

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 March 2012

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**

Confidential and Ex Parte Defence only

**Submissions concerning the scheduled Status Conference on the presentation of
Defence evidence**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

The Office of the Prosecutor

Counsel for the Defence

Me Aimé Kilolo-Musamba

Me Peter Haynes

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

Applicants

(Participation/Reparation)

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

A. BACKGROUND

1. On 24 February 2012, the Chamber rendered its *Order postponing a status conference and on issues related to the presentation of evidence by the defence*¹ in which it postponed a scheduled status conference until the week of 12 March 2012.²

2. On 5 March 2012, the Defence filed its *ex parte* observations pursuant to this order.³ On 9 March, the Defence was ordered via email to file a “confidential or public redacted version” of the submissions,⁴ which was filed the same day.

3. The status conference scheduled for the week of 12 March 2012 was not in fact held.

4. The following week, on 21 March 2012, the Chamber rendered its *Order convening a status conference on issues related to the presentation of evidence by the legal representatives of victims and the defence*,⁵ in which it scheduled a status conference for Tuesday, 27 March 2012.

B. EX PARTE FILING

5. The Defence submits the current filing as *ex parte* and confidential. Regulation 23 *bis* (1) of the Regulations of the Court provides that “any document filed by the Registrar or a participant and marked “*ex parte*”, “under seal” or “confidential”, shall state the factual and legal basis for the chosen classification and, unless otherwise ordered by a Chamber, shall be treated according to that classification throughout the proceedings.”

¹ ICC-01/05-01/08-2145, para. 4.

² ICC-01/05-01/08-2145, para. 4.

³ ICC-01/05-01/08-2152-Conf-Exp

⁴ Email, Legal Officer to the Defence, 9 March 2012.

⁵ ICC-01/05-01/08-2170.

6. The purpose of the current filing is to provide an update to the Chamber, prior to the scheduled status conference, as to the stage reached in the Defence's ongoing investigations. Given that this filing addresses the status of Defence investigations, the Defence respectfully submits that this filing should be received *ex parte* to the Defence.

7. The Defence notes that it is under no obligation to inform the other parties or participants as to its ongoing investigations. The Defence also notes that despite being ordered via email to file a public redacted or confidential version of previous submissions concerning the status of the Defence case,⁶ the Chamber only ordered disclosure of "the justification of the *ex parte* nature of the filing, the anticipated starting date of the defence presentation of evidence, the anticipated number of witnesses to be called and the estimate time required to present its witnesses as well as the defence's position in relation to the re-classification of filing ICC-01/05-01/08-2005-Conf-Exp." The Defence was not, however, required to inform the Prosecution and the legal representatives as to the stage reached in its investigations.

8. Given that the current filing merely updates previous *ex parte* submissions concerning the status of Defence investigations, the Defence likewise files the present submissions *ex parte*. A confidential redacted version concerning (a) the justification for the *ex parte* filing; and (b) an anticipated start date for the presentation of the Defence case will be simultaneously submitted.

C. SUBMISSIONS

9. In its previous submissions, the Defence stated that "the Defence anticipates spending the remainder of March and the majority of April 2012 conducting ongoing

⁶Email, Legal Officer to the Defence, 9 March 2012.

investigations.”⁷ On this basis, it was anticipated that the Defence would commence the presentation of its evidence “on 1 July 2012”.⁸

10. Given recent sad events, it has been necessary for the Defence team to re-establish contacts with a significant number of potential witnesses in the Democratic Republic of the Congo who had previously only been met by the late Mr. Nkwebe Liriss. The re-establishment of these contacts and the re-building of confidence with potential witnesses is an ongoing, sensitive and lengthy process, which has consumed more time than the Defence previously anticipated despite its best efforts to expedite the process.

11. Moreover, some potential witnesses who had previously been located in the more easily accessible areas of the DRC, have since relocated (or have been relocated) to areas which are significantly more difficult to access further aggravating the process of meeting with them. In addition, a number of the witnesses being met by the Defence are currently serving in the armed forces of the DRC, and have received authorization to meet with the Defence during the month of March. As these meetings will necessarily spill over into April, additional authorisations will be required. The process of securing these authorisations is regrettably lengthy.

12. As such, the Defence estimates that its investigations will be prolonged by an approximate period of two additional weeks, which it regrettably submits would push back the anticipated start date for the presentation of the Defence evidence until 15 July 2012.

THE WHOLE respectfully submitted.

⁷ICC-01/05-01/08-2152-Conf-Exp

⁸Ibid.



Kilolo Musamba
Lead Counsel



Peter Haynes
Co-Lead Counsel

Done on the 26th of March 2012

At The Hague, the Netherlands