

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 6 November 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  
with Confidential Annex**

**Public redacted version of Decision on the presentation of additional  
testimony pursuant to Articles 64(6)(b) and (d) and 69(3) of the Rome  
Statute**

**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**

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**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” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (the “Bemba case”), issues the following Decision on the presentation of additional testimony pursuant to Articles 64(6)(b) and (d) and 69(3) of the Rome Statute (“Decision”).

## I. Background and Submissions

1. On 18 October 2013, the Chamber issued its “Second decision on issues related to the closing of the case” (“Decision 2837”)<sup>1</sup> in which it, *inter alia*, informed the parties and participants that, pursuant to its powers under Articles 64(6)(d) and 69(3) of the Rome Statute (“Statute”), it was considering hearing the testimony of two individuals – [REDACTED] and/or [REDACTED] – whose names had repeatedly been mentioned by witnesses in the proceedings.<sup>2</sup> The Chamber further stated that “the modalities of the testimony will be addressed in due course.”<sup>3</sup>
2. On 24 October 2013, the Registry filed its “Registry report on the whereabouts, willingness and availability to give evidence at trial of two additional witnesses” (“Registry’s Report”),<sup>4</sup> in which it informs the Chamber that [REDACTED] and [REDACTED] had been located and that both had been informed that the Chamber was interested in calling them as witnesses in the *Bemba* case.<sup>5</sup> The Registry informs the Chamber that [REDACTED] had indicated that he was not willing to testify.<sup>6</sup> With respect to [REDACTED], the Registry informs the Chamber that he is willing and

<sup>1</sup> 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 was filed on the same day, ICC-01/05-01/08-2837-Red.

<sup>2</sup> ICC-01/05-01/08-2837-Red, paragraphs 19 and 20.

<sup>3</sup> ICC-01/05-01/08-2837-Red, paragraph 21.

<sup>4</sup> Registry report on the whereabouts, willingness and availability to give evidence at trial of two additional witnesses, dated 23 October 2013 but notified on 24 October 2013, ICC-01/05-01/08-2843-Conf-Exp, a confidential redacted version was notified on the same date ICC-01/05-01/08-2843-Conf-Red.

<sup>5</sup> ICC-01/05-01/08-2843-Conf-Red, paragraphs 1 and 8.

<sup>6</sup> ICC-01/05-01/08-2843-Conf-Red, paragraphs 1 to 5.

available to testify before the Chamber.<sup>7</sup> In addition, the Registry requests that the Chamber clarify whether it would consider the appearance of [REDACTED] by means of video technology.<sup>8</sup>

## II. Analysis

3. For the purpose of the present Decision, the Chamber has considered, in accordance with Article 21(1) of the Statute, Articles 64(2), (6)(b) and (d), (7) and (8)(b), 67(1), 68, 69, and 93(1)(e) and (2) of the Statute, Rules 63 to 67, 74, 87, 88, 89 to 93, 101, 134, 140, 190, and 191 of the Rules of Procedure and Evidence ("Rules"), and Regulations 42, 43, 54, 73, and 86 of the Regulations of the Court ("Regulations").
4. As stated in its Decision 2837, the Chamber has been considering hearing the testimony of [REDACTED] and/or that of [REDACTED], as either could assist the Chamber in better understanding the role of the [REDACTED] at the time of the events.<sup>9</sup> Taking into account that [REDACTED] is willing and available to testify, pursuant to its powers under Article 64(6)(b) and (d) and 69(3) of the Statute, the Chamber decides to call [REDACTED] to provide testimony in the *Bemba* case.
5. As the presentation of oral evidence by the defence is to be concluded by 15 November 2013 at the latest,<sup>10</sup> the Chamber will hear the testimony of [REDACTED], hereinafter Witness CAR-CHM-PPPP-0001 ("Witness CHM-01"), as of 18 November 2013.

<sup>7</sup> ICC-01/05-01/08-2843-Conf-Red, paragraphs 8 and 9.

<sup>8</sup> ICC-01/05-01/08-2843-Conf-Red, paragraph 15.

<sup>9</sup> ICC-01/05-01/08-2837-Conf, paragraph 20.

<sup>10</sup> Decision on the time limit for the conclusion of the defence's presentation of oral evidence at trial, 1 November 2013, ICC-01/05-01/08-2861, paragraphs 10 and 11(ii).

6. Witness CHM-01 shall, in principle, testify in person at the seat of the Court in The Hague. However, in light of the Registry's enquiry,<sup>11</sup> in case logistical difficulties prevent the witness from travelling to the seat of the Court and starting his testimony as of 18 November 2013, the Chamber will hear his testimony *viva voce* by means of video technology. As the Chamber has previously held, "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 justify hearing a witness's testimony by means of video technology.<sup>12</sup> The Chamber notes that the use of video technology permits the witness to be questioned by the Chamber, both parties, and also the legal representatives of victims. The Chamber is therefore satisfied that this option would not be prejudicial to, or inconsistent with, the rights of the accused.<sup>13</sup>
7. The order of questioning during the testimony of Witness CHM-01 will be as follows: firstly the Chamber will question the witness; following this, the Prosecution will be given the opportunity to question him; then, providing a written application has been made and leave to ask questions granted, the legal representatives of victims may question the witness; and finally, the defence will be given the opportunity to question the witness last in accordance with Rule 140(2)(d) of the Rules. In line with the Chamber's usual practice, the Chamber may intervene at any time during the parties or the participants' questioning in order to pose additional questions or require clarification from the witness.

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<sup>11</sup> ICC-01/05-01/08-2843-Conf-Red, paragraph 15.

