

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 31 May 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

Decision on the “Second Further Revised Defence Submissions on the Order of Witnesses” (ICC-01/05-01/08-2644) and on the appearance of Witnesses D04-02, D04-09, D04-03, D04-04 and D04-06 via video-link

Decision 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

Mr Aimé Kilolo Musamba

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Legal Representatives of the Applicants

Unrepresented Victims

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Amicus Curiae

Registrar

Mr Herman von Hebel

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Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber III ("Chamber") of the International Criminal Court in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* issues the following Decision on the "Second Further Revised Defence Submissions on the Order of Witnesses" (ICC-01/05-01/08-2644) and on the appearance of Witnesses D04-02, D04-09, D04-03, D04-04 and D04-06 via video-link.

Background and submissions

1. On 15 May 2013, the Chamber issued its "Decision on the order of appearance of witnesses to be called by the defence following Witness D04-56" ("15 May 2013 Decision"),¹ in which it approved the defence's proposed order of witnesses to be called after the conclusion of the testimony of Witness D04-56. According to this schedule, witnesses were to be heard in the following order: Witness D04-13; Witness D04-18; Witness D04-04; Witness D04-03; Witness D04-02.²
2. On 28 May 2013, the defence filed its "Further Defence Submissions on the Order of Witnesses",³ in which it sought leave by the Chamber to amend the order of appearance on the basis that Witnesses D04-13 and D04-18 have not received authorisation to testify before the Court.⁴ On 29 May 2013, the defence filed its "Further Revised Defence Submissions on the Order of Witnesses", requesting authorisation to further revise the order in view of the amended court calendar,⁵ and given the latest information

¹ Decision on the order of appearance of witnesses to be called by the defence following Witness D04-56, 15 May 2013, ICC-01/05-01/08-2630.

² ICC-01/05-01/08-2630, paragraphs 5 and 7(a).

³ Further Defence Submissions on the Order of Witnesses, 28 May 2013, ICC-01/05-01/08-2638. The defence suggested hearing witnesses in accordance with the following schedule: Witness D04-02 (3 to 6 June 2013); Witness D04-04 (7 to 12 June 2013); Witness D04-03 (13 to 18 June 2013).

⁴ ICC-01/05-01/08-2638, paragraph 6.

⁵ By email of 28 May 2013 at 12.39, the VWU informed the Chamber that Witness D04-13 would not be able to travel to the Hague to give testimony as initially planned, that no other witnesses are prepared and ready to testify during the week between 27 and 31 May 2013, and that video-link testimonies could start at the earliest on 5 or 6 June 2013. Further to this information, the hearings scheduled for 3 and 4 June 2013 were cancelled (Email from the Registry to the parties and participants of 28 May 2013 at 16.35).

available to the defence concerning the availability and status of witnesses.⁶

3. On 30 May 2013, the defence filed its "Second Further Revised Defence Submissions on the Order of Witnesses" ("Second Further Revised Order"),⁷ in which it submits that during the course of the weekly coordination meeting with the Victims and Witnesses Unit ("VWU"), it was informed that Witness D04-18 has now received authorisation to testify before the Court, but that this authorisation was at risk of being revoked should he not be called immediately to testify. Based on this updated information, the defence proposes the following further revised schedule of witnesses:

Witness D04-18: 4 June – 10 June 2013;

Witness D04-02: 11 June – 14 June 2013;

Witness D04-09: 17 June – 20 June 2013;

Witness D04-03: 21 June – 26 June 2013;

Witness D04-04: 27 June – 2 July 2013;

Witness D04-06: 03 July – 8 July 2013.⁸

⁶ Further Revised Defence Submissions on the Order of Witnesses, 29 May 2013, ICC-01/05-01/08-2640. The defence suggested hearing witnesses in accordance with the following schedule: Witness D04-02 (5 to 11 June 2013); Witness D04-09 (12 to 17 June 2013); Witness D04-03 (18 to 21 June 2013); Witness D04-04 (24 to 27 June); Witness D04-06 (28 June to 3 July 2013); Witness D04-08 (4 to 10 July 2013).

