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

Date: 14/05/2013

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

Defence Submissions on the Order of Witnesses

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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A. BACKGROUND

1. The remaining Defence witnesses are currently residing in three different states. **Country 1** is a signatory to the Rome Statute, however the majority of witnesses in this state require prior authorisation from the relevant state authorities before they are permitted to testify, whether at the seat of the court or by video link. Currently, none of the remaining witnesses still to be called from Country 1 have received authorisation to testify, despite timely and repeated applications having been made by the Registry.

2. **Country 2** is not a signatory to the Rome Statute. The Chamber and Registry were informed prior to the start of the Defence case in May 2012 of the difficulties which would be experienced by the witnesses located in Country 2 in travelling to Europe to testify at the seat of the Court.¹ During a public status conference on 3 May 2013, the Registry informed the Chamber that it has still be unable to locate a “focal point” in Country 2 through which negotiations for a video link facility could be undertaken.² The Chamber was also informed that previous Registry missions to this country to make arrangements had been unsuccessful.³

3. Similarly, **Country 3** is not a signatory to the Rome Statute, and on 3 May 2013, the Registry explained to the Chamber in public session that steps have been taken, and that negotiations are ongoing to facilitate the establishment of a video link facility in Country 3. Despite this progress, however, the Registry informed the Chamber that it estimated that four additional weeks are required before this video link testimony could even begin.⁴ The Defence has since been informed that the earliest this video link testimony could commence is 3 June 2013.

¹ ICC-01/05-01/08-T-226-CONF-EXP-ENG ET 10-05-2012

² ICC-01/05-01/08-T-311-CONF-ENG ET 03-05-2013 p. 27.

³ ICC-01/05-01/08-T-311-CONF-ENG ET 03-05-2013 p. 28

⁴ ICC-01/05-01/08-T-311-CONF-ENG ET 03-05-2013 p.28.

4. By way of its *Decision on the "Submissions on Defence Evidence* on 7 June 2012, Trial Chamber III ("the Chamber") informed the Defence that order of presentation of Defence witnesses would be decided by the Chamber.⁵ Since then, any change in the order of the witnesses has required prior authorization from the Chamber.

5. On 14 April 2013, the Chamber authorised the following order for the next tranche of Defence witnesses:⁶ D04-39, D04-56, D04-17, D04-12, D04-13 and D04-40. These witnesses were all located in **Country 1**.⁷ Witnesses D04-39 and D04-56 have since completed their testimony by video link.

6. On 3 May 2013, Chamber asserted as follows:⁸

the Chamber notes that the Defence should be in a position to conclude the presentation of its evidence by approximately **19 July 2013**, unless due to compelling reasons the Chamber decides otherwise... the Chamber takes this opportunity to alert Defence to the need for it **to carefully review its list of witnesses...**

7. As such, on 10 May 2013, the Defence filed its *Defence Submissions on the Remaining Defence Witnesses*. By way of this filing, the Defence informed the Chamber of its intention not to call a number of witnesses, including D04-12 and D04-40.

8. On 13 May 2013, the Defence was informed by the Chamber by way of an oral "instruction" that VWU had informed the Chamber in its "bi-weekly update - week 20" submitted by email on 10 May 2013, that Witnesses D04-18's and D04-17's authorisation to testify have not yet been received and that Witness D04-13 will be able to testify, at the earliest, as of 21 May 2013.

⁵ ICC-01/05-01/08-2225

⁶ ICC-01/05-01/08-T-306-ENG, pp. 61-62.

⁷ See transcript 3 May 2013

⁸ ICC-01/05-01/08-T-311-CONF-ENG ET 03-05-2013 p.30.

9. As such, the Chamber instructed the Defence to clarify, at the latest by 1600 on 14 May 2013:⁹

whether it intends to request an alteration of the order of appearance of the witnesses to be called to testify after the conclusion of Witness D04-56's testimony **and the specific dates** in which these witnesses are expected to appear before the Chamber.

C. SUBMISSIONS

10. The preference of the Defence concerning the order of presentation of its witnesses remains as set out in its original request on 28 May 2013.¹⁰ As such, the Defence would prefer to be presenting the evidence of witnesses from Country 2 and Country 3, particularly given the deadline set by the Chamber of 19 July 2013 for the completion of the presentation of the Defence case.¹¹

11. Given the obstacles outlined above, the Defence is aware that calling witnesses from Country 2 is currently impossible, and calling witnesses from Country 3 may only be possible from 3 June 2013. As regards the remaining witnesses in Country 1, none have received authorisation from the relevant state authorities to testify, despite requests having been filed by the Registry of the ICC in some cases as early as November 2012. Without knowing when and if the authorities of Country 1 will provide authorisations to facilitate this testimony, and when arrangements will be finalized to allow the presentation of evidence of witnesses from Country 2 and Country 3, the Defence is unable to provide with any accuracy a schedule of upcoming witnesses.

⁹ ICC-01/05-01/08-T-316-CONF-ENG ET 13-05-2013 p. 56 (open session).

¹⁰ Submissions on Defence Evidence, 28 May 2012, ICC-01/05-01/08-2222-Conf-Exp, with Annex A ICC-01/05-01/08-2222-Conf-Exp-AnxA.

¹¹ ICC-01/05-01/08-T-311-CONF-ENG ET 03-05-2013 p.30.

12. However, in order to comply with the Chamber's order of 13 May 2013, the Defence provides the following order of witnesses which represent its best estimation as regards the most likely order of presentation of its witnesses and the dates on which they may be able to testify:

Witness D04-13: 21 May – 24 May 2013

Witness D04-18: 27 May – 30 May 2013

Witness D04-04: 3 June – 6 June 2013

Witness D04-03: 7 June – 12 June 2013

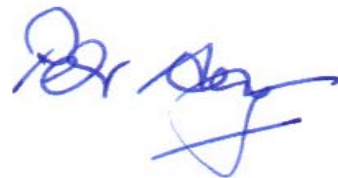
Witness D04-02: 13 June – 18 June 2013

13. The Defence confirms that these witnesses are all willing and available to testify in the present proceedings.

The whole respectfully submitted.



Aimé Kilolo Musamba
Lead Counsel



Peter Haynes
Co- Counsel

Done on the 14th of May 2013
At The Hague, The Netherlands