6.

<sup>84</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 45 lines 14-17.

<sup>85</sup> Email of 28 June at 15.12 from the Legal Assistant of Mr Jean-Pierre Bemba to the Chamber’s Associate Legal Officer.

<sup>86</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 49 lines 20-12.

67(1)(e) of the Rome Statute (“Statute”).<sup>87</sup> For its part, the prosecution indicated its willingness to continue sitting for extended hours and submitted that it should be for the VWU to assess whether the witnesses could testify for six hours per day. In addition, the prosecution suggested that one witness could testify in the morning and a different one in the afternoon, as was the practice of this Chamber with some witnesses during the month of June 2013. In this way, the prosecution argued, the trial could proceed expeditiously while safeguarding the welfare of the witnesses.<sup>88</sup> The representative of the Registry confirmed that the Registry was prepared to provide for extended sitting hours of six hours of court hearing per day as of 19 August 2013.<sup>89</sup>

19. On 5 July 2013, the Registry filed a Report,<sup>90</sup> in which indicated that, of the 13 witnesses residing in Country 2, who were expected to be introduced to the VWU by phone on 1 July 2013, the defence was only able to locate and introduce five of the witnesses. On 10 July 2013,<sup>91</sup> the defence responded to the Registry’s Report indicating that it continues to work towards ensuring that the introductory meetings are completed as soon as possible and that a further meeting at a time that was mutually convenient already had been scheduled with the VWU for 12 July 2013.<sup>92</sup>

20. On 3 July 2013 the Chamber issued its “Order on the schedule and conditions of the testimony of Witness D04-15”,<sup>93</sup> in which it decided that the testimony of Witness D04-15 would be given *viva voce* before the Chamber by means of video technology.<sup>94</sup> Taking into account the medical reasons and logistical

<sup>87</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 7 lines 1-13.

<sup>88</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 14 lines 3-21.

<sup>89</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 40 lines 3-4.

<sup>90</sup> ICC-01/05-01/08-2726-Conf-Exp.

<sup>91</sup> ICC-01/05-01/08-2728-Conf-Exp.

<sup>92</sup> To the extent that the present Decision refers to the content of *ex parte* filings, it does so in light of the principle of publicity of the proceedings enshrined in Articles 64(7) and 67(1) of the Statute, and because the Chamber considers that the information concerned does not warrant *ex parte* treatment at this time.

<sup>93</sup> Order on the schedule and conditions of the testimony of Witness D04-15, 3 July 2013, ICC-01/05-01/08-2723.

<sup>94</sup> ICC-01/05-01/08-2723, paragraph 13.

difficulties that impeded the witness from starting his testimony earlier, the Chamber ordered that the testimony of the witness start on 15 July 2013.<sup>95</sup> In addition, in order to conclude Witness D04-15's testimony before the summer recess, and considering that the Chamber was not able to sit on 18 and 19 July 2013, it decided to sit, with extended sitting hours, on 15, 16 and 17 July 2013, in spite of 17 July 2013 being an official holiday of the Court.<sup>96</sup> Surprisingly, on 12 July 2013 at 15.14, the VWU transmitted to the Chamber a communication from the defence informing that the witness was not available to provide testimony on 15, 16 and 17 July 2013, due to personal engagements.<sup>97</sup>

## II. Analysis

21. For the purpose of the present Decision, the Chamber has considered, in accordance with Article 21(1) of the Statute, Articles 64(2) and 67(1)(c), (e) and (f) of the Statute, Rules 101 and 141 of the Rules of Procedure and Evidence ("Rules") and Regulations 24, 34, 36, 37, 40, 43 and 54 of the Regulations of the Court, and Regulation 61 of the Regulations of the Registry.

### *Timeline for the completion of the defence's presentation of evidence and sitting hours*

22. Taking into account the manner in which the presentation of evidence by the defence has proceeded to date, and considering the parties' submissions at the 27 June Status Conference, the Chamber is of the view that the defence should be prepared to conclude its presentation of evidence by 25 October 2013, at the latest.

<sup>95</sup> ICC-01.05-01/08-2723, paragraphs 11 and 13.

<sup>96</sup> Ibid..

