

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 July 2013

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

**SITUATION IN THE CENTRALAFRICANREPUBLIC
IN THE CASE OF
THE PROSECUTOR
*v. JEAN-PIERRE BEMBA GOMBO***

Public

Order on the schedule and conditions of the testimony of Witness D04-15

Order 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 Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

Other

Victims Participation and Reparations Section

Trial Chamber III ("Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Order scheduling the testimony of Witness D04-15 via video-link ("Order").

I. Background and Submissions

1. On 21 June 2013, further to the Chamber's instruction,¹ the defence informed the Chamber, by email, that (i) according to the information received from the Victims and Witnesses Unit ("VWU"), the witnesses who could be heard prior to the summer recess² were Witnesses D04-13, D04-15 and D04-17; (ii) due to security concerns, the defence did not intend to call Witness D04-17; (iii) the first witness that could be heard following the completion of the testimony of Witnesses D04-06 and D04-03 would be Witness D04-15, who, due to medical reasons, could not start his testimony until 8 July 2013.³
2. At the status conference on 27 June 2013, the VWU informed the Chamber that due to medical reasons and logistical difficulties, Witness D04-15 would not be able to travel to the seat of the Court before 15 July 2013.⁴ Subsequently, the defence advised the Chamber that the witness could commence his testimony via video-link on 12 July 2013.⁵ In addition, the defence informed the Chamber of its decision to withdraw Witness D04-13 from its list.⁶
3. On 1 July 2013, the Chamber contacted the parties and participants, by email (i) advising them that due to scheduling constraints, the Chamber cannot sit on 18 and 19 July 2013; (ii) advising them that in order to ensure the

¹ Email sent from the Chamber to the defence on 20 June 2013 at 17.02.

² The summer recess starts on 19 July 2013 at 17.30.

³ Email sent from the defence to the Chamber on 21 June 2013 at 15.58.

⁴ Transcript of hearing of 27 June 2013, ICC-01/05-01/08-T-331-CONF-ENG ET, page 21, lines 16 to 18.

⁵ ICC-01/05-01/08-T-331-CONF-ENG ET, page 34, line 22 to page 35, line 2.

⁶ ICC-01/05-01/08-T-331-CONF-ENG ET, page 24, line 11 to page 25, line 18. In addition, the defence informed the Chamber of its decision to withdraw Witnesses D04-11 and D04-52 from its list (ICC-01/05-01/08-T-331-CONF-ENG ET, page 28, lines 5 to 8).

completion of Witness D04-15's testimony prior to the summer recess, the Chamber is considering holding a hearing on Wednesday, 17 July 2013, although it is a holiday of the Court; and (iii) instructing them to inform the Chamber as to whether they have any objections to the proposed schedule.⁷

4. Further to the Chamber's enquiry, the defence, the Office of the Prosecutor ("prosecution") and the legal representatives of victims replied that they had no objections to the proposed schedule.⁸

II. Analysis

5. For the purpose of the present Order, the Chamber has considered, in accordance with Article 21(1) of the Rome Statute ("Statute"), Articles 64(2), 67(1)(c) and (e), 68(1) and (2), 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 appearance of Witness D04-15 via video-link

6. As previously stated, the term "given in person" used in Article 69(2) of the Statute, does not imply that witness testimony shall necessarily, under all 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

⁷ Email sent from the Chamber to the parties and participants on 1 July 2013 at 15.37

⁸ Email sent from the defence to the Chamber on 1 July 2013 at 15.58; Email sent from the prosecution to the Chamber on 1 July 2013 at 17.30; Email sent from the case manager of the legal representatives of victims to the Chamber on 2 July 2013 at 10.59.

with, the rights of the accused.⁹ 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 parties and the Chamber at the time the witness so testifies.

7. The Chamber recalls that one of the relevant criteria to be considered in determining whether a witness should be allowed to give testimony by means of video technology is the witness's personal circumstances.¹⁰ 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.¹¹
8. In the present case, the Chamber notes that due to medical reasons and logistical difficulties, hearing Witness D04-15 in person at the seat of the Court would entail a postponement of the witness's testimony until after the summer recess, while hearing this witness via video-link - following the schedule and conditions set out in paragraph 11 - would enable the witness to complete his testimony prior to the summer recess. Accordingly, the Chamber is of the view that hearing the witness via video-link would be more

⁹ 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.

¹⁰ 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.

