

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 20 February 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**

PUBLIC

Public redacted version of ICC-01/05-01/08-2507-Conf

**Registry's report on the arrangements for the testimony of Witness D04-19 *via*
video-link**

Source: Registry

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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**Unrepresented Applicants for
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Ms Silvana Arbia

Defence Support Section

Deputy Registrar

Mr Didier Daniel Pereira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court ("the Court");

NOTING the *"Decision on the temporary suspension of the proceedings pursuant to Regulation 55(2) of the Regulations of the Court and related procedural deadlines"* issued by Trial Chamber III (the "Chamber") on 13 December 2012;¹

NOTING the *"Decision on measures to facilitate the continued presentation of evidence by the defence"* on 14 December 2012;²

NOTING the *"Defence Motion to Vacate Trial Chamber's 'Decision on the temporary suspension of the proceedings' of 13 December 2012 and Notification Regarding the Envisaged Re-Qualification of Charges Pursuant to Regulation 55"* on 28 January 2013;³

NOTING the *"Decision shortening the time for observations and requesting further information on the Defence Motion ICC-01/05-01/08-2490-Red"* on 29 January 2013;⁴

NOTING the *"Defence Submission in Compliance with Decision ICC-01/05-01/08-2492"* (the "Defence's Submissions") on 31 January 2013;⁵

NOTING the *"Victims and Witnesses Unit's Report Following the 'Decision on measures to facilitate the continued presentation of evidence by the defence' (ICC-01/05-01/08-2482-Conf-Exp)"* on 4 February 2013;⁶

¹ ICC-01/05-01/08-2480.

² ICC-01/05-01/08-2482-Conf-Exp.

³ ICC-01/05-01/08-2490-Conf.

⁴ ICC-01/05-01/08-2492.

⁵ ICC-01/05-01/08-2497-Conf.

⁶ ICC-01/05-01/08-2498-Conf-Exp.

NOTING the *“Decision lifting the temporary suspension of the trial proceedings and addressing additional issues raised in defence submissions ICC-01/05-01/08-2490-Red and ICC-01/05-01/08-2497”* (the “Decision”) on 6 February 2013;⁷

NOTING articles 43(6), 68 (1) and (4) and 69 (2) of the Rome Statute, rules 16 to 19, 67, 86 to 88 of the Rules of Procedure and Evidence and regulations 45, 46, 57, 64, 79 to 96 of the Regulations of the Registry;

CONSIDERING that the Chamber has granted the Defence's request and authorised Witness D04-19 to give testimony before the Chamber by means of video technology;⁸

CONSIDERING that, taking into consideration the logistical arrangements of 1) the video-link testimony of Witness D04-19, 2) the Defence's request to have two members of the defence team present at the location of the video link and 3) privileged communication between counsel at the location of the video link and the accused in the Courtroom in The Hague, the Chamber deemed it necessary to first receive the observations of the prosecution, the legal representatives of victims and the Registry in order for the Chamber to take an informed decision on the said request;⁹

CONSIDERING that the Chamber has lifted the temporary suspension and ordered that the trial resume as soon as practicable;¹⁰

CONSIDERING that, in the absence of any obstacles to the appearance of Witness D04-19 *via* video link, the Chamber is of the view that his testimony should commence as soon as practicable and, if possible, before the testimony of Witness [Redacted] and

⁷ ICC-01/05-01/08-2500.

⁸ ICC-01/05-01/08-2500, paras. 30 and 34.

⁹ ICC-01/05-01/08-2500, para. 31

¹⁰ ICC-01/05-01/08-2500, paras. 21 and 34.

ordered the Registry and the Defence to report to the Chamber, by 16h00 on Friday 8 February 2013, on the earliest possible starting date for the presentation of the testimony of Witness D04-19 *via* video link;¹¹

CONSIDERING that during the preparation meeting between the Victims and Witnesses Unit and the Defence dated 30 January 2012, the defence informed the unit that the testimony of Witness D04-19, if given *via* video link, may last [Redacted];

CONSIDERING that the location of the video link testimony of Witness D04-19 is discussed in this report, the present report is submitted as confidential;

RESPECTFULLY SUBMITS as follows the Registry's report on the arrangements of the testimony of Witness D04-19 *via* video-link and the earliest possible starting date of his testimony:

1. The Registry hereby submits that, in principle, the Registry can support the following defence requests with some limitations:
 - 1) the defence request to have two members of the defence team present at the location of the video link; and
 - 2) privileged communication between the defence counsel at the location of the video link and the accused in the courtroom in The Hague.

I. The defence request to have two members of the defence team present at the location of the video-link

2. For the facilitation of video-link testimony [Redacted], a maximum of two language channels can be provided. As informed by the defence that Witness

¹¹ ICC-01/05-01/08-2500, paras. 32 and 34.

D04-19 will testify in Swahili and the defence counsel will question the witness in French, provided that no other languages will be used at the location of the video-link, the Registry can support this request.

