

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 September 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 defence's "Submissions on the anticipated witness schedule
and the testimony of Witness D04-54" (ICC-01/05-01/08-2806-Conf)**

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

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

Other

Victims Participation and Reparations Section

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on the defence’s “Submissions on the anticipated witness schedule and the testimony of Witness D04-54” (ICC-01/05-01/08-2806-Conf) (“Decision”).

I. Background and Submissions

1. On 6 September 2013, the defence filed its “Defence Submissions as to the current timetable for the completion of its case”,¹ in which it, *inter alia*, (i) informed the Chamber that Witness D04-54 would be available to testify via video-link from 24 September 2013;² and (ii) provisionally scheduled the testimony of Witnesses D04-14, D04-41, and D0-44 for 7, 10, and 14 October 2013 respectively.³
2. On 9 September 2013, by way of an email,⁴ the Chamber instructed the defence to submit a consolidated filing (i) amending the proposed witness schedule taking into account that the Chamber will not sit between 23 and 27 September 2013; and (ii) providing further justifications supporting the defence’s request to hear Witness D04-54 via video-link.
3. On 12 September 2013, the defence filed its “Submissions on the anticipated witness schedule and the testimony of Witness D04-54” (“Defence Submissions”).⁵ Concerning the amended witness schedule, the defence submits that Witness D04-54 is available to commence his testimony on 30

¹ Defence Submissions as to the current timetable for the completion of its case, 6 September 2013, ICC-01/05-01/08-2796.

² ICC-01/05-01/08- 2796, paragraph 2.

³ ICC-01/05-01/08- 2796, paragraph 3.

⁴ Email from the Chamber to the defence of 9 September 2013 at 14.54.

⁵ Submissions on the anticipated witness schedule and the testimony of Witness D04-54, 12 September 2013, ICC-01/05-01/08-2806-Conf.

September 2013⁶ and that “Witnesses D04-14, D04-41 and D04-44 remain provisionally listed to testify between 7 and 14 October [2013]”.⁷

4. As for the request to hear Witness D04-54 via video-link, the defence submits that hearing this witness by means of video-technology is warranted in view of the professional commitments of the witness and in order to ensure the presentation of his evidence before 25 October 2013, the completion date of the defence’s presentation of evidence.

II. Analysis and conclusions

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(2) and (7), 67(1), 68(1) and 69(2) of the Statute, Rule 67 of the Rules of Procedure and Evidence (“Rules”) and Regulations 20, 43 and 54 of the Regulations of the Court.
6. As a preliminary matter, the Chamber notes that the Defence Submissions were filed confidentially. However, as the present Decision does not reveal any information requiring confidential treatment and in the interest of publicity of the proceedings, the Decision is classified as public.

On the amended witness schedule

7. The Chamber notes that the schedule proposed by the defence is consistent with the Chamber’s decision that the defence’s presentation of evidence be completed by 25 October 2013.⁸ However, the Chamber notes that according

⁶ ICC-01/05-01/08-2806-Conf, paragraph 8.

⁷ ICC-01/05-01/08-2806-Conf, paragraph 10.

⁸ Decision on the timeline for the completion of the defence’s presentation of evidence and issues related to the closing of the case, 16 July 2013, ICC-01/05-01/08-2731, paragraphs 22, 24 and 38(b).

to the defence, the dates of appearance of Witnesses D04-14, D04-44, and D04-41 are still “provisional”. In this regard and in order to allow the Office of the Prosecutor, the legal representatives of victims and the Chamber to prepare, the Chamber instructs the defence to circulate by 26 September 2013 an updated schedule in relation to all witnesses to be heard before 25 October 2013.

8. In addition, the Chamber reminds the parties and participants to comply with the applicable deadlines for the submission of comprehensive summaries, applications to question witnesses, and lists of documents in relation to the next witnesses.⁹

On the request to hear Witness D04-54 via video-link

9. 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.¹⁰ 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

⁹ See Corrigendum to Decision on the Participation of Victims in the Trial and on 86 Applications by Victims to Participate in the Proceedings, 12 July 2010, ICC-01/05-01/08-807-Corr, paragraph 102(h); Decision on defence disclosure and related issues, 24 February 2012, ICC-01/05-01/08-2141, paragraph 21(a) and (b); Public redacted version of “Decision on measures to facilitate the continued presentation of evidence by the defence”, 14 December 2012, ICC-01/05-01/04-2482-Red, paragraph 17..

¹⁰ 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.

witness to be questioned by the Prosecutor, the defence, and by the Chamber itself, at the time that 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.¹¹ 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.¹²

11. In the present case, the Chamber is satisfied with the defence’s justification related to the witness’s professional commitments and the need to ensure the completion of its presentation of evidence by 25 October 2013.

12. The Chamber further considers that the presentation of Witness D04-54’s testimony by means of video technology will not be prejudicial to, or inconsistent with, the rights of the accused as this was suggested by the defence itself.

13. 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, the Chamber and the legal representatives of victims at the time the witness so testifies.

¹¹ 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.

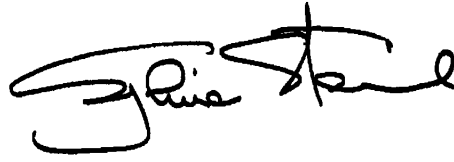
¹² ICC-01/05-01/08-2525-Red, paragraph 7.

III. Conclusion

14. In view of the foregoing, the Chamber:

- a. APPROVES the amended witness schedule;
- b. ORDERS the defence to circulate, by 26 September 2013, an updated schedule in relation to all witnesses to be heard before 25 October 2013;
- c. GRANTS the defence's request that the testimony of Witness D04-54 be given *viva voce* before the Chamber by means of video technology;
- d. ORDERS the Registry to make the necessary arrangements for the conduct of the video-link testimony to start on Monday, 30 September 2013; and
- e. REMINDS the parties and participants to comply with the applicable deadlines for the submission of documents reiterated in paragraph 8 above.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 17 September 2013

At The Hague, the Netherlands