

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 September 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

**Decision on the "Prosecution Motion on Procedure for Contacting Defence
Witnesses and to Compel Disclosure"**

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

The Office of the Prosecutor

Ms Fatou Bensouda

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 Luis Martinod Jacome

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber III ("Chamber") of the International Criminal Court ("Court") in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* issues the following Decision on the "Prosecution Motion on Procedure for Contacting Defence Witnesses and to Compel Disclosure.

I. Background and submissions

1. On 10 August 2012 the Office of the Prosecutor ("prosecution"), filed its "Prosecution Motion on Procedure for Contacting Defence Witnesses and to Compel Disclosure" ("Motion"),¹ in which it requests the Chamber to compel the defence to seek, in good faith, the consent of its witnesses to meet with the prosecution and to facilitate the necessary arrangements for such meetings.² More specifically, the prosecution requests that the Chamber order the defence: (i) to prepare a neutral script, to be disclosed to the Chamber and the prosecution, which should be read to witnesses when seeking their consent; (ii) to comply with its obligation to facilitate contact between the prosecution and defence witnesses; (iii) not to obstruct these meetings by making themselves unavailable to attend them; (iv) to bear any costs incurred by the defence in relation to such meetings; (v) not to interfere in such meetings; and (vi) to disclose certain documents and information requested on 2 August 2012.³
2. On 17 August 2012, the defence filed its "Defence Response to 'Prosecution Motion on Procedure for Contacting Defence Witnesses and to Compel Disclosure'" ("Response"),⁴ in which it submits that (i) reading a "neutral script" to the witnesses would be problematic in practice, since it would prevent defence counsel from responding to a multitude of inevitable

¹ Prosecution Motion on Procedure for Contacting Defence Witnesses and to Compel Disclosure, 10 August 2012, ICC-01/05-01/08-2260-Conf.

² ICC-01/05-01/08-2260-Conf, paragraph 1.

³ ICC-01/05-01/08-2260-Conf, paragraph 25.

⁴ Defence Response to 'Prosecution Motion on Procedure for Contacting Defence Witnesses and to Compel Disclosure', 17 August 2012, ICC-01/05-01/08-2268-Conf.

questions and would almost certainly end up having the opposite outcome to that sought by the prosecution;⁵ (ii) the defence has no obligation to facilitate contact between the prosecution and defence witnesses;⁶ (iii) the defence's assertions that it cannot attend meetings are a genuine reflection of its current workload;⁷ (iv) the prosecution request that the defence bear any costs it incurs in relation to such meetings is unjust and impracticable;⁸ (v) the defence must be able to raise objections or intervene to protect witnesses when necessary to meet their obligations to represent the interests of their client;⁹ and (vi) the defence has disclosed the documents requested by the prosecution on a rolling basis as and when they are available and will continue to do so in good faith.¹⁰

3. The defence also stresses that defence counsel are officers of the Court and therefore bound by the ethical guidelines of their national bar associations and by the Court's relevant code of conduct.¹¹ Further, the defence seeks that the Chamber direct the prosecution to retract and refrain from making accusations that it has not acted in good faith.¹²
4. During the hearing of 23 August 2012, the prosecution orally clarified that it no longer seeks to meet with witness CAR-D04-PPPP-0059, but expressed concerns in relation to its intention to meet with witness CAR-D04-PPPP-0060.¹³ The prosecution submitted that, although the defence has indicated that the witness was willing to meet with the prosecution,¹⁴ the defence is seeking to impose a number of conditions on the meeting, including the requirement that the prosecution make all the necessary arrangements for a

⁵ ICC-01/05-01/08-2268-Conf, paragraph 3.

⁶ ICC-01/05-01/08-2268-Conf, paragraph 4.

⁷ ICC-01/05-01/08-2268-Conf, paragraph 7.

⁸ ICC-01/05-01/08-2268-Conf, paragraph 8.

⁹ ICC-01/05-01/08-2268-Conf, paragraph 9.

¹⁰ ICC-01/05-01/08-2268-Conf, paragraph 10.

