

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 7 December 2010

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 a public annex**

Victims and Witnesses Unit's amended version of the "Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial" submitted on 22 October 2010

Source: Registrar

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Other

The Registrar of the International Criminal Court (the “Court”);

NOTING the “Victims and Witnesses Unit's Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial” of 22 October 2010 (the “Protocol”)¹;

NOTING the “Decision on the Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial” (the “Decision”) issued by Trial Chamber III (the “Chamber”) on 18 November 2010²;

NOTING articles 43(6) and 68(1), (3) and (4) of the Rome Statute, rules 16 to 19, 73, 76, 86 to 89 of the Rules of Procedure and Evidence, regulation 41 of the Regulations of the Court and regulations 79 to 96 of the Regulations of the Registry;

CONSIDERING that the Chamber instructed the Victims and Witnesses Unit (the “VWU”) to *“apply the Unified Protocol for the purposes of the trial, after having made the amendments ordered in the present Decision; and to file the amended version of the Protocol as soon as available”*³;

CONSIDERING that practical difficulties may occur when implementing the amendments instructed by the Chamber in the Decision;

¹ ICC-01/05-01/08-972.

² ICC-01/05-01/08-1016.

³ *Ibid*, p.15.

RESPECTFULLY INFORMS the Chamber of the practical difficulties which may occur when implementing the following amendments instructed by the Chamber:

Scheduling of witnesses

1. As *per* the Chamber's Decision, the wording of paragraph 14 was modified and the word "must" was replaced by the words "needs to":
"In order to facilitate the logistical arrangements and to ensure the timely appearance of a witness, the WIF needs to be submitted to the VWU not less than 35 days before the witness is scheduled to arrive at the location of testimony".
2. As articulated by the Chamber⁴, this would allow some flexibility with regard to the deadline given to submit the Witness Information Form (the "WIF").
3. Although the Registry will always make its utmost efforts and will show as much flexibility as possible in order to facilitate the appearance of witnesses, the VWU would like to emphasise the necessity for the calling parties to communicate with the Unit in a timely manner in order to avoid unnecessary delays and to permit smooth organisation of witnesses scheduling.

Separation of witnesses at the accommodation

4. As *per* the Chamber's decision⁵, the following text has been added to the Protocol as paragraph 38:
"In cases in which the accounts of witnesses overlap or there is a risk of evidence being tainted by contact during and after testimony, the VWU, in consultation with the party calling the witness shall, to the extent possible, take the following measures: (i) once a witness commences giving evidence, he or she should be separated from other witnesses; (ii), the VWU shall arrange supervised social contact between the witness who has testified and the remaining witnesses at least for a few hours each day;

⁴ *Ibid*, p.13

⁵ *Ibid*, para.17

(iii) the VWU shall warn the witnesses that they should not discuss their evidence with each other; (iv) the VWU shall, as far as possible, jointly accommodate the witnesses who have finished giving evidence; and, (v) in the event that the witnesses breach these conditions imposed by the Chamber, the matter shall be brought to the Chamber's attention for review."

5. The VWU considers that the VWU support staff may face concrete difficulties to ensure the requested monitored social contacts for the following reasons:
 - The participation of witnesses in such social contacts would have to be on a voluntary basis. The VWU will, however, take into account the psychological state of mind of the witnesses when seeking their informed consent to participate in such event.
 - Such social contacts would have to be monitored by staff members who are able to understand the witnesses' languages.
 - The organisation of these social contacts would be subject to planning constraints considering the schedule of testimony of the witnesses.
 - The requested monitoring would necessarily have limited effect, as the VWU staff, who is not aware of the content of evidence, may not be able to identify if witnesses are talking about their testimonies. However, the VWU will remind the witnesses in a proper and regular manner that they should not discuss their testimonies with anybody.

6. Therefore, the VWU informs the Chamber that, to the extent possible, such social contacts will be scheduled subject to the wish of the witnesses, the availability of human resources to perform this task, the scheduling of the hearings and within the limitation described above.

Reading and provision of statements

7. The Chamber in its Decision decides that the Unified Protocol *“needs to be amended to clarify that the VWU should provide the following documents to a witness to refresh their memory: (i) a copy of all the statements the witness has previously given. The term statement includes any signed statement and recorded interview (audio, video or both); and, (ii) any document or information generated or provided by the witness when giving any of his/her previous statements”*.⁶ Paragraph 83 of the Protocol is now amended accordingly. However, in order to be able to provide the witness with the documents mentioned in point (ii) above, the VWU will need such material to be provided by the entity calling the witness. Therefore, paragraph 82 of the Protocol has also been modified in order to reflect the necessity for the calling party to provide the VWU with all the requested material.
8. The Chamber orders also the VWU to “keep a proper record of all material provided to a witness prior to his/her testimony” and that “such a record will be sent to the parties and participants by email, in advance of the hearing in which the witness will testify”.⁷ These instructions are now incorporated into paragraph 84 of the amended Protocol in addition to the following: *“Prior to handing over witness statements to the VWU, the party calling the witness informs the other party and legal representatives of witnesses with dual status, where applicable, of the documentation to be handed over in order to resolve any potential disputes”*.⁸