3. However, the Registry would like to point out that during the video-link testimony, data and phone traffic [Redacted] will be virtually impossible due to the fact that this video-link testimony, where two language channels will be provided, will use almost all available data band-width [Redacted]. [Redacted]. Therefore, the Registry is of the opinion that this [Redacted] should be taken into consideration when establishing the sitting hours [Redacted]. In the meantime, the Registry will endeavour on the enhancement of the data band-width capacity [Redacted] in order to be able to provide more language channels [Redacted].
4. In addition, the language channel for the video-link will be occupied by the testimony of Witness D04-19 (Swahili) while the defence counsel will use the French channel through a telephone line to conduct the questioning or any intervention. As the audio quality of the telephone line is lower than it of the Floor/Swahili channel in and to the courtroom, it will create more exhaustion for the interpreters in the courtroom. Therefore, the Registry will recruit additional freelance interpreters to re-inforce the French booth and the Swahili booth¹².
5. Lastly, if the in court protective measures are granted by the Chamber, *i.e.* facial and voice distortion¹³, as Witness D04-19 will be questioned by the defence counsel at the same location, both the witness and the counsel questioning are subject to voice and facial distortion in the public feed (to the Public Gallery, press, public and internet). However, participants in the courtroom as well as the interpreters and court reporters are not affected and will see and hear the clear feed, of both the witness and the counsel.

¹² [Redacted].

¹³ ICC-01/05-01/08-2244, paras. 11 and 25

6. Should the Chamber authorise the testimony of D04-19 be given entirely in closed sessions [Redacted]¹⁴, no impact will be caused by the presence of the defence counsel at the location of the video-link and the limitations detailed in paragraph 5 of the present report will not be applicable.

II. Privileged communication between counsel at the location of the video-link and the accused in the courtroom in The Hague

7. Secure (encrypted) communications between the location of the video-link and the courtroom in The Hague can be accommodated. A desk telephone will be installed in the courtroom in The Hague, if approved by the Chamber.
8. However, the Registry would like to inform the Chamber that the consultation between the defence counsel at the location of the video-link and the accused in the courtroom may be heard by the people present at the location of the video-link. In addition, given the small size of the room where the video-link testimony will take place, the consultation may also be captured by the microphone of the witness. Therefore, a mute button for the microphone can be made available for the Courtroom Officer to operate at the location of the video-link. All sounds from the location of the video-link can be blocked to the courtroom in The Hague by activating this button and a message on the remote witness screens in the courtroom would show 'microphone muted at other end' for verification.
9. In light of the fact that the consultations to be held between the defence counsel at the location of the video-link and the accused in the courtroom may lead to multiple adjournments of the hearings, the Registry recommends that while one defence counsel is questioning the witness, the other member of the defence team could make the consultation in a room in close vicinity to the room where the video-link will take place. If the Chamber considers this option agreeable, the Registry will look into the feasibility of this option [Redacted].

¹⁴ [Redacted].

III. The earliest starting date

10. The Registry will be able to arrange the video-link testimony of Witness D04-19 [Redacted] and accommodate the defence requests within [Redacted] calendar days as of the day when the Chamber orders the starting date of the testimony of Witness D04-19, if it will take place before the testimony of Witness [Redacted], and when the Chamber grants the requests of the defence.
11. Witness D04-19 will be available to commence his testimony *via* video-link as of [Redacted], as submitted by the defence *via* email to the Chamber¹⁵.
12. The Registry would however like to draw the Chamber's attention to the scheduling of the confirmation of charges hearings in the case of *the Prosecutor v. Laurent Gbagbo* (the "Gbagbo case") from 19 February to 1 March 2013. Should the testimony of Witness D04-19 be ordered to commence during the confirmation of charges hearings in the Gbagbo case, the Registry is able to accommodate two simultaneous trials¹⁶ with the following consequences and restrictions due to the shortage of resources:
 - The production of English and French transcripts: Both cases (the Bemba and the Gbagbo cases) will be provided with real-time transcript in Court. For one of the cases, it has to be agreed upon, that the notification of the finalised transcripts within the normal deadline after adjournment will not be fulfilled. The Registry will commit itself to notify the transcripts with possible delay for one of the cases where the notification of the transcripts in such case will take place the next working day. A draft transcript will be however available to all parties and participants directly after the adjournment if the notification of such transcript is delayed.
 - In court staff: Due to the fact that one Court Officer will be present at the location of the video-link, only one Court Officer will be available in The Hague assigned to both cases.

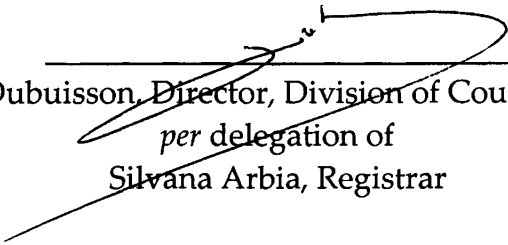
¹⁵ Email sent by the Defence to the Chamber on 6 February 2013 at 11h09.

¹⁶ [Redacted].

- Technology: Taking into consideration that a video conference also needs to be made available during the confirmation of charges hearings in the Gbagbo case, the Registry respectfully requests a break of one hour and 30 Minutes between the Bemba trial and the Gbagbo confirmation of charges hearings, instead of the minimal amount of one hour break. This longer break will enable the technicians to change and prepare all the settings and allow the video conference to operate in a safe and functional way.

IV. Conclusion

13. The Registry has already started the preparation of the video-link testimony of D04-19 as ordered by the Chamber. However, as the defence requests involve complicated technical and logistical arrangements, the accommodation of the defence requests will take [Redacted] calendars days. Should the Chamber decide the starting date of Witness D04-19 testimony and grant the defence requests taking into consideration all parameters detailed above, the Registry will make its at most efforts to organise the video-link testimony of Witness D04-19 within the [Redacted] calendar days.



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

Dated this 20 February 2013

At The Hague, The Netherlands