¹¹ ICC-01/05-01/08-2268-Conf, paragraph 2.

¹² ICC-01/05-01/08-2268-Conf, paragraphs 11-13.

¹³ ICC-01/05-01/08-T-235-CONF-ENG ET, page 26, lines 23 to 25, and page 27, lines 1 to 8.

¹⁴ ICC-01/05-01/08-T-235-CONF-ENG ET, page 35 lines 12 to 14.

member of the defence team to be present including arranging “a visa, finances, an official letter from the Court, authorisation from the Counsel Support Section, and a mission order signed by the Registrar”.¹⁵ Given the proximity of the date of the proposed meeting, the prosecution submits that by imposing such conditions the defence is essentially informing the prosecution that it will not have this meeting as there is not enough time for such arrangements to be made.¹⁶

5. In response the defence stated that it was “perfectly prepared to listen to suggest[ions] such as meetings via video link”¹⁷ and that the issue could be dealt with between the parties without the need to involve the Chamber.¹⁸ Further, the defence submitted that if the prosecution wished to discuss any suggestion, the defence had “a very open mind and [...] will do everything to facilitate it”.¹⁹

II. Relevant Provisions

6. In making this ruling, the Chamber has considered, in accordance with Article 21(1) of the Rome Statute (“Statute”), Articles 43(6), 64(2), (6)(f), 67(1)(b) and (e), and 68(1) and (4) of the Statute, Rules 17(2)(b)(i) and (ii), 18(b) and 74 of the Rules of Procedure and Evidence, Regulation 51 of the Regulations of the Office of the Prosecutor and Article 7(1) of the Code of Professional Conduct for Counsel.

¹⁵ ICC-01/05-01/08-T-235-CONF-ENG ET, page 27, lines 23 to 25, page 28, lines 1 and 23 to 25, and page 29, line 1.

¹⁶ ICC-01/05-01/08-T-235-CONF-ENG ET, page 28, lines 5 to 13.

¹⁷ ICC-01/05-01/08-T-235-CONF-ENG ET, page 37 lines 23-24.

¹⁸ ICC-01/05-01/08-T-235-CONF-ENG ET, page 38, lines 1 to 2.

¹⁹ ICC-01/05-01/08-T-235-CONF-ENG ET, page 38, lines 2 to 6.

III. Analysis and Conclusions

7. At the outset, the Chamber stresses that although not specifically regulated in the Court's legal framework, prior contact between a party or a participant and the witnesses to be called by the other party or a participant has been consistently permitted in the jurisprudence of the Court.²⁰ Indeed, Trial Chamber I held that:

With regard to permitting contact between a party or a participant and the witnesses to be called by the other party or a participant, the overarching consideration is the consent of the witness. Once a witness consents, unless the Chamber rules otherwise, contact should be facilitated. If the party or participant who intends to call a witness objects to the meeting, it shall raise the matter with the Chamber by way of an application in advance of the interview. The party or participant calling the witness is entitled to have a representative present during the interview, unless – again, following an application – the Chamber rules otherwise.²¹

8. With regard to the purpose of this contact, Trial Chamber I stated that it “may assist in the efficient management of the proceedings, and assist the Chamber in its determination of the truth”.²² In addition, Trial Chamber I noted that through holding such meetings, “irrelevant lines of questioning may be identified and discarded [and] lines of further enquiry may become clear, enabling their timely investigation prior to the witness giving evidence”.²³

²⁰ See Decision on the prosecution's application for an order governing disclosure of non-public information to members of the public and an order regulating contact with witnesses, 3 June 2008, ICC-01/04-01/06-1372, paragraphs 8 to 14; Second Decision on disclosure by the defence and Decision on whether the prosecution may contact defence witnesses, 20 January 2010, ICC-01/04-01/06-2192-Red, paragraphs 47 to 52; Decision on a number of procedural issues raised by the Registry, ICC-01/04-01/06-1134, paragraphs 25 to 31; Decision on the Protocols concerning the disclosure of the identity of witnesses of the other party and the handling of confidential information in the course of investigations, 6 March 2012, ICC-02/11-01/11-49, paragraphs 29 to 32; and Decision on the protocol concerning the handling of confidential information and contacts of a party with witnesses whom the opposing party intends to call, 24 August 2012, ICC-01/09-02/11-469, paragraphs 5 to 8, and ICC-01/09-02/11-469-Anx, paragraphs 4 to 15.