<sup>97</sup> Email of 12 July at 15.14 from the VWU to the Chamber's Associate Legal Officer.



23. In order to facilitate the completion of the presentation of evidence by the defence by the above deadline, ensure that the trial is fair and expeditious, and guarantee the accused's rights to be tried without undue delay, the Chamber decides that it will sit for extended hours, i.e. six hours per day, until the completion of the defence's presentation of evidence. The Chamber is mindful that six hours of testimony per day may be too demanding for certain witnesses. In this respect, the Chamber is willing, where appropriate, to alternate the testimony of certain witnesses, i.e. to hear one witness during the morning sessions and another witness in the afternoon session. However, the Chamber's determination as to whether such a course of action is necessary and appropriate will be based upon the assessment and recommendations of the VWU.

24. The Chamber notes that the prosecution took approximately 16 months to present its evidence, including judicial recesses and gaps due to, *inter alia*, difficulties in the scheduling of witnesses.<sup>98</sup> As described above, the defence began its presentation of evidence on 14 August 2012 and will have until 25 October 2013 to complete it, thus giving it a total of approximately 14 months. Although these 14 months will have included two months of suspension in the proceedings due to the Regulation 55 notification, the Chamber has sat extended hours during June and July 2013 and will continue doing so from August to October 2013. Therefore, the Chamber considers that the total time granted to the defence for the presentation of its evidence will now roughly "mirror that taken by the Prosecution to present its case."<sup>99</sup>

<sup>98</sup> ICC-01/05-01/08-2225, paragraph 9.

<sup>99</sup> As expected by the defence, *see* Defence observations pursuant to the Chamber's order postponing the status conference, 5 March 2012, ICC-01/05-01/08-2152-Conf-Exp. A confidential redacted version of this document was filed on the same day, ICC-01/05-01/08-2152-Conf-Red, paragraph 12. In addition, it should be noted that the 230 hours within a timeframe of 8 months originally granted by Decisions 2225 and 2242 was based upon the time requested for questioning the defence's list of approved witnesses. Given that the defence has since then withdrawn 18 witnesses from this list, it was the Chamber's understanding that the total time for questioning witnesses by the defence has also been reduced to a total 170 hours – the time requested for questioning the witnesses who have remained in the list – and not the total of 230 hours, as the defence claims. *See, inter alia*, ICC-01/05-01/08-T-331-CONF-ENG ET, page 4 lines 17-22.

25. The Chamber stresses once more that the defence bears the responsibility for the presentation of its evidence and should take all reasonable measures to avoid gaps in the proceedings.<sup>100</sup> As the Chamber as previously held:

The party wishing to submit evidence by way of a witness's oral testimony is the sole entity responsible for contacting the witness concerned, obtaining his or her voluntary consent to testify and proposing to the Chamber a feasible schedule for the appearance of witnesses, taking into account all necessary arrangements that may need to be implemented – with the support of the Registry and the VWU – in order to enable the witnesses to appear to testify before the Court.<sup>101</sup>

In this regard, the Chamber underlines that it does not accept the apparent defence submission that the Registry and in particular to the VWU are responsible for the delays which occurred. The Chamber recalls that on 6 July 2012, in its Decision 2242, it ordered the defence to begin the preparation phase regarding the handover of its witnesses to the care of the VWU.<sup>102</sup> However, it appears that one year later this has not occurred in relation to certain witnesses. The Chamber stresses that, in the event that the defence is unable to locate its remaining witnesses sufficiently in advance of their scheduled appearance before the Court so as to allow the VWU to make the necessary arrangements to facilitate their testimony,<sup>103</sup> the Chamber may consider such witnesses as not being available to testify in this case.

*Issues related to the closing of the case*

26. Although the Chamber does not exclude the possibility that it may call witnesses after the conclusion of the presentation of evidence by the defence, pursuant to Articles 64(6)(d) and 69(3) of the Statute, the Chamber considers that, in order to facilitate the parties' and participants' preparation, it would be preferable to determine the modalities of the presentation of closing briefs in this case in the present Decision.

<sup>100</sup> ICC-01/05-01/08-2500, paragraph 25.

<sup>101</sup> ICC-01/05-01/08-2500, paragraph 23.