⁶ *Ibid*, para. 21

⁷ *Ibid*, para. 22; see also para. 84 of the Amended Protocol annexed to the current document

⁸ “Any document referred to in the statement or electronic recording which are to be shown to the witness by the party calling him or her should also be shown to the witness during this process. The party calling the witness should inform the other party and the legal representative of -- and the legal representatives of dual-status witnesses, if relevant, in advance of the documents to be provided to the VWU for the purposes of memory refreshing. Any dispute is to be resolved by the Chamber before the material is given to the witness”, ICC-01/04-01/06-T-104-ENG, page 25, lines 10 to 17.

9. In this regard, the VWU respectfully informs the Chamber that, according to the current practice, the calling party shall provide the VWU support team with a “package” consisting of an index and paper copies of documents to be provided to the witness. As a neutral party, the VWU shall not be responsible for the content of the documentation handed over by the calling party. However, the VWU undertakes to check whether the titles of documents submitted and the number of pages correspond to the indications in the index. Therefore, the VWU suggests that an electronic version of these indexes are from now on sent to the Head of the VWU Support Unit who would forward the said indexes to the Chamber and to the other party and participants. When forwarding the said indexes, the Head of the VWU Support Unit will inform that the titles of the documents and the number of pages have been checked by the Unit against the index before the paper copies of the documents are handed over to the witness⁹. In addition to that, the VWU will keep a complete record of all the indexes of the documents handed over to the witnesses.

Day of the testimony

10. With regard to the information which should be given to the witnesses, the Chamber instructed the VWU to inform the witness of the offence defined in article 70, paragraph 1 (a) of the Rome Statute before the testimony¹⁰. The Chamber also considered it part of the VWU’s obligation to inform the witness that he or she will remain under oath¹¹. Accordingly, paragraphs 101 and 102 have been modified in order to integrate these instructions and now read as follows:

“101. Before the examination of a witness commences, the Presiding Judge invites the witness to make the solemn declaration to tell the truth, in accordance with rule 66 of the Rules of Procedure and Evidence. Before the testimony, in accordance with Rule

⁹ For audio-visual material the VWU will only be able to check the title indicated on the audio-visual document against the title mentioned in the index.

¹⁰ ICC-01/05-01/08-1016, para.26

¹¹ *Ibid*, para.27

66(3) of the Rules of Procedure and Evidence, the VWU shall inform the witness of the offence defined in article 70, paragraph 1 (a) of the Statute.

102. The VWU shall inform the witness that he or she will remain under oath until the end of proceedings and it will therefore not be necessary for the witness to repeat the solemn declaration after each adjournment."

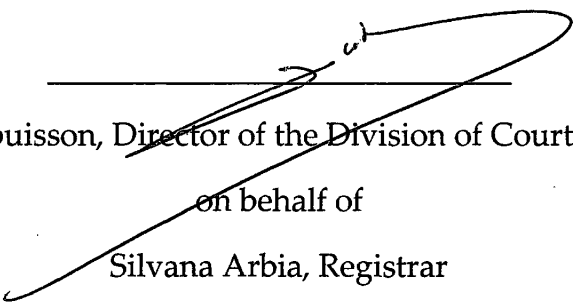
11. The VWU recalls that during the courtroom familiarisation the VWU support staff explains the proceedings before the Court and always "reminds the witnesses that they are under a strict obligation to tell the truth when testifying".¹² The VWU also provides all the witnesses with an informative brochure¹³. This informative brochure states the following: *"Before you give your testimony, you will be asked to say the following words: "I solemnly swear to speak the truth, the whole truth and nothing but the truth". This is called a solemn undertaking. After you say this, you are under a strict legal obligation to tell the truth. If you intentionally give false testimony, the court may punish you either with a fine or imprisonment of up to five years, or both"*.

12. However, according to the practice before the other Trial Chambers, the VWU shall not emphasise to the witnesses the information regarding the sanction pursuant to article 70 paragraph 1 (a) of the Statute right before the beginning of their testimonies. Therefore, the VWU will attract the attention of the witness on the text of the brochure and will read it to the witness if the latter is illiterate. However, the VWU stresses that to the extend possible this should be done neither in the field nor during the courtroom familiarisation in order to avoid possible misperception by the parties that the VWU provides frightening information and imposes unnecessary pressure on the witnesses.

¹² See paragraphs 77 and 78 of the Protocol

¹³ See paragraph 12 of the Protocol

RESPECTFULLY SUBMITS in an annex to the current document the amended version of the "Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial".



Marc Dubuisson, Director of the Division of Court Services
on behalf of
Silvana Arbia, Registrar

Dated this 7 December 2010

At The Hague, The Netherlands