

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 31/01/2013

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

with an Annex A Confidential, *Ex Parte* Defence and VWU Only

Defence Submissions in Compliance with Decision ICC-01/05-01/08-2492

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

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for the Victims

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

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Defence Support Section

Victims and Witnesses Unit

Ms. Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations Other
Section**

A. BACKGROUND

1. On 29 January 2013, by way of its *Decision shortening the time for observations and requesting further information on the Defence Motion ICC-01/05-01/08-2490-Red*¹ Trial Chamber III (“the Chamber”) held as follows:

The Chamber...orders the Defence to submit no later than 16.00 on 31 January 2013, the list of witnesses it intends to call as priority, indicating, in coordination with the VWU, a concrete and precise schedule for the appearance of the proposed witnesses.

2. Pursuant to that order, the Defence files the following submissions.

B. SUBMISSIONS

3. Firstly, the Defence continues to work closely with the Victims and Witnesses Unit (“VWU”), and the relevant offices within the Registry, in order to provide all the assistance possible to facilitate the ongoing presentation of Defence witnesses, and the efficient running of the proceedings.

4. However, the Defence is again compelled to recall that the responsibility for arranging the appearance of witnesses before the International Criminal Court in The Hague does not rest with the Defence, but with the VWU and the Registry. The Defence has now been informed that VWU is continuing to encounter obstacles in arranging the presentation of Defence witnesses, due to the ongoing non-cooperation of state authorities, and other associated difficulties. This is obviously of extreme concern. However, it must be stressed that it is the Registry in general and the VWU in particular who have the established contacts with the designated focal points, and who are specialists in arranging the movement of witnesses to The

¹ ICC-01/05-01/08-2942, para. 14(ii).

Hague, and in organizing passports, visas, authoriations, and the accompanying logistics associated with witness testimony.

5. As such, while the Chamber has ordered the Defence to provide a “precise and concrete schedule for the appearance of witnesses”, the Defence reiterates that whether this schedule can be complied with is out of the hands of the members of the Defence team. While the Defence will continue to do everything possible to facilitate the presentation of its witnesses, any deviation from the “precise and concrete schedule” is beyond the role and capacity of Defence lawyers, who are tasked in these proceedings with representing the accused and presenting Defence evidence before the Chamber, and have no expertise in the movement of witnesses, nor the resources to perform this task.

6. Secondly, the Defence hereby reiterates its request for the re-commencement of the trial as soon as possible. The Defence is willing and ready to continue with the presentation of its evidence as soon as this can be facilitated by the relevant organs of the Court, noting that Mr. Bemba remains incarcerated throughout this period of delay.

7. Following consultations with VWU, however, it appears that no witnesses will be available to testify before the Chamber’s scheduled date of 4 March 2013. Should VWU be able to arrange the presentation of any witnesses, the Defence remains ready to present their evidence to the Chamber.

8. The Defence provides below “the list of witnesses it intends to call as priority”, and in the order it wishes them to be called. This list has been put together in consultation with VWU, and is based on the availability of witnesses and their state of readiness to travel. Further details concerning ongoing obstacles, and a request for video-link for Witness D-19 are set out in Confidential and Ex Parte Annex A. The time estimates provided below indicate the hours which the

Defence anticipates it will need to examine each witness. The Defence will continue to provide its monthly and weekly timetables once VWU has confirmed the appearance of the witnesses.

Witness D-21: Estimated 4 hours

Witness D-19 (via video-link): Estimated 10 hours

Witness D-15: Estimated 4 hours

Witness D-18: Estimated 3 hours

Witness D-39: Estimated 3 hours

Witness D-46: Estimated 5 hours

Witness D-45: Estimated 8 hours

The whole, respectfully submitted.



Aimé Kilolo Musamba

Lead Counsel



Peter Haynes

Co- Counsel

Done on the 31st of January 2013

At The Hague, The Netherlands