²¹ ICC-01/04-01/06-1372, paragraph 11. See also ICC-01/04-01/06-2192-Red, paragraphs 47 to 52.

²² ICC-01/04-01/06-2192-Red, paragraph 49.

²³ ICC-01/04-01/06-2192-Red, paragraph 49.

9. The Chamber agrees with Trial Chamber I in this regard, and in addition notes the particular benefit such meetings may have for the interviewing party in cases where the disclosed summaries of the issues on which the witnesses called by the other party will testify provide insufficient detail for the interviewing party to effectively and efficiently carry out any investigations.

10. By way of procedure, Trial Chamber I ordered that:

A party or participant wishing to interview a witness whom the other party or a participant intends to call, shall first inform the party or participant of the proposal, setting out the suggested time and location of the interview. If the witness consents, the party or participant shall make such contact through the Victims and Witnesses Unit, which shall make the necessary arrangements for the interview. A representative of the Victims and Witnesses Unit shall be present during the interview and the party or participant intending to call the witness may also attend the interview, unless the Chamber has, on an application, ruled otherwise.²⁴

11. Trial Chamber II endorsed Trial Chamber I's approach and followed a similar procedure with the exception that it did not require the Victims and Witnesses Unit ("VWU") to attend the interview of those witnesses who were not in the ICC Protection Programme ("ICCPP") and who did not ask for the VWU's assistance during the interview.²⁵ Moreover, Trial Chamber II held that the interviews could take place without the representative of the party or participant calling the witness, if the witness objected.²⁶ In addition, Trial Chamber II held that "in some circumstances" it may be more efficient for the party calling the witness to be responsible for making the practical arrangements, in particular for witnesses not included in the ICCPP.²⁷

12. Recently, Trial Chamber V adopted a protocol setting out the modalities of contact between one party and the witnesses the other party

²⁴ ICC-01/04-01/06-1372, paragraph 14.

²⁵ ICC-01/04-01/06-1134, paragraph 26.

²⁶ ICC-01/04-01/07-1134, paragraph 28.

²⁷ ICC-01/04-01/06-1134, paragraph 29-30.

intends to call.²⁸ In that protocol, Trial Chamber V held that “a party which intends to interview a Witness of another party shall first notify the other party of this intention, setting out the suggested time and location of the interview.”²⁹ Upon receiving this notification, the calling party must seek the consent of the witness within five days, and must not attempt to influence in any way the witness’s decision as to whether or not to consent to meeting the other party.³⁰ Trial Chamber V further held that, if the witness consents to the meeting, the calling party must notify the interviewing party accordingly and contact must be facilitated as appropriate.³¹

13. This Chamber has also permitted contact between one party and the witnesses called to testify by another party, adopting the practice followed by Trial Chamber II, subject to the clarification that the consent of the witness is to be sought by the party or participant calling the witness.³² Taking the above into account, the Chamber will now proceed to analyse the specific requests made by the prosecution.

Preparation of a neutral script

14. In light of the concerns the prosecution raises over the manner in which the defence has sought witnesses’ consent, the prosecution requests that the Chamber order the defence to prepare a neutral script to be read to witnesses when it seeks their consent.³³ The defence opposes the use of a script, highlighting difficulties that use of a script might entail, namely, that it would prevent the defence from responding to a multitude of inevitable questions from witnesses and that this method, in relation to witnesses who

²⁸ ICC-01/09-02/11-469 and ICC-01/09-02/11-469-Anx.

²⁹ ICC-01/09-02/11-469-Anx, paragraph 4.

³⁰ ICC-01/09-02/11-469-Anx, paragraph 7.

