

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 23 October 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 testimony of Witnesses D04-54, D04-14, D04-41 and D04-44

Decision 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

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Patrick Craig

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Other

Victims Participation and Reparations Section

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (the “Bemba case”), issues the following Decision on the testimony of Witnesses D04-54, D04-14, D04-41 and D04-44 (“Decision”).¹

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” (“Decision 2731”),² in which, taking into account numerous difficulties in the defence’s presentation of evidence,³ it ordered, *inter alia*, that “the presentation of evidence by the defence be concluded by 25 October 2013, at the latest.”⁴
2. On 6 September 2013, pursuant to an oral order of the Chamber,⁵ the defence filed its “Defence Submission as to the current timetable for the completion of its case” (“Submission 2796”),⁶ in which, *inter alia*, it informed the Chamber that the remaining witnesses to be called were Witnesses D04-54, D04-14, D04-41, and D04-44 and that it did not currently anticipate calling any further witnesses.⁷

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

² 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.

³ ICC-01/05-01/08-2731, paragraphs 1 to 20.

⁴ ICC-01/05-01/08-2731, paragraph 38(b).

⁵ Transcript of hearing of 3 September 2013, ICC-01/05-08-T-342-CONF-ENG ET, page 32, line 20 to page 34, line 10.

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

⁷ ICC-01/05-01/08-2796, paragraphs 1 to 4.

3. On 18 October 2013, the Chamber issued its “Second decision on issues related to the closing of the case”,⁸ in which, *inter alia*, it noted that all hearings from 13 September 2013 to that date had been cancelled because no defence witnesses had been available to appear before the Chamber.⁹ Consequently, the Chamber expressed its concern that, in spite of the timeframe for the defence to conclude with its presentation of evidence soon coming to an end, there was no concrete information as to the exact dates of appearance of the remaining witnesses.¹⁰ On the same date, upon the defence’s request,¹¹ the Chamber decided to convene an *ex parte* status conference with the defence and representatives of the Registry to be held on 21 October 2013.¹²
4. At the status conference,¹³ while insisting on the relevance of the testimony of the four remaining witnesses,¹⁴ the defence explained that difficulties related to making the necessary arrangements for the witnesses’ appearance before the Chamber made the 25 October 2013 deadline untenable.¹⁵ As a result, the defence requested the deadline to conclude its presentation of evidence be extended to 15 December 2013.¹⁶
5. The Registry explained that it was necessary to distinguish the situation of Witness D04-54 from that of Witnesses D04-14, D04-44, and D04-41.¹⁷ With respect to Witness D04-54, the Registry stressed that he was reinstated to

⁸ Second decision on issues related to the closing of the case, 18 October 2013, ICC-01/05-01/08-2837-Conf. A public redacted version of the decision was filed on the same day, ICC-01/05-01/08-2837-Red.

⁹ ICC-01/05-01/08-2837-Red, paragraph 25.

¹⁰ ICC-01/05-01/08-2837-Red, paragraph 26.

¹¹ Email from the defence sent to the Chamber at 16.11 on 17 October 2013.

¹² Order convening an *ex parte* defence and Registry only status conference on the remaining witnesses to be called by the defence, 18 October 2013, ICC-01/05-01/08-2836.

¹³ Transcript of hearing of 21 October 2013, ICC-01/05-01/08-T-346-CONF-EXP-ENG ET.

¹⁴ Witnesses D04-54, D04-14, D04-41 and D04-44, See ICC-01/05-01/08-T-346-CONF-EXP-ENG ET, page 3, line 10 to page 5, line 13.

¹⁵ ICC-01/05-01/08-T-346-CONF-EXP-ENG ET, page 3, lines 2 to 9, page 5, line 14 to page 8, line 6, page 19, line 12 to page 27, line 7.

¹⁶ ICC-01/05-01/08-T-346-CONF-EXP-ENG ET, page 27, lines 8 to 14.

¹⁷ ICC-01/05-01/08-T-346-CONF-EXP-ENG ET, page 8, lines 19 to 22.

the defence's list of witnesses on 5 September 2013 only.¹⁸ Nonetheless, the Registry informed the Chamber that, since then, it had taken all necessary measures to facilitate his appearance and that he will soon be ready to testify before the Chamber.¹⁹ According to its last contact with the witness, made on 21 October 2013, the Registry estimated that the witness may be able to commence his testimony at the end of the week ending 25 October 2013 or at the beginning of the following week.²⁰

6. With respect to Witnesses D04-44, D04-41, and D04-14, the Registry submitted that the defence formulated inconsistent requests, which made it difficult for the Registry to take the necessary measures for them to appear.²¹ In addition, neither the defence nor the Registry have been able to contact Witness D04-41.²² Consequently, the Registry submitted that there are no objective elements to confirm that these three witnesses would be able to appear even if the deadline were to be extended to 15 December 2013.²³
7. On 22 October 2013, the Registry filed its "Registry report on the measures taken in order to ensure the appearance of the remaining defence witnesses",²⁴ in which it details the measures taken in order to ensure the appearance of the remaining witnesses to be called by the defence.²⁵ In relation to Witness D04-54, the Registry submits that it appears infeasible to organise his appearance before 25 October 2013.²⁶ In relation to Witnesses D04-14 and D04-44, due to additional requests recently made by the

