

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 9 mars 2012

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Alouch
Judge Kuniko Ozaki

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
*v. JEAN-PIERRE BEMBA GOMBO***

Public Redacted Version of Filing No. ICC-01/05-01/08-905-Conf

**Request for the conduct of the testimony of witness CAR-OTP-WWWW-0108
by video-link**

**With Confidential *ex parte* OTP and OPCV only Annex A and
Same Confidential redacted Annex A**

Source: Office of Public Counsel for Victims

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

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I. Procedural Background

1. On 24 June 2010, the Prosecution filed an Application requesting leave to submit the written statements of three witnesses as evidence *in lieu* of oral testimony, namely CAR-OTP-WWWW-0032, CAR-OTP-WWWW-0080 and CAR-OTP-WWWW-0108 (the "Prosecution Application")¹.

2. On 15 July 2010, the Defence filed its Response on a confidential and *ex parte* basis (the "Defence's Response")².

3. On 16 September 2010, Trial Chamber III issued its decision rejecting in its entirety the Prosecution's Application (the "Decision")³.

4. Pursuant to Article 69(2) of the Rome Statute and Rules 67 and 87 of the Rules of Procedure and Evidence, the Principal Counsel of the Office of Public Counsel for Victims (the "OPCV"), acting as Legal Representative of witness CAR-OTP-WWWW-0108, who is also victim [REDACTED], already authorized to participate at trial⁴ (the "Legal Representative"), hereby submits a request for the testimony of the said witness to be conducted by video-link. The Office of the Prosecutor has been consulted and has indicated to agree with and support this request.

¹ See the "Requête de l'Accusation aux fins de versement par écrit des témoignages préalablement enregistrés par CAR-OTP-WWWW-0032, CAR-OTP-WWWW-0080, et CAR-OTP-WWWW-0108", No. ICC-01/05-01/08-801-Conf-Exp, 24 June 2010.

² See the "Réponse de la Défense à la Requête de l'Accusation aux fins de versement des témoignages préalablement enregistrés par CAR-OTP-WWWW-0032, CAR-OTP-WWWW-0080 et CAR-OTP-WWWW-0108", No. ICC-01/05-01/08-829-Conf-Exp, 15 July 2010.

³ See the "Decision on the "Prosecution Application for Leave to Submit in Writing Prior-Recorded Testimonies by CAR-OTP-WWWW-0032, CAR-OTP-WWWW-0080, and CAR-OTP-WWWW-0108"" (Trial Chamber III), No. ICC-01/05-01/08-886, 16 September 2010 (the "Decision").

⁴ See the "Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants" (Trial Chamber III), No. ICC-01/08-01/05-699, 22 February 2010.

5. In accordance with Regulation 23*bis* of the Regulations of the Court, the Legal Representative respectfully requests the Chamber to receive this filing and its Annex A, which is a correspondence addressed by CAR-OTP-WWWW-0108 to his lawyer setting out the reasons for his unavailability to travel to testify in The Hague at the upcoming trial, as confidential since they contain identifying information of a protected witness known by the participants in the current procedure but not by the public.

6. Furthermore, in Annex A, information related to the witness's specific personal security and privacy have been redacted in conformity with Decision ICC-01/05-01/08-813⁵. Privileged information contained in Annex A and made in the context of the professional relationship between the Legal Representative and CAR-OTP-WWWW-0108 have been omitted.

II. Reasons justifying the request for the conduct of the testimony by video-link

7. In a recent correspondence⁶, CAR-OTP-WWWW-108 informed his legal representative that, whilst he remains ready and willing to cooperate with the Court, he will not be able to testify at the seat of the Court. The witness indicated that [REDACTED] and would not be able to leave the country [REDACTED]. Additionally, [REDACTED].

8. According to the Prosecution, the witness is expected to testify on issues that are critical for the determination of the case at trial. In particular, he will provide evidence on the pillaging of [REDACTED] by MLC soldiers who subsequently [REDACTED]. He will also provide evidence on the military materials [REDACTED].

⁵ See the "Decision on the Prosecution's Requests to Lift, Maintain and Apply Redactions to Witness Statements and Related Documents" (Trial Chamber III), No. ICC-01/05-01/08-813, 20 July 2010, par. 89(a). The Chamber authorized redactions relating to the witness's personal security and privacy information, e.g., fixed residential addresses and telephone and fax numbers of the witness.

⁶ See Confidential Annex A.