³¹ ICC-01/09-02/11-469-Anx, paragraph 7.

³² ICC-01/05-01/08-813-Conf, paragraph 68.

³³ ICC-01/05-01/08-2260-Conf, paragraph 25.

are often “vulnerable” and “ignorant of their rights and the processes of the Chamber”, “would almost certainly end up having the opposite outcome to that sought by the Prosecution.”³⁴

15. At the outset, the Chamber notes that it agrees with Trial Chamber II that “the [witness’s] consent must be given voluntarily. The party calling the witness is prohibited from trying to influence the witness’s decision as to whether or not to agree to be interviewed by Counsel of another party.”³⁵

16. However, despite the concerns the prosecution raises, the Chamber agrees with the defence that the use of a neutral script is an impractical solution. Rather, the Chamber considers it sufficient to stress the obligation incumbent on the calling party not to try to influence the witness’s decision in any way when seeking consent. More specifically, the information to be provided by the calling party to the witness should be limited to explaining: (i) the nature of the interview; (ii) the fact that such interviews are accepted common practice; and (iii) the requirement of the witness’s consent. The calling party should raise no other issues with the witness that could affect his or her decision to consent or not to participate in such a meeting.

17. That notwithstanding, should the interviewing party have any concerns regarding the manner in which the calling party has sought the witness’s consent, it may raise such concerns in the course of the witness’s testimony in court.

³⁴ ICC-01/05-01/08-2268-Conf, paragraph 3.

³⁵ ICC-01/04-01/06-1134, paragraph 28.

Obligation to facilitate contact

18. The prosecution submits that the defence has an obligation to facilitate contact between the prosecution and the witnesses called by the defence.³⁶ The defence submits that it is under no such obligation and that it has sought the consent of each witness and notified the prosecution of the witnesses' replies as soon as practicable.³⁷ The Chamber stresses that it has already set out the modalities for the calling party seeking the consent of the witnesses it has called,³⁸ and recalls that once consent has been given by the witness, "contact should be facilitated".³⁹
19. In that respect, the Chamber considers that once consent has been given, the calling party, the interviewing party and the VWU, where necessary, should liaise and take all reasonable steps to facilitate contact between the interviewing party and the witness.
20. In relation to objections on the part of the calling party, the Chamber notes the approach followed by Trial Chamber V whereby in such cases the calling party must discuss any objections with the interviewing party, following which, if the parties cannot reach agreement despite their best efforts, they should promptly raise the matter with the Chamber.⁴⁰ This Chamber finds such procedure adequate, and decides to follow it in the present case. Therefore, in cases where the calling party objects to a meeting, the Chamber encourages the parties to liaise in order to find a mutually agreeable solution and, in case agreement cannot be reached, the parties should promptly raise the matter with the Chamber. That notwithstanding, the Chamber stresses that it is not for the calling party to impose "Pre-

³⁶ ICC-01/05-01/08-2260-Conf, paragraph 25(ii).

³⁷ ICC-01/05-01/08-2268-Conf, paragraphs 4 and 5.

³⁸ See paragraph 16 above.

³⁹ ICC-01/04-01/06-1372, paragraph 11.

⁴⁰ ICC-01/09-02/11-469-Anx, paragraph 8.

Conditions to any Meeting”⁴¹ of its own volition, regardless of their merit or legal basis.

Presence of a defence representative at the meetings and conduct of the meetings

21. The prosecution alleges that “if the Defence team *chooses* not to attend or is unable to attend for its own reasons, and also chooses not to send another representative who may be available, there is no bar to the meetings occurring in the absence of the Defence”.⁴² On the other hand, the defence avers that it has an entitlement to be present at interviews and that “it intends to exercise this right”.⁴³ The Chamber also notes the defence’s position, as set out in an email to the prosecution, that it “will not countenance the idea of the Prosecution interviewing defence witnesses absent the defence”.⁴⁴

22. In relation to the issue of the presence of the calling party in these meetings, Trial Chamber I stated that “the party calling the witness is entitled to have a representative present during the interview”.⁴⁵ However, it also stated that “the party or participant intending to call the witness may also attend the interview, unless the Chamber has, on an application, ruled otherwise”.⁴⁶ Further, Trial Chamber I, in a later decision, stated that “the defence may attend (unless the Chamber has ruled otherwise)”.⁴⁷ On this issue, Trial Chamber V stated that “a representative of the party calling the witness may be present during the interview”.⁴⁸

⁴¹ ICC-01/05-01/08-2260-Conf-AnxF and ICC-01/05-01/08-T-235-ENG ET, page 27, lines 1 to 4.

