

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 15 August 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 the “Submissions on the remaining Defence evidence” and the  
appearance of Witnesses D04-23, D04-26, D04-25, D04-36, D04-29, and D04-  
30 via video-link**

**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**

Ms Paolina Massidda

**The Office of Public Counsel for the Defence**

Mr Xavier-Jean Keïta

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

Mr Patrick Craig

**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 “Submissions on the remaining Defence evidence” and the appearance of Witnesses D04-23, D04-26, D04-25, D04-36, D04-29, and D04-30 via video-link (“Decision”).

## I. Background and Submissions

1. On 16 July 2013, the Chamber issued its “Decision on the timeline for the completion of the defence’s presentation of evidence and issues related to the closing of the case”,<sup>1</sup> in which it, *inter alia*, decided that the presentation of evidence by the Defence for Mr Jean-Pierre Bemba (“defence”) would conclude by 25 October 2013, at the latest, and ordered the defence to file, by 12 August 2013, a proposed order of appearance for the remaining witnesses it intended to call to testify at trial.<sup>2</sup>
  
2. On 12 August 2013, the defence filed its “Submissions on the remaining Defence evidence”,<sup>3</sup> in which it informs the Chamber that it is currently participating in a joint mission with the Registry, the result of which may have an impact on the order and composition of the list of witnesses to be heard prior to the close of the defence case.<sup>4</sup> Although noting that it may seek leave for further amendments,<sup>5</sup> in light of the Chamber’s order, the defence proposes the following list and order of witnesses for the remainder of its presentation of evidence: Witness D04-15; Witness D04-23; Witness D04-26; Witness D04-25; Witness D04-36; Witness D04-29; Witness D04-30; Witness D04-44; Witness D04-14; Witness D04-41; and the accused.<sup>6</sup>

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<sup>1</sup> Decision on the timeline for the completion of defence’s presentation of evidence and issues related to the closing of the case, 16 July 2013, ICC-01/05-01/08-2731.

<sup>2</sup> ICC-01/05-01/08-2731, paragraphs 22 and 36(b) and (d).

<sup>3</sup> Submissions on the remaining Defence evidence, 12 August 2013, ICC-01/05-01/08-2739-Conf.

<sup>4</sup> ICC-01/05-01/08-2739-Conf, paragraph 3.

<sup>5</sup> *Ibid.*

<sup>6</sup> ICC-01/05-01/08-2739-Conf, paragraph 4.

3. Additionally, the defence seeks leave from the Chamber to call Witness D04-23, who was originally included in the defence's list of witnesses but later withdrawn due to the defence's inability to contact him and confirm his availability to appear before the Chamber.<sup>7</sup> The defence submits that Witness D04-23 is an important witness, who can contribute to the establishment of the truth of the events in question, and is in possession of information not previously presented by other witnesses heard in the case.<sup>8</sup> After referring in more detail to the specific role of the witness during the relevant events, the defence argues that his testimony is of utmost relevance to live issues in the case.<sup>9</sup> The defence submits that the re-instatement of Witness D04-23 to its list will not affect the defence's intention or ability to comply with the deadline for the close of its case of 25 October 2013.<sup>10</sup> Lastly, it submits that the Office of the Prosecutor ("prosecution") and the legal representatives of victims have been aware of this witness and his proposed evidence since July 2012, and as such no prejudice would arise from his re-instatement to the defence list.

## II. Analysis and Conclusions

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, 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.
5. As a preliminary matter, the Chamber notes that the present Decision refers to the existence and the content of a number of confidential or ex parte filings or transcripts. This is done in light of the principle of publicity of the

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<sup>7</sup> ICC-01/05-01/08-2739-Conf, paragraphs 5 to 7. *See also* Defence submissions on the remaining Defence witnesses, 10 May 2013, ICC-01/05-01/08-2624, paragraph 16.

<sup>8</sup> ICC-01/05-01/08-2739-Conf, paragraph 7.

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

<sup>10</sup> ICC-01/05-01/08-2739-Conf, paragraph 8

proceedings enshrined in Articles 64(7) and 67(1) of the Statute and because the Chamber considers that the information concerned does not warrant confidential or *ex parte* treatment, as the case may be, at this time.

6. In relation to the defence's request to reinstate Witness D04-23 to its list of witnesses, taking into account the defence's submission that the reinstatement of this witness would not affect the deadline for the close of its case of 25 October 2013 and noting that the prosecution and the legal representatives of victims have been aware of the defence's intention to call this witness and of the issues he is able to testify about since July 2012,<sup>11</sup> the Chamber is satisfied that his re-instatement to the defence's list is appropriate.
7. While regretting that the defence is yet again unable to provide the Chamber with a definitive proposal which would allow the Chamber, the prosecution, and the participants to prepare in the most efficient manner, the Chamber approves the order of appearance of witnesses proposed by the defence, including Witness D04-23, subject to any further amendments.
8. In relation to the mode of appearance of the remaining witnesses to be called by the defence, the Chamber notes that, pursuant to its previous decisions, the testimony of Witnesses D04-15, D04-44, D04-14, and D04-41 shall be given *viva voce* by means of video technology.<sup>12</sup>
9. In relation to the mode of appearance of Witnesses D04-23, D04-26, D04-25, D04-36, D04-29 and D04-30, the Chamber recalls that the term "given in

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<sup>11</sup> See Annex A to the Defence Disclosure of its List of Witnesses and the Factual and Legal Elements of its Case, ICC-01/05-01/08-2243-Conf-AnxA, page 4.

