



Original: **English**

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

Date: 27/03/2013

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 D04-39 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

Ms. Fatou Bensouda

Mr. Jean-Jacques Badibanga

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

(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 Section

Other

A. BACKGROUND

1. Witness D-39 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-39 was included.³

4. On 1 March 2013, during a weekly coordination meeting, VWU informed the Defence, concerning Witness D04-39 that “[REDACTED]”.⁴ The following week, on 7 March 2013, at the weekly coordination meeting, VWU again confirmed that “[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]”.⁵ On this basis that the Defence included Witness D04-39 on its monthly schedule,⁶ with his testimony commencing on 12 April 2013. This schedule was approved by the Trial Chamber.⁷

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: “[REDACTED].”

³ ICC-01/05-01/08-2497, para. 8.

⁴ Minutes of Meeting, contained in Email VWU to Defence, “VWU-Defence meeting 28 FEB 2013”, sent on 01 March 2013 at 16:14

⁵ Minutes of Meeting, contained in Email VWU to Defence, “VWU-Defence meeting 07 03 2013” sent Mon, Mar 11, 2013 at 10:51 AM

⁶ Programme hebdomadaire (Estimation) de la Comparution des témoins de la Défense allant du 08 Avril au 08 Mai 2013, sent 19 March 2013 15:07.

⁷ ICC-01/05-01/08-T-298-CONF-ENG, p. 2.

5. Following the circulation of the Defence monthly calendar, the VWU informed the Defence that, in fact, due to a miscommunication in the field, no [REDACTED] for Witness D04-39.⁸

6. On 25 March 2013, VWU confirmed to the Defence via email that the [REDACTED] authorities had not in fact given authorization for the witness to [REDACTED].⁹ As such, at the present time, Witness D04-39 is neither in [REDACTED], or a [REDACTED].

7. The Defence has been informed by VWU that Witness D04-39 consents to testifying via video-link.

B. SUBMISSIONS

8. 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.¹⁰

9. However, given circumstances beyond the control of the Defence, namely Witness D04-39's [REDACTED], the Defence feels compelled to request authorization from the Chamber to present the evidence of Witness D04-39 via video-link from [REDACTED], given the order and schedule approved by the Trial Chamber.

⁸ Email, VWU to Defence, "Witness 39" sent Tuesday, March 19, 2013 at 5:38 PM

⁹ Email VWU to Defence, "Witness 39", sent Monday, March 25, 2013 at 12:55 PM

¹⁰ 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.

C. RELIEF REQUESTED

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

GRANT the current Defence request; and

ORDER that the testimony of Defence Witness D04-39 be heard via video-link.

The whole, respectfully submitted.



Aimé Kilolo Musamba
Lead Counsel



Peter Haynes
Co- Counsel

Done on the 27th of March 2013
At The Hague, The Netherlands