

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 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

Public redacted version of ICC-01/05-01/08-2575-Conf of 8 April 2013

**Victims and Witnesses Unit's Report concerning the Appearance of Witness CAR-
D04-PPPP-0039**

Source: Registrar

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 Victims

Ms Marie Edith Douzima-Lawson

Mr Assingambi Zarambaud

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Defence Support Section

Deputy Registrar

Mr Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

Ms Maria Luisa Martinod-Jacome

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court (the “Court”);

NOTING the “Defence Motion for authorisation to hear the testimony of Witness D04-39 via video-link” (the “Defence Motion”) submitted on 27 March 2013;¹

NOTING the bi-weekly report provided by the Registry *via* e-mail on 28 March 2013 pursuant to the “Decision on issues related to the testimony of Witness D04-19 via video-link”² dated 15 February 2013 issued by Trial Chamber III (the “Chamber”);³

NOTING the instruction of the Chamber sent by e-mail on 2 April 2013;⁴

NOTING articles 43(6) and 68(1) and (4) of the Rome Statute, rules 16 to 19, 86 to 88 of the Rules of Procedure and Evidence, regulation 23*bis* of the Regulations of the Court and regulations 79 to 91 of the Regulations of the Registry;

CONSIDERING that the Chamber in its instruction of 2 April 2013 stated that the submissions in the Defence Motion “*appear to be to some extent inconsistent with the information provided in the VWU’s latest update on the availability of defence witnesses*”;⁵

CONSIDERING that on 2 April 2013 the Chamber instructed the Victims and Witnesses Unit (the “VWU”) to submit “*an update on the ability of Witness D04-39 to travel to the seat of the Court and to start his testimony on 12 April 2013*”, to be filed confidentially by 8 April 2013;⁶

¹ ICC-01/05-01/08-2566-Conf.

² ICC-01/05-01/08-2509.

³ E-mail sent by the Registry to the Chamber on 28 March 2013 at 14:20.

⁴ E-mail sent by the Chamber to the Registry on 2 April 2013 at 16:33.

⁵ E-mail sent by the Chamber to the Registry on 2 April 2013 at 16:33.

⁶ E-mail sent by the Chamber to the Registry on 2 April 2013 at 16:33.

CONSIDERING that in order to uphold the same level of confidentiality that has been in place for the previous submissions, the VWU files the current submission as confidential;

CONSIDERING that the documents in Annex 1 to 4 are confidential communications between the Registry and the [REDACTED] authorities, the Registry, in accordance with regulation 23*bis* of the Regulations of the Court, files the annexes to the current submission as confidential, *ex parte* Registry only;

RESPECTFULLY SUBMITS Victims and Witnesses Unit's Report concerning the Appearance of Witness CAR-D04-PPPP-0039:

1. Upon the request of the Defence, the Registry communicated a note verbale to [REDACTED] the employer of the witness, *via* [REDACTED] the official channel of communication [REDACTED], requesting the cooperation from the [REDACTED] authorities to authorise that [REDACTED].⁷
2. The [REDACTED] replied to the Court's request [REDACTED].⁸ Taking into consideration the replies from the [REDACTED] authorities with regard to other witnesses, the Registry considered that the authorisation had been given by the authorities [REDACTED]. This reply has been communicated to the witness.

⁷ Annex 1 attached hereto.

⁸ Annex 2 attached hereto.

3. Following that granted authorisation, the witness requested the assistance from the Court to send an additional request to the witness's superior seeking his authorisation for the witness [REDACTED].
4. In mid-February 2012, the VWU was informed by the Defence resource person that the witness had applied himself for authorisation [REDACTED] *via* his hierarchy. The VWU, before submitting a similar request to the authorities, requested the Defence resource person to confirm this information. The resource person never provided such confirmation. However, the resource person did inform the VWU that the witness would like to testify *via* video link as his hierarchy was unlikely to approve this request.
5. On 18 March 2013, the Defence resource person returned the funds provided to him for [REDACTED] and informed the VWU that the witness had reiterated his request to give his testimony *via* video link in the absence of an authorisation given by his hierarchy for him to [REDACTED]. The witness also indicated to the VWU that his hierarchy had never notified him of any authorisation given to him to [REDACTED].
6. In light of the abovementioned information [REDACTED], the Registry urgently requested the cooperation from the [REDACTED], requesting that the witness is to be authorised to [REDACTED].⁹ The Registry has also urged [REDACTED] again to promptly notify the witness of the authorisation given to the witness [REDACTED].
7. On 20 March 2012, the witness further requested the assistance of the Court to request his hierarchy [REDACTED] to permit him to [REDACTED]. Upon the request of the witness [REDACTED], the Registry again urgently transmitted a

⁹ Annex 3 attached hereto.

request for cooperation to the [REDACTED] to this end. A deadline [REDACTED] was given to the authorities [REDACTED].¹⁰

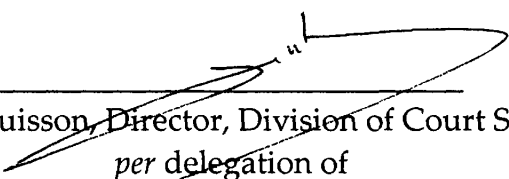
8. A few days after, the Defence resource person informed the VWU that [REDACTED] had been submitted [REDACTED].
9. On 3 April 2013, the VWU field office was informed by the Defence resource person that, in fact, the resource person had not submitted [REDACTED] for the witness as indicated previously, because the witness told him that [REDACTED] would be required before [REDACTED].
10. In light of the urgency, due to the fact that the request has already been transmitted to the [REDACTED], the Registry communicated the request directly to the [REDACTED] and again endeavoured to liaise with the [REDACTED]. The [REDACTED] replied that he would follow up with the relevant authorities on the pending requests.
11. To date, the [REDACTED] authorities have not responded to the Registry's requests. [REDACTED] The Registry will continue to communicate with the [REDACTED] authorities to secure cooperation.

TRANSMITS respectfully to the Chamber as confidential, ex parte Registry only:

- Annex 1: Note verbale transmitted to the [REDACTED] authorities [REDACTED] requesting the authorisation for the witness to [REDACTED] ;
- Annex 2: Note verbale transmitted by the [REDACTED] authorities replying to the Registry's note verbale [REDACTED];

¹⁰ Annex 4 attached hereto.

- Annex 3: Note verbale transmitted to the [REDACTED] authorities [REDACTED] requesting authorisation for the witness to [REDACTED]; and
- Annex 4: Note verbale transmitted to the [REDACTED] authorities, [REDACTED] requesting for the [REDACTED] to the witness.



Marc Dubuisson, Director, Division of Court Services
per delegation of
Didier Preira, Acting Registrar

Dated this 17th April 2013

At The Hague, The Netherlands