¹¹ ICC-01/05-01/08-2525-Red, paragraph 7.

appropriate in order to avoid further gaps in the presentation of evidence and thus ensure the expeditious conduct of the trial proceedings.¹²

9. The Chamber further considers that the presentation of Witness D04-15's testimony by means of video technology will not be prejudicial to, or inconsistent with, the rights of the accused. In this regard, the Chamber notes that hearing the witness via video-link was suggested by the defence itself in order to hear an additional witness prior to the summer recess.¹³
10. The Chamber further notes that in line with Rule 67(1) of the Rules, the available video technology permits the witness to be questioned by both parties as well as the legal representatives of victims and the Chamber at the time the witness so testifies.

On the schedule for the video-link testimony

11. In order to ensure the completion of the witness's testimony before the summer recess and considering that the Chamber will not sit on 12,¹⁴ 18 and 19 July 2013, the Chamber decides to sit on 15, 16 and 17 July 2013, even though 17 July 2013 is an official holiday of the Court. In addition, the Chamber will sit according to extended sitting hours, as set out in paragraph 13(c) below. This schedule provides for 18 hours of hearing time which should be sufficient to ensure the completion of Witness D04-15's testimony before the summer recess.

¹² The Chamber notes that on previous occasions the defence has requested that witnesses present evidence via video-link technology in order to avoid gaps in their presentation of evidence. *See* for example, Public Redacted version of the "Decision on 'Defence Motion for authorisation to hear the testimony of Witness D04-21 via video-link'", 3 April 2013, ICC-01/05-01/08-2572-Red, paragraph 3.

¹³ ICC-01/05-01/08-T-331-CONF-ENG ET, page 34, line 22 to page 35, line 2.

¹⁴ The hearing on 12 July 2013 has been cancelled by hearing notification on 25 June 2013 at 10.03.

12. However, this will only be achieved if the parties and participants focus their questioning on strictly relevant issues and comply with the time limits to question Witness D04-15. For this purpose, the Chamber notes that the defence has been granted four hours and the legal representatives of victims jointly two hours to question the witness.¹⁵ In addition, following the previous practice of this Chamber,¹⁶ and in order to ensure that the questioning of the Witness D04-15 will be completed before the summer recess, the Chamber decides that the questioning of this witness by the prosecution shall not exceed six hours. The Chamber will monitor the parties and participants' questioning closely to ensure that the witness's testimony is completed by 18.00 on 17 July 2013.

III. Conclusion

13. In view of the foregoing, the Chamber:

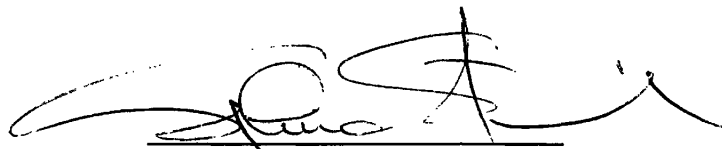
- a. DECIDES that the testimony of Witness D04-15 will be given *viva voce* before the Chamber by means of video technology;
- b. ORDERS the Registry to make the necessary arrangements for the conduct of the video-link testimony to start on Monday, 15 July 2013; and

¹⁵ Pursuant to Decision on the "Submissions on Defence Evidence", 7 June 2012, ICC-01/05-01/08-2225, paragraph 10 in relation to Annex A to the Defence Submissions to the Chamber concerning its witnesses, 11 May 2012, ICC-01/05-01/01/08-2214-Conf-Exp-AnxA, the defence was granted four hours to question Witness D04-15. At the hearing of 27 June 2013, the defence informed the Chamber that it would need approximately four to five hours to question the witness (*see* transcript of hearing of 27 June 2013, ICC-01/05-01/08-T-331-CONF-ENG ET, page 38, lines 8 to 9). In addition, by Oral Decision of 15 October 2012, the legal representatives of victims were granted together up to two hours to question each of the witnesses called to give evidence by the defence, *see* Transcript of Hearing on 15 October 2012, ICC-01/05-01/08-T-254-RED-ENG WT, page 66, lines 15 to 24.

¹⁶ The prosecution usually uses up to 150 per cent of the time granted to the defence to question witnesses, *see* transcript of hearing of 11 February 2013, ICC-01/05-01/08-T-283-CONF-EXP-ENG ET, page 15, lines 6 to 7.

- c. DECIDES that the Chamber will sit from 09.00 to 11.00, from 11.30 to 13.30 and from 15.00 to 17.00 on 15 and 16 July 2013 and from 10.00 to 12.00, from 13.30 to 15.30 and from 16.00 to 18.00 on 17 July 2013.
- d. ORDERS the parties and participants to comply with the time limits as set out in paragraph 12 above.

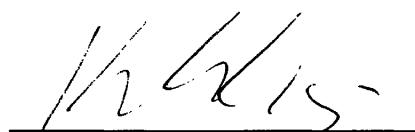
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 3 July 2013

At The Hague, the Netherlands