<sup>102</sup> ICC-01/05-01/08-2242-Red, paragraphs 24-26.

<sup>103</sup> ICC-01/05-01/08-2500, paragraph 24.

27. In relation to the time to be granted to the parties and participants for the filing of their closing briefs, the Chamber acknowledges the submissions made by all parties and participants at the 27 June Status Conference, in particular those related to the complexity of the case in terms of the scope of the charges and the volume of evidence presented. Taking into account these submissions, as well as the Chamber's obligation to ensure that the trial is fair and expeditious, the Chamber is of the view that the prosecution and the legal representatives of victims should be in a position to file their respective closing briefs within eight weeks of the date on which the Presiding Judge declares the presentation of evidence in the case to be closed pursuant to Rule 141 of the Rules.
28. On the issue of the languages of the closing briefs, the Chamber is aware that, although the defence team is able to work in English, French is the language that the accused fully understands and speaks.<sup>104</sup> That notwithstanding, the accused has had the possibility since the pre-trial stage of the case to have a sight interpreter at his disposal who may, pursuant to Regulation 61 of the Regulations of the Registry, assist him in understanding written documents, translating them orally.<sup>105</sup>
29. As to the language of the prosecution's closing brief, the Chamber notes that the prosecution will file its closing brief in English. The Chamber is of the view that, although the accused does not have an absolute right to have *all* documents translated into French, the prosecution's closing brief is a key

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<sup>104</sup> Transcript of hearing of 4 July 2008, ICC-01/05-01/08-T-3ENG ET, page 3 lines 2-6; Transcript of hearing of 8 October 2008, ICC-01/05-01/08-T-7-ENG ET WT, page 11 lines 5-8; Request for Transmission of Pleadings in the Language Chosen by the Suspect, namely French, 7 November 2008, ICC-01/05-01/08-221-tENG.

<sup>105</sup> Decision on the "Defence Application to Obtain the French Version of Certain Filings and Statements", 8 September 2010, ICC-01/05-01/08-879, paragraph 24.

document of the case for which at least a draft translation into French should be provided to the accused.

30. In light of the above and in order to meet the requirements of Article 67(1) of the Statute, the Chamber orders the prosecution to work closely with the Translation and Interpretation Section of the Registry in order to facilitate the production a draft translation of the full prosecution's closing brief within eight weeks of the date of its filing, at the latest. The Chamber orders the Translation and Interpretation Section of the Registry to provide the defence with completed sections of the draft translations on a rolling basis, i.e. as soon as they become available.
31. The Chamber notes that the legal representatives will file their closing briefs in French and is satisfied that this will allow the accused to analyse their submissions in a language that he fully understands and speaks.
32. In order to determine the time to be granted to the defence for the filing of its closing brief, the Chamber has taken the following into account: (i) some members of the defence team are native speakers of English; (ii) the legal representatives of victims will file their closing briefs in French; (iii) a draft translation of the full prosecution's closing brief will be provided by the relevant section of the Registry within eight weeks of the prosecution's filing of its brief, at the latest; and (iv) as has been the case since the Pre-Trial proceedings,<sup>106</sup> the accused has the possibility to have at his permanent disposal an interpreter provided by the Registry in order to facilitate his proper understanding of the issues in the case pending translation.<sup>107</sup> Having considered the above factors, the Chamber is of the view that the defence

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<sup>106</sup> ICC-01/05-01/08-307, paragraph 18.

<sup>107</sup> ICC-01/05-01/08-879, paragraph 24.

should be in a position to file its closing brief within twelve weeks of the filing of the prosecution's and legal representatives' closing briefs.