⁷ Second Further Revised Defence Submissions on the Order of Witnesses, 30 May 2013, ICC-01/05-01/08-2644.

⁸ ICC-01/05-01/08-2644, paragraph 3 and 4.

Analysis and conclusions

4. For the purpose of the present Decision, the Chamber has considered, in accordance with Article 21(1) of the Rome Statute ("Statute"), Articles 64, 67(1), 68, and 69(2) of the Statute, Rule 67 of the Rules of Procedure and Evidence ("Rules") and Regulations 43 and 54 of the Regulations of the Court.

On the Second Further Revised Order

5. The Chamber recalls that in its 15 May 2013 Decision, it *inter alia* ordered the defence and the VWU "in case of difficulties in following [the approved] schedule or if alterations in the order appear to be necessary, to inform the Chamber immediately and submit an alternative order for the Chamber's consideration in order to avoid further gaps in the proceedings."⁹
6. While regretting the gap in the proceedings between the completion of the testimony of Witness D04-56 and the commencement of the testimony of Witness D04-18, the Chamber notes that the Second Further Revised Order will allow the Chamber to hear six witnesses without interruption as of 4 June 2013. Accordingly, the Chamber is of the view that the proposed order is appropriate.
7. Concerning the dates of testimony proposed by the defence, the Chamber is of the view that the loss of hearing time prior to the commencement of the testimony of Witness D04-18 may be appropriately compensated by extending the sitting hours for the testimony of the six relevant witnesses. Noting that the parties and participants have already submitted their lists

⁹ ICC-01/05-01/08-2630, paragraph 7(ii).

of documents for the questioning of Witness D04-18,¹⁰ the Chamber is of the view that extending the sitting time by two hours per day for a limited number of witnesses will not unduly prejudice the parties and participants' preparation.

On the appearance of Witnesses D04-02, D04-09, D04-03, D04-04 and D04-06 via video-link

8. In relation to the mode of appearance of Witnesses D04-02, D04-09, D04-03, D04-04 and D04-06, the Chamber recalls that the term "given in person" used in Article 69(2) of the Statute does not imply that witness testimony shall necessarily, under any circumstances, be given by way of live testimony in court. Instead, the Statute and the Rules give the Court wide discretion, subject to the provisions of Rule 67 of the Rules, to permit or order evidence to be given *viva voce* by means of video or audio technology where necessary, provided that the Statute and the Rules are respected and such measures are not prejudicial to, or inconsistent with, the rights of the accused.¹¹ Further, pursuant to Rule 67(1) of the Rules, the Chamber may allow a witness to give *viva voce* (oral) testimony by means of audio or video technology, provided that such technology permits the witness to be questioned by the defence, the prosecution, and by the Chamber itself, at the time the witness so testifies.

9. The Chamber has previously held that one of the relevant criteria to be considered in determining whether or not a witness should be allowed to

¹⁰ The defence's list of documents was circulated by email on 23 November 2012 at 10.58; the prosecution's list of documents was circulated by email on 25 November 2012 at 19.56; Maître Zarambaud's list of documents was circulated by email on 25 April 2013 at 10.40 and Maître Douzima's list of documents was circulated by email on 3 May 2013 at 10.58.

¹¹ See 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, ICC-01/05-01/08-2500, paragraph 29; Public redacted decision on the "Prosecution request to hear Witness CAR-OTP-PPPP-0036's testimony via video-link", 3 February 2012, ICC-01/05-01/08-2101-Red2, paragraph 6; Redacted Decision on the "Request for the conduct of the testimony of witness CAR-OTP-WWWW-0108 by video-link", 12 October 2010, ICC-01/05-01/08-947-Red, paragraph 10.

give testimony by means of video technology is the witness's personal circumstances.¹² In addition, the Chamber has held that "other relevant circumstances, such as logistical difficulties in arranging a witness's travel to testify at the seat of the Court in The Hague, which would seriously impact upon the expeditious conduct of the proceedings", can also justify a witness's testimony being heard by means of video technology.¹³