⁴² ICC-01/05-01/08-2260-Conf, paragraph 21.

⁴³ ICC-01/05-01/08-2268-Conf, paragraph 6.

⁴⁴ ICC-01/05-01/08-2260-Conf-AnxF.

⁴⁵ ICC-01/04-01/06-1372, paragraph 11.

⁴⁶ ICC-01/04-01/06-1372, paragraph 14.

⁴⁷ ICC-01/04-01/06-2192-Red, paragraph 51.

⁴⁸ ICC-01/09-02/11-469-Anx, paragraph 10.

23. At the outset, the Chamber notes that the parties and participants do not “own” the witnesses they call to testify. Indeed, the witnesses do not “belong” to parties or participants;⁴⁹ witnesses “are the property neither of the Prosecution nor of the Defence and [...] should therefore not be considered as witnesses of either party, but as witnesses of the Court”.⁵⁰
24. In the view of the Chamber, the presence of the calling party at interviews between the witnesses it has called and another party is not a prerequisite to the conduct of such interviews. While, unless the Chamber has ruled otherwise, the calling party may attend such interviews, should the calling party not be able to attend through unavailability or for financial reasons, this is not a bar to such meetings taking place. That notwithstanding, the Chamber recognises the calling party’s interest in being present at such meetings and stresses that its presence should be facilitated and ensured where possible.
25. The Chamber considers that in cases where the attendance of the calling party is not possible or practicable, for any reason, the interviewing party should take all reasonable steps to minimise the impact of the calling party’s absence and the parties should liaise in order to find the most appropriate and sensible solution in order to ensure that the interests and rights of both parties, as well as the well-being of the witness, are not prejudiced.
26. In particular, the Chamber considers that the parties may agree for the meeting to take place once the witness has arrived in The Hague. The Chamber notes that this would represent an exception to the familiarisation process as provided for in the “Unified Protocol on the practices used to

⁴⁹ ICC-01/04-01/06-2192-Red, paragraph 49.

⁵⁰ Decision on the Practices of Witness Familiarisation and Witness Proofing, 8 November 2006, ICC-01/04-01/06-679, paragraph 26.

prepare and familiarise witnesses for giving testimony at trial" ("Unified Protocol").⁵¹ According to the Unified Protocol, familiarisation begins upon the witness's arrival in the Netherlands.⁵² Once familiarisation has begun, contact between witnesses and the parties and participants is restricted to a meeting in which the witness is acquainted with the persons who will examine them ("courtesy meeting") and parties and participants' passive observance of the courtroom familiarisation.⁵³ The Chamber notes that "[t]he witness is in the care of the VWU from the moment he or she leaves his/her residence, and while he or she provides testimony before the Court".⁵⁴

27. Therefore, where the parties do agree to a meeting taking place in The Hague, the VWU must attend the meeting in order to ensure that, with the exception of the meeting itself, the conditions set out in the Unified Protocol are adhered to.

28. Where agreement to meet in The Hague is not reached, the interviewing party must either arrange for the calling party to be able to observe any interview by video-link, or, at a minimum, provide the calling party with a copy of an audio/video recording of the full interview as soon as practicable after the meeting is concluded.

29. In addition, the Chamber recalls the obligations incumbent on the interviewing party in relation to conducting such interviews, as set out by Trial Chamber I:

[T]he prosecution must exercise great caution in its investigations; it must ensure that by its actions it does not deter or destabilise any of the defence witnesses, and that it does not impair the opportunity for the Chamber to consider all the relevant and

⁵¹ "Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial", ICC-01/05-01/08-1081-Anx,

⁵² ICC-01/05-01/08-1081-Anx, paragraph 28.

