

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 01/03/2013

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 Redacted Version

**Defence Motion for authorisation to hear the testimony of Witness D-45 via
video-link**

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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Mr. Jean-Jacques Badibanga

Counsel for the Defence

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Legal Representatives of the Victims

Ms. Marie-Edith Douzima-Lawson

Mr. Zarambaud Assingambi

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

(Participation/Reparation)

Applicants

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Deputy Registrar

Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

A. BACKGROUND

1. Witness D-45 has been included in the Defence List of Witnesses since its first iteration in July 2012.¹
2. On 8 November 2012, prior to the winter judicial recess, the Defence requested VWU to obtain all outstanding passports and visas for all Defence witnesses who still required them. This request was reiterated in an email on 12 November 2012.²
3. On 31 January 2013, the Defence filed its *Defence Submissions in Compliance with Decision ICC-01/05-01/08-2492*, in which it provided a list of seven “priority witnesses”, in which Witness D-45 was included.³
4. On 11 February 2013, VWU applied for a passport for Witness D-45. The Defence was informed of this application on 21 February 2013, during a weekly coordination meeting. VWU also informed the Defence that once the passport had been issued, VWU would then apply for a visa on his behalf.
5. On 25 February 2013, VWU informed the Defence via email that authorisation for Witness D-45’s testimony had been obtained “in principle”, but “due to [REDACTED].”⁴ The Defence understands that [REDACTED] will affect all Defence witnesses for whom passports have not yet been obtained.
6. On 27 February 2013, VWU informed the Defence via email that Witness D-45 was willing to testify via video-link.⁵ Later the same day, VWU informed the Defence via email that it recommended that it would be more prudent for the

¹ See ICC-01/05-01/08-2242-Conf-Exp-AnxA, p.2.

² Email Defence to VWU, “VWU-DEFENCE MEETING 08 NOVEMBER”, sent on Mon, Nov 12, 2012 at 4:21 PM: “The Defence requested its preference for VWU to obtain passports and visas for all witnesses who still required them, but that the original witness schedule should be used to prioritize such actions.”

³ ICC-01/05-01/08-2497, para. 8.

⁴ Email VWU to the Defence, “VWU-Defence meeting 21 FEB 2013”, Mon, Feb 25, 2013 at 5:24 PM

⁵ Email VWU to the Defence. “witness schedule”, Wed, Feb 27, 2013 at 11:30 AM

Defence present the evidence of Witness D-45 prior to that of Witness D-21, following the testimony of the current witness, Witness D-19.⁶

D. SUBMISSIONS

7. The Defence reiterates its consistently expressed preference for live testimony in The Hague. The Defence maintains its position that video-link is a generally undesirable alternative to live testimony, and should only be used on an exceptional basis, and reiterates its stated concerns about the quality of the link which has so far been demonstrated in the trial.⁷

8. However, given circumstances beyond the control of the Defence, most notably a [REDACTED], the Defence feels compelled to request authorization from the Chamber to present the evidence of Witness D-45 via video-link from [REDACTED]. Based on the information provided to the Defence by VWU and the Registry concerning the present state of authorisations received from [REDACTED], it appears that presenting the evidence of Witness D-45 via video-link from 11 March 2013 will provide the greatest chance of avoiding gaps in the presentation of the Defence case.

C. RELIEF REQUESTED

9. For the reasons outlined above, the Defence requests that the Chamber:

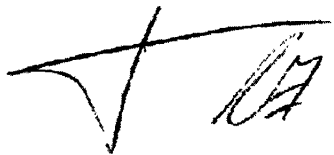
GRANT the current Defence request; and

ORDER that the testimony of Defence Witness D-45 be heard via video-link.

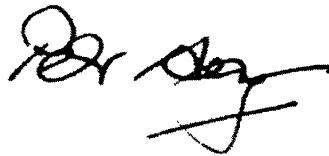
⁶ Email VWU to the Defence. "witness schedule", Wed, Feb 27, 2013 at 12:40 PM

⁷ See, for example: ICC-01/05-01/08-T-213-CONF-ENG ET 13-03-2012, pp. 9, 13, 17, 19. See also ICC-01/05-01/08-2238-Conf-Exp, Third Defence Submissions on the Presentation of its Evidence, 29 June 2012, para. 33.

The whole, respectfully submitted.



Aimé Kilolo Musamba
Lead Counsel



Peter Haynes
Co- Counsel

Done on the 1st of March 2013
At The Hague, The Netherlands