10. In the present case, the Chamber notes that at an *ex parte* - defence, VWU and Registry only - status conference of 2 October 2012, the defence confirmed that the approximately seven witnesses residing in a specific country ("Country 3"),¹⁴ including Witnesses D04-02, D04-09, D04-03, D04-04 and D04-06, do not possess the necessary documents in their country of residence and suggested considering the possibility of hearing these witnesses via video-link.¹⁵

11. In view of the logistical difficulties involved in arranging the witnesses' travel to testify at the seat of the Court in the absence of the required documentation, the Chamber is of the view that hearing the testimony of Witnesses D04-02, D04-09, D04-03, D04-04 and D04-06 via video-link would be a practical solution to these logistical difficulties. Taking into account that hearing these witnesses in Country 3 via video-link was suggested by the defence itself,¹⁶ the Chamber is satisfied that this option would not be prejudicial to, or inconsistent with, the rights of the accused.

¹² Public redacted version of "Decision on 'Defence Motion for authorization to hear the testimony of Witness D-45 via video-link'" of 6 March 2013, 7 March 2013, ICC-01/05-01/08-2525-Red, paragraph 7; ICC-01/05-01/08-2500, paragraph 30; ICC-01/05-01/08-2101-Red2, paragraph 7; ICC-01/05-01/08-947-Red, paragraph 13.

¹³ ICC-01/05-01/08-2525-Red, paragraph 7.

¹⁴ This designation is based on the defence's submissions in the context of a public status conference held on 3 May 2013, ICC-01/05-01/08-T-311-CONF-ENG ET, page 27, line 3.

¹⁵ Transcript of hearing of 2 October 2012, ICC-01/05-01/08-T-253-CONF-EXP-ENG ET, page 12, lines 9 to 23. While the present decision makes reference to a confidential *ex parte* status conference, the Chamber considers that the information concerned does not warrant *ex parte* treatment at this time.

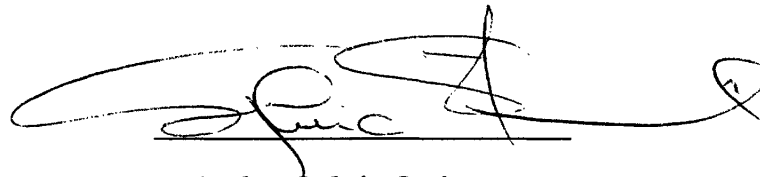
¹⁶ Transcript of hearing of 2 October 2012, ICC-01/05-01/08-T-253-CONF-EXP-ENG ET, page 12, lines 9 to 23.

12. In addition, the Chamber notes that in line with Rule 67(1) of the Rules, the available video technology permits the witness to be questioned by both parties, the Chamber as well as the legal representatives of victims at the time the witness so testifies.

13. In light of the above, in order to ensure the efficient presentation of evidence by the defence and the expeditiousness of the trial proceedings, the Chamber hereby

- (i) APPROVES the order of appearance proposed by the defence in its Second Further Revised Order;
- (ii) ORDERS that the testimony of Witnesses D04-02, D04-09, D04-03, D04-04 and D04-06 be given *viva voce* before the Chamber by means of video technology;
- (iii) ORDERS the Registry to make the necessary arrangements (i) for ensuring the appearance of Witness D04-18 at the seat of the Court as of 4 June 2013; and (ii) for the conduct of the video-link testimony to start immediately after the completion of the testimony of Witness D04-18;
- (iv) DECIDES that for the testimony of the witnesses included in the Second Further Revised Order, the Chamber will sit according to extended sitting hours from 09.00 to 11.00; from 11.30 to 13.30 and from 15.00 to 17.00.
- (v) ORDERS the defence to circulate by 16.00 on 6 June 2013 an amended monthly witness schedule, setting out the expected dates of testimony and questioning of the relevant witnesses.

Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 31 May 2013

At The Hague, The Netherlands