<sup>12</sup> Decision on "Defence Motion for authorization to hear the testimony of Witness D-45 via video-link" of 6 March 2013, ICC-01/05-01/08-2525-Conf, a public redacted version of this decision was filed on 7 March 2013, ICC-01/05-01/08-2525-Red, paragraph 7; 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, 15 August 2013, ICC-01/05-01/08-2740, paragraph 10; and Decision on the defence's "Submission on the anticipated witness schedule and the testimony of Witness D04-54" (ICC-01/05-01/08-2806-Conf), 17 September 2013, ICC-01/05-01/08-2818, paragraph 10.

<sup>13</sup> ICC-01/05-01/08-2740, paragraphs 11 and 12; ICC-01/05-01/08-2818, paragraphs 12 and 13.

8. As regards the scope of questioning, in line with the Chamber's Decision on Directions for the Conduct of Proceedings,<sup>14</sup> the Chamber will question the witness on relevant and contested issues in the *Bemba* case.<sup>15</sup> The parties and participants' questioning shall likewise focus on such issues, and may also concern the credibility of the witness, the reliability of the evidence presented, and any mitigating or aggravating circumstances.<sup>16</sup> The Chamber may, at any time, rule on the relevance of questions put to the witness, either on its own motion or at the request of a party.<sup>17</sup>
9. With regard to the mode of questioning, the Chamber orders the parties and participants to put only neutral, non-leading, questions to the witness.
10. Regarding the use of documents during questioning, the documents to be used by the Chamber during its questioning of Witness CHM-01 are listed in the Confidential Annex to the present Decision. Should the parties or the participants wish to rely on other documents during their questioning, they shall provide the Chamber, the parties, and the participants with a list of the additional documents they intend to use no later than 13 November 2013. This information should be communicated by email.
11. For planning purposes, the parties and the participants should communicate to the Chamber, by email, an estimate of the time required to question the witness no later than 13 November 2013. The Chamber will decide in due course on the time the parties and participants will be granted to question the witness.

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<sup>14</sup> Decision on Directions for the Conduct of the Proceedings, 19 November 2010, ICC-01/05-01/08-1023.

<sup>15</sup> ICC-01/05-01/08-1023, paragraph 12.

<sup>16</sup> ICC-01/05-01/08-1023, paragraph 13.

<sup>17</sup> ICC-01/05-01/08-1023, paragraph 12.

12. The legal representatives of victims should submit substantiated requests to question the witness, in accordance with the procedure set out in the Chamber's Decision on Directions for the Conduct of the Proceedings,<sup>18</sup> no later than 11 November 2013.

13. [REDACTED]

### III. Conclusions

14. For the above reasons, the Chamber hereby:

- (i) DECIDES to call Witness CHM-01 to provide testimony in the *Bemba* case;
- (ii) DECIDES that the testimony of Witness CHM-01 shall start as of 18 November 2013;
- (iii) DECIDES that Witness CHM-01 shall, in principle, testify live at the seat of the Court in The Hague unless logistical difficulties prevent him from travelling to the seat of the Court to start his testimony as of 18 November 2013, in which case the testimony of Witness CHM-01 shall be given *viva voce* by means of video technology;
- (iv) ORDERS the Registry to make the necessary arrangements in order for the testimony of Witness CHM-01 to start as of 18 November 2013, be it in person or via video-link;
- (v) DECIDES that the order, mode, and scope of questioning of Witness CHM-01 shall follow the procedure set out in paragraphs 7 to 9 above;
- (vi) ORDERS the parties and participants to provide the Chamber, the parties, and the participants with a list of the additional documents they intend to use during questioning Witness CHM-

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<sup>18</sup> ICC-01/05-01/08-1023, paragraphs 17 to 20.

01, no later than 13 November 2013;

(vii) ORDERS the parties and the participants to communicate to the Chamber, by email, an estimate of the time they require to question the witness, no later than 13 November 2013;

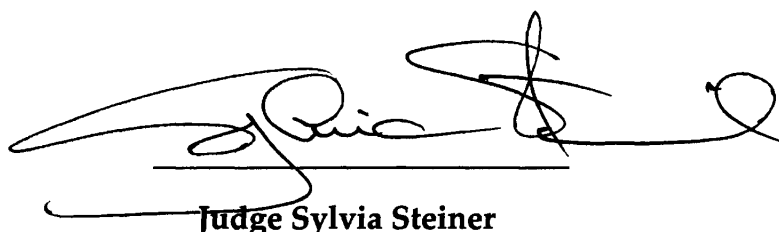
(viii) ORDERS the legal representatives of victims, in case they wish to question Witness CHM-01, to submit substantiated requests in accordance with the procedure set out in the Chamber's Decision on Directions for the Conduct of the Proceedings, no later than 11 November 2013;

(ix) [REDACTED];

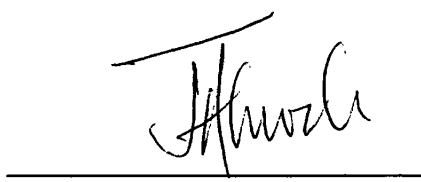
(x) [REDACTED]; and

(xi) [REDACTED].

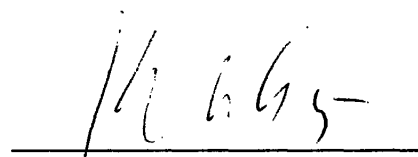
Done in both English and French, the English version being authoritative.



**Judge Sylvia Steiner**



**Judge Joyce Aluoch**



**Judge Kuniko Ozaki**

Dated this 6 November 2013

At The Hague, the Netherlands