

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 21 August 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***

Public

**Decision on “Prosecution’s Motion to Exclude Defence Political-Military
Strategy Expert”**

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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Ms Petra Kneuer

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

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Mr Grant Cronje

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber III (“Chamber”) of the International Criminal Court in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* issues the following Decision on “Prosecution’s Motion to Exclude Defence Political-Military Strategy Expert”.

I. Background and submissions

1. On 3 August 2012, the Office of the Prosecutor (“prosecution”) filed its “Prosecution’s Motion to Exclude Defence Political-Military Strategy Expert” (“Application”),¹ requesting that the Chamber exclude the proposed defence’s political-military strategy expert, CAR-D04-PPPP-0059 (“D04-59”), on the basis that the testimony of the witness is either not relevant to the issues of the case or, when arguably relevant, not properly the subject of expert testimony.² Further, the prosecution alleges that the proposed witness is not qualified to testify as an expert on military subjects,³ and that he has not been admitted into the Registry’s list of experts.⁴
2. On 6 August 2012, the Chamber issued its “Decision shortening time for observations on the ‘Prosecution’s Motion to Exclude Defence Political-Military Strategy Expert’”,⁵ in which it ordered that the defence and the legal representatives of victims must file any observations on the Application by no later than 16.00 on 10 August 2012.⁶
3. On 10 August 2012, the defence filed its “Defence Response to Prosecution’s Motion to Exclude the Defence Political-Military Strategy

¹ Prosecution’s Motion to Exclude Defence Political-Military Strategy Expert, 3 August 2012, ICC-01/05-01/08-2252-Conf.

² ICC-01/05-01/08-2252-Conf, paragraphs 1, 12, 14, 16 and 18.

³ ICC-01/05-01/08-2252-Conf, paragraph 17.

⁴ ICC-01/05-01/08-2252-Conf, paragraph 9.

⁵ Decision shortening time for observations on the “Prosecution’s Motion to Exclude Defence Political-Military Strategy Expert”, 6 August 2012, ICC-01/05-01/08-2254-Conf.

⁶ ICC-01/05-01/08-2254-Conf, paragraph 4.

Expert”,⁷ in which it submits that there is no legal basis for the prosecution seeking an order to prevent the attendance of a witness at court. The defence submits that, if the prosecution is concerned to limit the extent of the evidence the witness provides at trial, the proper procedure is to seek to limit the examination of the witness to matters that are relevant and properly within his expertise on a question by question basis.⁸ The defence further submits that any questions as to the admissibility of the witness’s expert report should be dealt with at the conclusion of his evidence.⁹

4. In response to the substance of the prosecution’s Application, the defence submits that (i) the subject of witness D04-59’s evidence – the antecedent events to the arrival of the *Movement de libération du Congo* (“MLC”) in the Central African Republic (“CAR”), the political background to the events in the CAR, the ethnic composition of the country and the pan-African arrangements for security in the area – are all relevant to the allegations against the accused and central to the proper understanding of a number of aspects of the case;¹⁰ (ii) witness D04-59 is entitled to give evidence of his received knowledge as Chambers of the Court can and do receive hearsay evidence;¹¹ (iii) reliance on un-named sources is an issue that goes to weight, not admissibility;¹² (iv) witness D04-59’s knowledge and training equip him to advance opinions on military matters and also that there is no requirement that an expert have professional experience of a particular situation, as opposed to having a sufficient level of knowledge of a subject to give weight to his opinions;¹³ (v) inclusion on the list of experts is an “administrative convenience” and not a rule of evidence,

⁷ Defence Response to Prosecution’s Motion to Exclude the Defence Political-Military Strategy Expert, 10 August 2012, ICC-01/05-01/08-2258-Conf.

⁸ ICC-01/05-01/08-2258-Conf, paragraph 5.

⁹ ICC-01/05-01/08-2258-Conf, paragraph 6.

¹⁰ ICC-01/05-01/08-2258-Conf, paragraphs 8 - 10.

¹¹ ICC-01/05-01/08-2258-Conf, paragraph 12.

¹² ICC-01/05-01/08-2258-Conf, paragraphs 15 - 17.

¹³ ICC-01/05-01/08-2258-Conf, paragraphs 19 - 20.

however, the defence notes that it has sought witness D04-59's admission to the list of experts.¹⁴ In addition, the defence appends relevant certificates and documents which it submits further demonstrate that the prosecution's Application challenging witness D04-59's expertise is premature.¹⁵

5. On 21 August 2012, the Registry informed the Chamber that witness D04-59 had been included in its list of experts.¹⁶

II. Relevant Provisions

6. In making this ruling, the Chamber has considered, in accordance with Article 21(1) of the Rome Statute ("Statute"), Articles 64(6)(f), 64(7), 64(9)(a), 67(1)(e), 69(3), 69(4) of the Statute, Rules 63(2) and 64 of the Rules of Procedure and Evidence ("Rules") and Regulations 23 *bis* (3) and 44 of the Regulations of the Court ("Regulations").

III. Analysis and Conclusions

7. The Chamber considers, in line with its decision accepting his inclusion in the defence list of witnesses,¹⁷ that the testimony of witness D04-59 is, in principle, relevant to the charges against the accused and that his testimony on the topics proposed by the defence has the potential to help the Chamber understand the background and context of the MLC intervention in the CAR. Should the prosecution wish to challenge the relevance of specific parts of witness D04-59's testimony, the Chamber is

¹⁴ ICC-01/05-01/08-2258-Conf, paragraphs 22 - 24.

