

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 08 April 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 Document

**Prosecution's Response to Defence Motion for authorisation to hear the testimony
of Witness D04-21 via video link.**

Source: The Office of the Prosecutor

Document to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

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I. Introduction

1. On 11 March 2013, the Defence of Jean-Pierre Bemba Gombo ("Accused") filed a motion requesting Trial Chamber III ("Chamber") to allow Witness CAR-D04-PPPP-0021 ("D04-21") to testify via video link from [REDACTED] in the [REDACTED]. In its request, the Defence alleges that [REDACTED] and this necessitates the witness's on-going presence in [REDACTED].¹ The Defence also states that the testimony of D04-21 via video-link would avoid gaps in the presentation of the Defence case.²

2. The Office of the Prosecutor ("Prosecution") takes the expeditiousness of the trial in the utmost consideration and is concerned about any delay in the presentation of evidence by the Defence. However, the Prosecution observes that since the recommencement of the trial in February 2013 the Defence has systematically requested authorization to hear the testimony of its witnesses by means of audio-video technology. While in this case the proposed reason for video-link evidence could be sufficient, it has not been substantiated in any way and should therefore be rejected.

II. Procedural History

3. On 31 January 2013, the Defence filed its "Defence Submission in Compliance with Decision ICC-01/05-01/08-2492"³ together with a confidential ex parte Annex A in which it requested, *inter alia*, that the testimony of Witness D04-19 be given via video-link.

¹ ICC-01/05-01/08-2528-Conf, Defence Motion to authorization to hear the testimony of Witness D04-21 via video-link, 11 March 2013, para. 4.

² Ibid. para. 4.

³ ICC-01/05-01/08-2497-Conf, Defence Submission in Compliance with Decision ICC-01/05-01/08-2492, 31 January 2013.

4. On 15 February 2013, the Chamber granted the Defence request.⁴

5. On 1 March 2013, the Defence filed its “Defence Motion to hear the testimony of Witness D-45 via video-link”.⁵

6. On 6 March 2013, the Chamber granted the afore-mentioned Defence request.⁶

7. On 11 March 2013, the Defence filed its “Defence Motion to authorization to hear the testimony of Witness D-04-21 via video-link”.⁷

III. Request for confidentiality

8. The Prosecution requests that this document be received as “Confidential” pursuant to Regulation 23 *bis* (2) of the Regulations of the Court, as it responds to the Defence Motion, which is currently classified as confidential.

IV. Submissions

9. The Prosecution notes that the Defence is routinely seeking the presentation of the evidence of its most important witnesses on the fundamental issue of the Accused’s criminal responsibility via video-link. This has occurred for all the three witnesses scheduled to testify prior to the Easter recess.

⁴ ICC-01/05-01/08-2509, Decision on issues related to the testimony of Witness D04-19 via video-link, 15 February 2013.

⁵ ICC-01/05-01/08-2519-Conf, Defence Motion to hear the testimony of Witness D-45 via video-link, 1 March 2013.

⁶ ICC-01/05-01/08-2525-Conf, Decision on “Defence Motion for authorization to hear the testimony of Witness D-45 via video-link”, 6 March 2013.

⁷ ICC-01/05-01/08-2528-Conf.

10. Pursuant to Article 69(2) of the Rome Statute, the presumptive rule is that the testimony of a witness at trial shall be given in person. As the Defence itself concedes, “video-link is a generally undesirable alternative to live testimony and should only be used on an exceptional basis”.⁸

11. The Defence based its motion on the grounds that D04-21’s [REDACTED] and this necessitates the witness’s presence in [REDACTED]. However, the motion is unsubstantiated, as the Defence merely provided a generic and vague allegation but did not provide the Chamber with any supporting materials to allow it to assess the [REDACTED].

12. As ruled by the Chamber, a key factor in determining whether or not a witness should be allowed to testify by means of video technology is the existence of personal and exceptional circumstances.⁹ In the instant case the Defence has not proved any such circumstance that would prevent witness D04-21 from travelling and testifying at the seat of the Court. The Defence request should therefore be rejected, absent the further provision of substantiating materials from the Defence.

⁸ ICC-01/05-01/08-2528-Conf, para.3.

⁹ ICC-01/05-01/08-2525-Conf, para.7; ICC-01/05-01/08-2500, 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, 6 February 2013, para.30; ICC-01/05-01/08-2101-Red2, Public redacted decision on the "Prosecution request to hear Witness CAR-OTP-PPPP-0036's testimony via video-link", 3 February 2012, para. 7.

V. Conclusion

13. In light of the above submissions, the Prosecution respectfully requests the Chamber to dismiss the Defence Motion for authorisation to hear the testimony of witness D04-21 via video link.



Fatou Bensouda, Prosecutor

Dated this 8th Day of April 2013
At The Hague, The Netherlands