¹⁸ ICC-01/05-01/08-T-346-CONF-EXP-ENG ET, page 9, lines 20 to 25

¹⁹ ICC-01/05-01/08-T-346-CONF-EXP-ENG ET, page 10, line 3 to page 11, line 24

²⁰ ICC-01/05-01/08-T-346-CONF-EXP-ENG ET, page 37, lines 8 to 23.

²¹ ICC-01/05-01/08-T-346-CONF-EXP-ENG ET, page 12, line 2 to page 14, line 11, page 17, line 9 to page 18, line 4.

²² ICC-01/05-01/08-T-346-CONF-EXP-ENG ET, page 11, line 25 to page 12, line 2, page 17, lines 16 to 17, page 22, line 24 to page 23, line 4.

²³ ICC-01/05-01/08-T-346-CONF-EXP-ENG ET, page 29, line 22 to page 31, line 15.

²⁴ Registry report on the measures taken in order to ensure the appearance of the remaining defence witnesses, 22 October 2013, ICC-01/05-01/08-2840-Conf.

²⁵ ICC-01/05-01/08-2840-Conf, paragraphs 2 to 23.

²⁶ ICC-01/05-01/08-2840-Conf, paragraph 9.

witnesses, the Registry submits that it is not in a position to facilitate their appearance before 25 October 2013.²⁷ In relation to Witness D04-41, the Registry submits that it is waiting for further information to be provided by the defence on his availability.²⁸ The Registry submits that it remains ready to facilitate the testimony of the witnesses, should an extension of the 25 October 2013 deadline be granted by the Chamber.²⁹

II. Analysis

8. 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 67(1)(c) and (e) of the Statute, Rules 134(3) and 140 of the Rules of Procedure and Evidence, and Regulations 43 and 54 of the Regulations of the Court.
9. Considering the submissions of the defence and the Registry, the Chamber considers it appropriate to grant an extension of the deadline, in order to allow the defence to present the testimony of Witness D04-54, provided that the testimony commences no later than Wednesday, 30 October 2013 and concludes by 1 November 2013, at the latest.
10. As to Witnesses D04-14, D04-41, and D04-44, the Chamber orders the Registry to continue making the necessary arrangements to facilitate their voluntary appearance as soon as practicable. The Registry is to report to the Chamber on 30 October 2013 on their availability and the feasibility of hearing their testimony as soon as practicable. On the basis of this report, the Chamber will decide whether further extension of the deadline, in order to allow the defence to present the testimony of Witnesses D04-14, D04-41, and D04-44, would be appropriate.

²⁷ ICC-01/05-01/08-2840-Conf, paragraph 20.

²⁸ ICC-01/05-01/08-2840-Conf, paragraph 22.

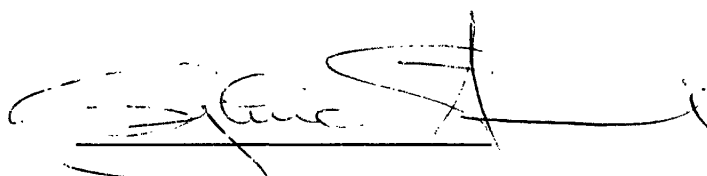
²⁹ ICC-01/05-01/08-2840-Conf, paragraphs 10 and 23.

III. Conclusions

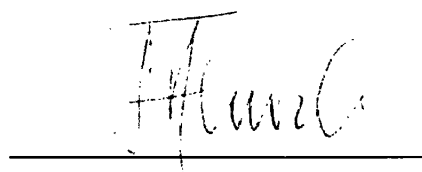
11. For the above reasons, the Trial Chamber hereby:

- (i) EXTENDS the deadline for the defence to present the testimony of Witness D04-54, provided that the testimony commences no later than Wednesday, 30 October 2013 and concludes by 1 November 2013, at the latest;
- (ii) ORDERS the Registry to continue making the necessary arrangements to obtain the voluntary appearance of Witnesses D04-14, D04-41 and D04-44 as soon as practicable; and
- (iii) ORDERS the Registry to file, by no later than 30 October 2013, a confidential report on the availability of Witnesses D04-14, D04-41 and D04-44 and the feasibility of hearing their testimony as soon as practicable.

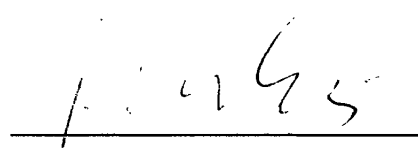
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 23 October 2013

At The Hague, the Netherlands