⁵³ ICC-01/05-01/08-1081-Anx, paragraphs 27, 30 to 32, and 69 to 74.

⁵⁴ ICC-01/05-01/08-1081-Anx, paragraph 9.

available evidence. Therefore, it is critical that it demonstrates circumspection and caution in taking [...] investigative steps as regards the defence witnesses.⁵⁵

The Chamber considers that caution must be exercised by all parties and participants during their investigations in relation to all witnesses of other parties and participants. Moreover, the Chamber agrees with the following directions given in the *Lubanga* case:

It is critical that the parties approach these meetings sensibly, with focused and identified questions that are reasonable and proportionate. Whilst the Chamber has currently sanctioned [meetings between one party and witnesses called or to be called by the other] if this procedure leads to questioning that is onerous for the witnesses, or if the meetings tend to turn into alternative or preliminary oral testimony, then the Chamber will have to consider imposing limitations and tighter controls on the exercise.⁵⁶

Witnesses to whom Rule 74 of the Rules may apply

30. The Chamber reminds the parties that, in relation to witnesses to whom Rule 74 of the Rules may apply, the calling party has the obligation to notify the VWU of the identity of any such witnesses, in accordance with the relevant provisions of the Unified Protocol, which the Chamber considers applies *mutatis mutandis* throughout the presentation of evidence by the defence.⁵⁷ In relation to witnesses to whom this paragraph applies, the calling party shall also notify the Chamber of their identity.

Defence costs in relation to the meetings

31. The Chamber notes its finding above that it is not a pre-requisite that the calling party attend such meetings; rather the calling party may attend at its discretion. In cases where the calling party does not attend such meetings, the Chamber considers the impact on its rights and interests will

⁵⁵ ICC-01/04-01/06-2192-Red, paragraph 60.

⁵⁶ ICC-01/04-01/06-T-232-ENG CT WT, page 10, lines 7 to 14.

⁵⁷ ICC-01/05-01/08-1081-Anx, paragraphs 56-63.

be minimal due to the requirement that the interviewing party must either arrange for the calling party to be able to observe any interview by video-link, or, at a minimum, provide the calling party with a copy of an audio/video recording of the full interview as soon as practicable after the meeting is concluded. Given these circumstances, the Chamber considers that in the event that the defence considers the attendance of a representative at a particular meeting to be imperative, and if it requires additional funds in order to attend, it should communicate with the Registry in order to seek the provision of an additional advance of funds to enable its representative to attend. If no additional advance of funds is approved by the Registry, paragraphs 26 to 28 of the present decision should apply.

Defence role in meetings

32. The Chamber reiterates that the parties do not represent the interests of the witnesses they call. The Chamber further notes that the calling party is entitled to “be present” or to “attend” such interviews, not to participate in them. It is therefore not for the representative of the calling party to actively participate or intervene in such meetings. In this regard, the Chamber endorses the view that “[t]he representative of the calling party present at an interview shall not, in any manner, prevent or dissuade the witness from answering questions freely. If the calling party considers that it must object to any part of the procedure followed or a particular line of questioning this will be recorded. Such objections must not impede or unduly disrupt the interview”.⁵⁸

⁵⁸ ICC-01/09-02/11-469-Anx, paragraph 11.

Disclosure of documents

33. In relation to the prosecution's request that the Chamber order the defence to disclose additional information on expert witnesses CAR-D04-PPPP-0059 and CAR-D04-PPPP-0060, which was requested from the defence by email on 2 August 2012,⁵⁹ the Chamber notes the defence's submission that it has disclosed the relevant documents on a rolling basis as and when it has been able to do so and that it will continue to do so in good faith.⁶⁰ The Chamber considers it sufficient to reaffirm that the defence should continue to disclose the relevant materials as soon as practicable and sufficiently in advance of the experts' testimony so as to allow the prosecution to prepare for its questioning of the witnesses.

