

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/08
Date: 31 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 redacted version

**Report to the Chamber pursuant to the Chamber's "Decision on the Submissions
on Defence Evidence" dated 7 June 2012**

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 *ex parte* status conference of 10 May 2012;¹

NOTING the "Defence submissions to the Chamber concerning its witnesses"; submitted by the Defence on 11 May 2012;²

NOTING the "Decision on the starting date of the defence presentation of evidence an related issues", issued by Trial Chamber III ("the Chamber") on 24 May 2012;³

NOTING the "Submissions on Defence Evidence", submitted by the Defence on 28 May 2012;⁴

NOTING the "Decision on the Submissions on Defence Evidence" ("the 7 June Decision"), issued by the Chamber on 7 June 2012;⁵

NOTING Articles 3 and 62 of the Rome Statute, Rule 68(a) of the Rules of Procedure and Evidence, and Regulation 45 of the Regulations of the Registry;

CONSIDERING that in the 7 June Decision, the Chamber ordered "the defence to adjust the order of appearance of its witnesses in order to start with the testimony of

¹ ICC-01/05-01/08-T-226-Conf-Exp-Eng-ET.

² ICC-01/05-01/08-2214-Conf-Exp.

³ ICC-01/05-01/08-2221.

⁴ ICC-01/05-01/08-2222-Conf-Exp.

⁵ ICC-01/05-01/08-2225.

the proposed expert witnesses, followed by those witnesses that are in possession of, or do not face obstacles in obtaining travel documents”;⁶

CONSIDERING that in the 7 June Decision, the Chamber further instructs ‘the defence and the Registry to inform the Chamber, as early as possible, of any problems that may be encountered in ensuring the appearance of defence witnesses, and to submit concrete proposals and alternatives for the Chamber’s consideration’;⁷

CONSIDERING that the Chamber has further requested the Defence and the Registry to assess the feasibility of various alternatives to live testimony in The Hague, and particularly in relation to: a) Video link testimony [REDACTED]; b) Introduction of testimony in accordance with Rule 68 (a) of the Rules of Procedure and Evidence (“the Rules”); c) The feasibility of holding in situ hearings [REDACTED].⁸

RESPECTFULLY SUBMITS for the attention of the Chamber as follows:

1. Following the 7 June Decision, the Defence and the Registry continued consultations on the issue of the appearance of defence witnesses, and in particular on the alternatives to live testimony. To this end the Defence and Registry met on 20 June 2012. In relation to the three alternatives to live testimony as proposed by the Chamber, the Defence informed the Registry that their main wish is to be able to bring the witnesses to give live testimony at the seat of the Court. Taking this into consideration, as well as the 7 June decision, the Registrar presents below the options currently being explored.

⁶ Ibid at p. 10, para. 23 (d).

⁷ Ibid at p. 10, para. 23 (e).

⁸ ICC-01/05-01/08-2225-Conf-Exp-AnxA, p.2, para. 3.

Video-link testimony

2. In relation to video-link testimony, in accordance with the submission of the Defence of 28 May 2012, the Defence envisages that video-link testimony would be required [REDACTED]. During the meeting of 20 June, the Defence further explained to the Registry that video-link would not be their preferred option for the other persons on the witness list, and that video-link in respect of a large number of witnesses is not desired.
3. From the technical and operational perspective, the Registry can confirm that [REDACTED] in respect of whom the Defence envisages video link testimony, the Registry can facilitate their appearance [REDACTED].
4. In relation to possible testimony via video-link for witnesses [REDACTED], the Registry is currently addressing a request to the relevant authorities so as to try to obtain their views in order for the Registry to be able to make a preliminary assessment on the willingness of the State to allow such an event in their territory, should this become necessary. [REDACTED].
5. In relation to possible testimony via video-link for witnesses [REDACTED]. The Registry is currently addressing a request to the relevant authorities so as to try to get information as to the willingness of the State to assist the Court by allowing it to organize video links in its territory.
6. In addition to the above, should the Court have the permission of the State authorities to operate in these countries, the Registry would also need to conduct an on-site security assessment of locations which may be identified for the purposes of video-link testimony. In terms of concrete practical steps to be taken in this regard, the Registry would require an instruction of the

Chamber in order to be able to proceed with specific arrangements and proceed to more formal consultations.

7. [REDACTED]. Lastly, but of fundamental importance is the issue of funds for this activity, which would depend on the number of days of testimony expected and operational requirements such as number of staff to be engaged in the field for this purpose.

Introduction of testimony by way of Rule 68 (a) of the Rules

8. On 20 June 2012, and consistent with their wish to bring live witnesses to testify at the seat of the Court, the Defence informed the Registry that the Defence does not envisage the possibility of Rule 68(a) pre-recorded statements.
9. Nevertheless, should this activity be required at any point in time, and given that the Court is able to operate in a particular environment, in terms of the technical capacity, the Registry would be able to support it following an official assessment procedure as to the location and security, among others.