¹⁵ ICC-01/05-01/08-2258-Conf, paragraph 25.

¹⁶ See: <http://www.icc-cpi.int/NR/rdonlyres/045C6DC2-9E7E-4F20-A5CF-6C1F8959B908/284816/210812ListofExpertsEnglish.pdf>

¹⁷ Decision on the "Third Defence Submissions on the Presentation of its Evidence", 6 July 2012, ICC-01/05-01/08-2242-Conf-Exp, Paragraph 31.

of the view that such challenges should be made in court, if necessary, during the questioning of the witness.

8. As to the prosecution's contention that even where relevant the proposed topic of witness D04-59's testimony does not require expert testimony as it is a "straightforward factual issue",¹⁸ the Chamber is of the view that, in light of his knowledge, experience and training, the testimony of witness D04-59 may potentially be of assistance in the Chamber's assessment of the background, context and motivations behind the entry of the MLC into the CAR. As such, the Chamber finds his expertise on these issues to be, in principle, relevant. Should the prosecution wish to challenge witness D04-59's expertise, it may do so in court, when questioning the witness.

9. The prosecution also challenges witness D04-59's qualifications to testify as an expert on military subjects.¹⁹ The defence avers that it has no "settled intention" to elicit from witness D04-59 opinions on military matters, given that another expert witness will already have testified on these issues by the time witness D04-59 comes to testify.²⁰ Nevertheless, the defence asserts that witness D04-59's knowledge and experience equip him to advance his opinions in this area.²¹ From his *curriculum vitae*,²² the Chamber notes that witness D04-59 has obtained a degree, undertaken courses, gained professional experience, conducted research and taken part in numerous colloquia, symposia, conferences and seminars in relation to military matters. As such, the Chamber is satisfied that in light of his experience witness D04-59 may possess relevant expertise in this area.

¹⁸ ICC-01/05-01/08-2252-Conf, paragraphs 12 - 14.

¹⁹ ICC-01/05-01/08-2252-Conf, paragraph 17.

²⁰ ICC-01/05-01/08-2258-Conf, paragraph 18.

²¹ ICC-01/05-01/08-2258-Conf, paragraph 18.

²² ICC-01/05-01/08-2258-Conf-AnxA.

10. The Chamber notes the prosecution's submission that witness D04-59's Report represents evidence collected by witness D04-59 from other sources as well as conclusions that he has drawn from that evidence and that this is an incorrect use of an expert and not a proper way to present evidence.²³ The defence on the other hand contends that Chambers of the Court can and do receive hearsay evidence,²⁴ and that as such witness D04-59 is entitled to testify as to knowledge that he has received from others. The Chamber firstly points out that any decision as to the admissibility of witness D04-59's Report will be taken after the conclusion of his testimony if and when its admission as evidence is sought by the defence. As such, the present decision will only deal with challenges to witness D04-59 testifying before the Court. Should issues relating to the material on which witness D04-59 bases his conclusions arise during his testimony, the prosecution may challenge that material and those conclusions in due course.

11. Similarly, with respect to the prosecution's submission regarding the alleged lack of sources and unnamed sources in witness D04-59's report,²⁵ the Chamber will consider these issues if and when it decides on the admissibility of the Report itself.

12. The Chamber recalls its position that the prior inclusion of an expert's name in the Registry's list of experts is not a prerequisite for his or her eligibility to receive instruction,²⁶ but that admission to the list must have been confirmed prior to the expert's testimony.²⁷ In this regard, the

²³ ICC-01/05-01/08-2252-Conf, paragraph 15.

²⁴ ICC-01/05-01/08-2258-Conf, paragraph 12.

²⁵ ICC-01/05-01/08-2252-Conf, paragraph 15.

²⁶ ICC-01/05-01/08-T-21-ENG ET, page 20, lines 7 to 12.

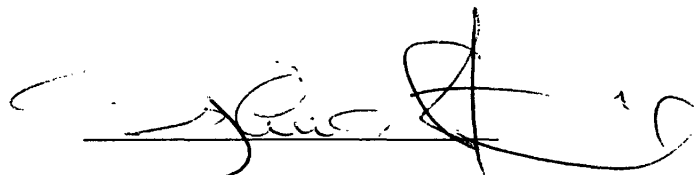
²⁷ ICC-01/05-01/08-T-21-ENG ET, page 20, lines 13 to 15.

Chamber notes that the inclusion of D04-59's name in the Registry's list has been accepted.²⁸

13. For the reasons above, the Chamber hereby **REJECTS** the prosecution's Application.

14. Taking into account the fact that there is no basis for the classification of the filings related to the prosecution's Application to remain confidential, and in order to ensure publicity of the proceedings, the Chamber **ORDERS** that filings ICC-01/05-01/08-2252-Conf and ICC-01/05-01/08-2258-Conf and decision ICC-01/05-01/08-2254-Conf, be reclassified as public.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this Tuesday 21 August 2012

At The Hague, The Netherlands

²⁸ Email communication from the Associate Legal Officer, Division of Court Services to a Legal Officer of the Trial Chamber of 14 August 2012 at 18.33. See also: <http://www.icc-cpi.int/NR/rdonlyres/045C6DC2-9E7E-4F20-A5CF-6C1F8959B908/284816/210812ListofExpertsEnglish.pdf>