Witness CAR-D04-PPPP-0060

34. In relation to the oral submissions made by the prosecution regarding meeting with witness CAR-D04-PPPP-0060,⁶¹ the Chamber considers that the parties should cooperate in line with the procedure set out in the present decision to facilitate the prosecution's meeting with this witness.

Prosecution reliance on confidential documents from another case

35. The Chamber notes the reference in the prosecution's Motion,⁶² to a confidential decision rendered by another trial chamber in another case.⁶³ The Chamber emphasises that neither it, nor the parties in this case, have access or are authorised to rely on confidential decisions from other cases.

⁵⁹ ICC-01/05-01/08-2260-Conf-AnxJ.

⁶⁰ ICC-01/05-01/08-2268-Conf, paragraph 10.

⁶¹ ICC-01/05-01/08-T-235-CONF-ENG ET, page 26, lines 19 to 25, page 27, lines 1 to 25, and page 28, lines 1 to 19.

⁶² ICC-01/05-01/08-2260-Conf, footnote 22.

⁶³ Decision on the presence of Defence counsel during Prosecution's interview with two potential Defence witnesses, 25 October 2010, ICC-01/04-01/07-2491-Conf.

36. Finally, the Chamber stresses the parties' duties to act courteously and in good faith in their dealings with one another.

IV. Orders

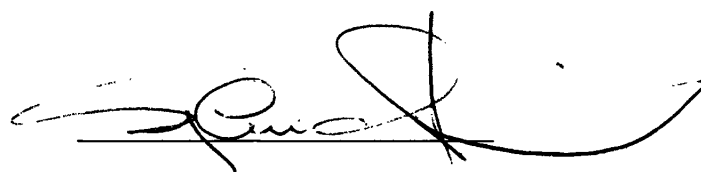
37. For the above reasons, the Chamber hereby:

- (i) ORDERS the defence to comply with the conditions set out in paragraph 16 above when seeking the consent of the witnesses it has called to testify to meet with the prosecution;
- (ii) INSTRUCTS the defence, the prosecution and the VWU, where necessary, to work together and take all reasonable steps to facilitate contact between the prosecution and witnesses called by the defence who have consented to meet with the prosecution;
- (iii) INSTRUCTS the defence to refrain from imposing pre-conditions on meetings between the prosecution and the witnesses it has called to testify;
- (iv) DECIDES that the presence of the defence it is not a pre-requisite to meetings between the prosecution and the witnesses called by the defence taking place;
- (v) ORDERS the parties, in cases where the defence cannot attend a meeting, to liaise in order to find the most agreeable solution in order to ensure that the interests and rights of both parties, as well as the well-being of the witness, are not prejudiced;
- (vi) ORDERS the prosecution, in cases where there defence cannot attend a meeting for any reason, and in case no other agreement has been reached with the defence, to either arrange for the defence to be able to observe any interview by video-link, or, at a minimum, provide the calling party with a copy of an audio/video recording

of the full interview as soon as practicable after the meeting is concluded;

- (vii) INSTRUCTS the defence to notify the VWU as soon as practicable of the identity of any witnesses who may potentially incriminate themselves, in accordance with the relevant provisions of the Unified Protocol;
- (viii) DECIDES that it is for the defence to bear any costs it incurs should it wish to have a representative present at any meetings between the witnesses it has called to testify and the prosecution;
- (ix) INSTRUCTS the defence not to interfere in any way in meetings it attends between the witnesses it has called and the prosecution;
and
- (x) INSTRUCTS the defence and the prosecution to cooperate in line with the procedure set out in the present decision in relation to facilitating the prosecution meeting with witness CAR-D04-PPPP-0060.

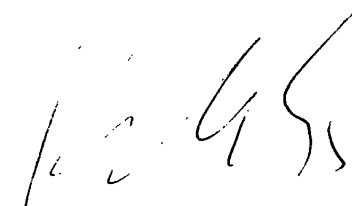
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 4 September 2012

At The Hague, The Netherlands