Feasibility of holding in situ hearings

10. During the meeting of 20 June, the Defence informed the Registry that in the event that witness travel to The Hague is not operationally possible at all, *in situ* hearings could be considered but only after exhausting all other options for live appearance.
11. With regard to *in situ* hearings, in order to be able to provide the Chamber with an actual feasibility study, and on the basis of former experience by the

Registry on this specific matter where a feasibility assessment was carried out by various Registry sections in a situation country and in a non-situation country location, the Registrar respectfully submits that first and foremost, and before a feasibility assessment is carried out, the Chamber would need to establish some parameters that would serve as a basis for the operational parameters to be determined by the Registry. For example, number of expected *in situ* hearing days, number of witnesses, would the accused be present at the *in situ* location or require video link.

12. However, on a preliminary basis, and taking into consideration [REDACTED] the Registrar is able, at this stage, to indicate to the Chamber as follows:

a) [REDACTED]. In addition to this, the Registry will need to look at how it could support such an activity as for instance some resources have reduced in comparison to a former *in-situ* planning a few years ago, therefore, budgetary considerations will need to be considered as well. It is currently estimated, that an *in situ* planning could take place between three and six months. This time would be subject to change depending on the actual requirements.

b) [REDACTED].

c) [REDACTED].

d) [REDACTED].

13. In terms of concrete practical steps to be taken in this regard, the Registry would require further guidance from the Chamber as to the parameters that need to be considered.

Further information to the Chamber

14. During the meeting of 20 June, the Defence informed the Registry *inter alia* that the Defence wishes to maintain the current order of witnesses and previously submitted to the Chamber.

15. In this regard, the Registrar notes that the current aim of the Registry is to be able to bring all the relevant witnesses for testimony at the seat of the Court. However, and in order to be able to have a concrete plan, it is paramount for the Registry to be able to work on a finalized and approved order in which the witnesses will appear.⁹ Only on the basis of definite information, will the Registry be able to take concrete steps with the relevant authorities to be able to conduct its operations (*i.e.* making specific requests for cooperation to relevant States depending on the need). The results of such concrete steps would give the Registry a much better idea of the level of difficulty of the challenge and would enable it to keep the Chamber informed of any specific and actual obstacles. This would also be very relevant for the timing of the handover of the witnesses from the Defence to the VWU team in the field because as of that moment, the witnesses will be in the hands of the VWU.

16. However, and in order to further report to the Chamber on the current situation, in addition to all of the information previously provided in the present submission, the Registrar wishes to inform the Chamber of additional

⁹ This would also allow the Registry to plan accordingly in terms of the languages that will need to be provided during the testimonies.

preliminary steps that have been taken, and steps that the Registry intends to take, unless otherwise ordered by the Chamber.

17. [REDACTED].

18. [REDACTED].

19. [REDACTED].

20. [REDACTED].

21. Other witnesses: From the current information at our disposal it seems that there are no considerable impediments in obtaining travel documents. Nevertheless, the Registrar notes that their arrival in The Hague for testimony depends on the availability of witnesses and ability of the Registry to be able to make concrete arrangements in a timely manner.

22. [REDACTED].

Other matters

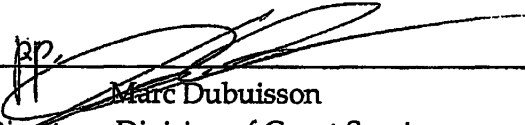
23. The Registrar further observes that in the 7 June Decision, the Chamber instructed the "defence to liaise with the Registry in order to ensure that, if necessary, defence witnesses be provided with the document referred to in paragraph 2 of Article 19 of the Agreement on Privileges and Immunities of the International Criminal Court and paragraph 2 of Article 26 of the Headquarters Agreement between the International Criminal Court and the

Host State".¹⁰ In this regard, the Registrar stands ready to assist the Defence by providing this document if they so require.

24. The Registry stands ready to further assist the Chamber and the Defence in trying to secure the appearance of Defence witnesses at the seat of the Court in accordance with a final and approved order of witness appearance.

The present submission is presented as *Confidential Ex Parte* for it contains information of a confidential nature in relation to witness appearance, and in particular it addresses matters that have been classified as Confidential ex Parte by the Chamber through document ICC-01/05-01/08-2225-Conf-Exp-AnxA.

RESPECTFULLY SUBMITTED,



Marc Dubuisson
Director – Division of Court Services
per delegation of
Silvana Arbia, Registrar

Dated this 31 August 2012

At The Hague, The Netherlands

¹⁰ Idem. at p. 2, para.2.