<sup>12</sup> See Decision on measures to facilitate the continued presentation of evidence by the defence, 14 December 2012, ICC-01/05-01/08-2482-Conf-Exp, a public redacted version of this decision was filed on the same day ICC-01/05-01/08-2482-Red, paragraphs 15 and 18 (iii), in which the Chamber decided that the testimony of, *inter alia*, Witnesses D04-44, D04-14 and D04-41 would be given via video-link from an appropriate location; and Order on the schedule and conditions of the testimony of Witness D04-15, 3 July 2013, ICC-01/05-01/08-2723, paragraph 13, in which the Chamber decided that the testimony of Witness D04-15 would be given *viva voce* by means of video technology.

person” used in Article 69(2) of the Statute does not imply that witness testimony shall necessarily, in all circumstances, be given by way of live testimony in court. Instead, the Statute and the Rules give the Court wide discretion 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.<sup>13</sup> Further, pursuant to Rule 67(1) of the Rules, the Chamber may allow a witness to give *viva voce* testimony by means of audio or video technology, provided that such technology permits the witness to be questioned by the defence, the prosecution, and by the Chamber itself, at the time the witness so testifies.

10. 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.<sup>14</sup> 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.<sup>15</sup>

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<sup>13</sup> 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; 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, paragraph 6, a public redacted version of this decision was filed on 3 February 2012, ICC-01/05-01/08-2101-Red2; 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, paragraph 10, a public redacted version of this decision was filed on the same day, ICC-01/05-01/08-947-Red.

<sup>14</sup> Decision on “Defence Motion for authorization to hear the testimony of Witness D-45 via video-link”, 6 March 2013, ICC-01/05-01/08-2525-Conf, paragraph 7, a public redacted version of this decision was filed on 7 March 2013, ICC-01/05-01/08-2525-Red; 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.

<sup>15</sup> ICC-01/05-01/08-2525-Red, paragraph 7.

11. In the present case, the Chamber notes the logistical difficulties relating to witnesses residing in Country 2,<sup>16</sup> including Witnesses D04-23, D04-26, D04-25, D04-36, D04-29 and D04-30, in particular difficulties in bringing them to Europe in order to testify at the seat of the Court.<sup>17</sup> In view of these logistical difficulties, the Chamber is of the view that hearing the testimony of Witnesses D04-23, D04-26, D04-25, D04-36, D04-29 and D04-30 via video-link is an appropriate practical solution. Taking into account that hearing these witnesses in Country 2 via video-link was suggested by the defence itself,<sup>18</sup> the Chamber is satisfied that this option would not be prejudicial to, or inconsistent with, the rights of the accused.
12. In addition, the Chamber notes that in accordance with Rule 67(1) of the Rules, the use of video technology would permit the witnesses to be examined by both parties, the Chamber, and the legal representatives of victims.
13. In light of the above and in order to ensure the efficient presentation of evidence by the defence and the expeditiousness of the trial proceedings, the Chamber hereby:

- (i) APPROVES the reinstatement of Witness D04-23 to the defence's list of witnesses;
- (ii) APPROVES the order of appearance of witnesses proposed by the defence, including Witness D04-23;

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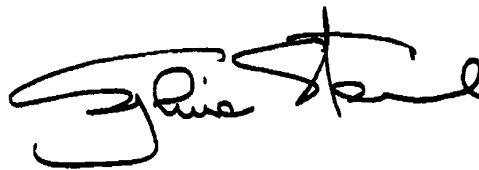
<sup>16</sup> This designation is based on the defence's submissions in the context of the public status conference held on 27 June 2013, ICC-01/05-01/08-T-331-CONF-ENG ET, page 5, line 21.

<sup>17</sup> See, transcript of hearing of 16 April 2013, ICC-01/05-01/08-T-307-CONF-EXP-ENG ET, page 28, line 16 to page 30, line 4; transcript of hearing of 03 May 2013, ICC-01/05-01/08-T-311-CONF-ENG page 26, line 19, to page 27, line 3, and page 28, line 19 to page 29, line 5; transcript of hearing of 03 May 2013, ICC-01/05-01/08-T-312-CONF-EXP-ENG ET, page 11, line 21 to page 12, line 13; and transcript of hearing of 27 June 2013, ICC-01/05-01/08-T-331-CONF-ENG ET, page 5, lines 12 to 13.

<sup>18</sup> ICC-01/05-01/08-T-331-CONF-ENG ET, page 5, lines 15 to 17 and page 16, lines 16 to 19.

- (iii) ORDERS that the testimony of Witnesses D04-23, D04-26, D04-25, D04-36, D04-29 and D04-30 be given viva voce before the Chamber by means of video technology;
- (iv) ORDERS the Registry to make the necessary arrangements to ensure the uninterrupted conduct of the video-link testimony of Witnesses D04-15, D04-23, D04-26, D04-25, D04-36, D04-29, D04-30, D04-44, D04-14, and D04-41, as from 20 August 2013; and
- (v) ORDERS the defence to circulate, by 16.00 on 19 August 2013, an amended monthly witness schedule, setting out the expected dates of testimony and questioning time of the relevant witnesses.

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



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**Judge Sylvia Steiner**



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**Judge Joyce Aluoch**



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**Judge Kuniko Ozaki**

Dated this 15 August 2013

At The Hague, the Netherlands