33. As to the length of the closing briefs, the Chamber decides that neither the prosecution's brief nor defence's brief may exceed 400 pages and the briefs of the legal representatives of victims may not exceed 150 pages each. The total number of pages of the annexes accompanying each brief shall not exceed one-third of the number of pages allocated for the brief. The parties and participants shall strictly comply with the format requirements for documents as set out in Regulation 36 of the Regulations.
34. In relation to the footnotes in the prosecution's closing brief, the Chamber orders that any reference to transcripts of the hearings refer to both French and English transcripts. The defence and the legal representatives of victims may choose to refer to the transcripts of hearings in either English or French; however, in case of discrepancies between the English and French transcripts, the relevant reference to both transcripts shall be provided.
35. With respect to the content of the closing briefs, the Chamber instructs the parties and participants to set out their legal and factual submissions concerning the contextual and specific elements of the war crimes and crimes against humanity charged and the individual criminal responsibility of the accused, on the understanding that they should only focus on the aspects of the case which are in dispute. In this regard, the Chamber orders the defence to clearly indicate where it disputes assertions of fact made in the prosecution's brief.
36. The Chamber decides that the prosecution and the legal representatives of victims will be allocated two weeks to respond to the defence's closing brief, and the defence will be allocated two weeks to reply to the prosecution's

response. Neither the prosecution's response nor defence's reply may exceed 50 pages. The responses by the legal representatives of victims may not exceed 30 pages each. The Chamber orders the prosecution to provide to the defence a full draft translation of its response, at the time of its filing.

37. Final oral submissions will be presented two weeks after the filing of the defence's reply.

### **III. Conclusions**

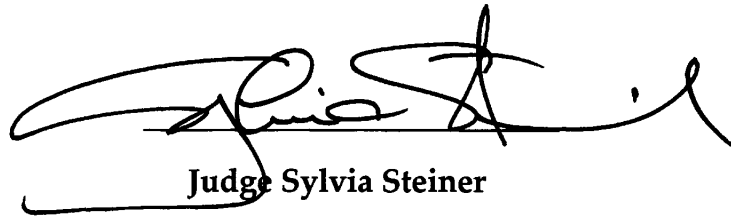
38. For these reasons, the Trial Chamber hereby:

- a. INFORMS the parties and participants that the hearings after the summer recess will resume on 20 August 2013;
- b. ORDERS that the presentation of evidence by the defence be concluded by 25 October 2013, at the latest;
- c. DECIDES that the Chamber will sit in extended sessions of six hours per day, until the completion of the defence's presentation of evidence;
- d. ORDERS the defence to file by 12 August 2013, a proposed order of appearance for the remaining witnesses;
- e. ORDERS the prosecution and the legal representatives of victims to file their respective closing briefs within eight weeks of the date on which the presentation of evidence is formally closed;
- f. ORDERS the prosecution to work closely with the Translation and Interpretation Section of the Registry in order to facilitate the production of a draft translation of the prosecution's closing brief within eight weeks of the date of its filing, at the latest;
- g. ORDERS the Translation and Interpretation Section of the Registry to provide the defence with completed sections of the draft translation on a rolling basis, i.e. as soon as they become available;


- h. ORDERS the Registry to give priority to the translation of the prosecution's closing brief in the *Bemba* case;
- i. ORDERS the defence to file its closing brief within twelve weeks of the filing of the prosecution's and legal representatives' closing briefs;
- j. ORDERS that the prosecution's and defence's briefs may not exceed 400 pages each and that the briefs of the legal representatives of victims may not exceed 150 pages each;
- k. ORDERS that the total number of pages of the annexes accompanying each brief shall not exceed one-third of the number of pages allocated for the brief;
- l. ORDERS the parties and participants to strictly comply with the format requirements for documents as set out in Regulation 36 of the Regulations;
- m. INSTRUCTS the parties and participants to set out in their respective closing briefs their legal and factual submissions concerning the contextual and specific elements of the war crimes and crimes against humanity charged and the individual criminal responsibility of the accused;
- n. DECIDES that the prosecution and the legal representatives of victims will be allocated two weeks to respond to the defence's closing brief, and the defence will be allocated two weeks to reply to the prosecution's and legal representatives' response;
- o. ORDERS the prosecution to provide to the defence a full draft translation of its response, at the time of its filing;
- p. ORDERS that the prosecution's response and defence's reply not exceed 50 pages each;
- q. ORDERS that the legal representatives' response not exceed 30 pages each;

- r. DECIDES that the final oral submissions will be presented two weeks after the filing of the defence's reply.

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



**Judge Sylvia Steiner**



**Judge Joyce Aluoch**



**Judge Kuniko Ozaki**

Dated this 16 July 2013

At The Hague, the Netherlands