Additionally, he is expected to provide evidence on the identification of MLC troops as well as information pertaining to contextual elements of the on the CAR conflict in question⁷.

9. The request for the conduct of the testimony by video-link finds support in the core texts of this Court⁸. In particular, Article 69(2) of the Rome Statute expressly allows “the giving of *viva voce* (oral) or recorded testimony of a witness by means of video or audio technology”. The case-law of the *ad-hoc* tribunals also supports the conduct of testimony by video-link. In the case of *The Prosecutor v. Tadic*, the Trial Chamber held that the discretion to allow a witness to testify via video-link is guided by two main criteria, which must be satisfied: (i) the testimony of the witness is shown to be sufficiently important to make it unfair to proceed without it; and (ii) the witness is unable or unwilling to come to the International Tribunal⁹.

10. The Legal Representative also notes that the requested measure is consistent with the Chamber’s Decision ordering that witness CAR-OTP-WWWW-0108 testify *viva voce* at the upcoming trial¹⁰. The implementation of the requested measure would therefore respects both the Chamber’s Decision to hear *viva voce* evidence of the witness, while at the same time protecting the well-being of the witness who has expressed his consent for the implementation of such measure for the purpose of his testimony. Moreover, the measure sought is not prejudicial to or inconsistent with the rights of the accused since the Defence will have the opportunity to question the witness as if he was appearing in courtroom in The Hague.

⁷ See the Prosecution Application, *Supra* note 1, par. 11.

⁸ See Article 69(2) of the Rome Statute and Rule 67 of the Rules of Procedure and Evidence. See the “Redacted Decision on the defence request for a witness to give evidence via video-link” (Trial Chamber I), No. ICC-01-04-01/06-2285-Red, 9 February 2010.

⁹ *Prosecutor v. Tadic*, Case No. IT-94-1-T, Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the Giving of evidence by Video-Link, 25 June 1996, par. 19. See also, e.g., *Prosecutor v. Radovan Karadzic*, Decision on Prosecution’s Motion for Testimony to be heard via Video-Link” 17 June 2010, par. 5; *Prosecutor v. Stanisic et al*, Decision on Prosecution Motions To hear Witnesses By Video-Conference Link, 24 February 2010, par. 8.

¹⁰ See the Decision, *Supra* note 3, par. 24.

11. In this respect, in the case of *The Prosecutor v. Delalic et al.*, the Chamber found that “video-conference not only allow the Chambers to hear the testimony of a witness who is unable or unwilling to present their evidence before the Trial Chamber at The Hague, but allows the Judges to observe the demeanor of the witness whilst giving evidence (...) Video-conferencing is, in actual fact, merely an extension of the Trial Chamber to the location of the witness. The accused is therefore denied neither his right to confront the witness, nor does he lose materially from the fact of the physical absence of the witness (...).”¹¹ Similarly in *The Prosecutor v. Hadzihasanovic and Kubura*, the Trial Chamber concluded that “the testimony of witnesses by video-conference link has as much probative value as testimony presented in the courtroom and does not infringe the rights of the accused to confront the witnesses directly.”¹²

12. Therefore, the Legal Representative submits that witness CAR-OTP-WWWW-0108 should be allowed to testify by video-link. Indeed, the Chamber recognized in its Decision that the testimony of CAR-OTP-WWWW-0108 is sufficiently important to its determination of issues at trial¹³; and the circumstances warranting the requested measure are based on the witness’s [REDACTED] which forms the origin of its inability to come to testify in The Hague. Collectively these factors support the request for conducting testimony *via* video-link.

¹¹ *Prosecutor v. Delalic et al.*, Case No. IT-96-21-T, Decision on the Motion to Allow Witnesses K, L and M to give their testimony by means of Video-Link Conference, 28 May 1997, par. 15.

¹² *The Prosecutor v. Hadzihasanovic and Kubura*, Case No. IT-01-47-T, Decision on Prosecution Motion for Receiving Testimony by Video-Conference Link, 11 March 2004, p. 4.

¹³ See the Decision, *Supra* note 3, par. 24.

FOR THE ABOVE-MENTIONED REASONS, the Legal Representative respectfully requests the Chamber to order that witness CAR-OTP-WWWW-0108 be heard by means of video link technology from a location to be determined in Central African Republic.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line drawn underneath the name.

**Paolina Massidda
Principal Counsel**

Dated this 9 March 2012

At The Hague, The Netherlands