



Original: **English**

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

Date: 17/01/2014

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

Defence Request for an Order for Cooperation

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

Me Peter Haynes QC

Me Kate Gibson

Legal Representatives of the Victims

Maitre Marie-Edith Douzima-Lawson

Maitre Assingambi Zarambaud

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

(Participation/Reparation)

Applicants

The Office of Public Counsel for the Victims

Ms. Paolina Massida

The Office of Public Counsel for the Defence

Mr. Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Mr. Patrick Craig

Detention Section

Victims Participation and Reparations Section Other

A. BACKGROUND

1. Witness D04-14 and Witness D04-44 have been included on the Defence list of witnesses since July 2012.¹

2. On 13 December 2012, after continued non-cooperation on the part of the authorities in the [REDACTED] in facilitating the presentation of Defence witnesses in the present proceedings, Trial Chamber III (“the Chamber”) rendered its [REDACTED].² Specifically, the Chamber:

[REDACTED]

3. The Trial Chamber noted:

[REDACTED]

4. On 16 July 2013, the Chamber rendered the *Decision on the timeline for the completion of the defence’s presentation of evidence and issues related to the closing of the case*.³ The Chamber ordered the Defence to conclude the presentation of its evidence by 25 October 2013. This decision was public, and as such would be known to those following the proceedings.

5. The Defence secured the agreement of Witnesses D04-14 and D04-44 for authorization to be requested [REDACTED]. The timing of this agreement is in no way attributable to the Defence and arose out of legitimately held security fears and safety concerns on the part of the witnesses. The Defence notes [REDACTED],⁴ and

¹ [REDACTED]

² [REDACTED]

³ ICC-01/05-01/08-2731

⁴ [REDACTED]

another suggestion [REDACTED].⁵ Accordingly, [REDACTED].⁶ The Registry has stated that since this time [REDACTED].⁷

6. A month has passed since this *note verbale* has been sent, with the Defence understanding that there has been no response from the [REDACTED] authorities.

B. APPLICABLE LAW

7. Article 86 of the Rome Statute of the International Criminal Court (“Statute”) sets out a general obligation on States Parties to cooperate with the Court, and provides:

States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.

8. Article 87(1)(a) provides that “[t]he Court shall have the authority to make requests to States Parties for cooperation. The requests shall be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, acceptance, approval or accession.”

C. SUBMISSIONS

9. The failure of the [REDACTED] authorities to respond in a timely manner to the both the official *note verbale* from the ICC Registry, and to the Registry’s subsequent attempts to follow up, is effectively preventing the Defence presenting critical exculpatory evidence on behalf of the accused.

⁵ [REDACTED]

⁶ [REDACTED]

⁷ [REDACTED]

10. The Defence has, on numerous occasions throughout its case, reduced its witness list to its bare minimum in order to facilitate the efficient presentation of its case. However, Witness D04-14 and D04-44 have remained on the list when other witnesses have been dropped. This is because they are uniquely placed to provide the Chamber with evidence from the perspective of soldiers who were amongst MLC contingent in the Central African Republic during the events in question. [REDACTED] from within the MLC troops who crossed into Bangui, these witnesses can provide vital details as to the operational command structure in place, the implementation of this command structure at ground level, the commission of crimes, the movement and location of troops, and other significant details directly relevant to the charges against the accused. Their testimony is of particular importance given the failure of the Prosecution to present witnesses who were part of the MLC contingent on the ground in the Central African Republic at the time.

11. The [REDACTED] authorities are aware of their obligation as a State Party to cooperate with the Court, and to facilitate the presentation of witnesses in the *Bemba* case. The obstruction on their part has the effect of preventing important evidence from forming part of the record of this case. The failure to respond for over a month at this critical phase of the proceedings has the effect of preventing the Defence from presenting evidence vital to its case. As such, the Defence makes the request set out below.

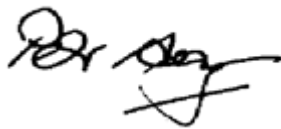
D. RELIEF REQUESTED

12. Given the above submissions, the Defence respectfully requests that the Chamber:

REQUEST the competent authorities of the [REDACTED] to immediately facilitate the appearance of Witness D04-14 and D04-44 as witnesses in the present proceedings

ORDER that the Defence presentation of evidence conclude upon the completion of the testimony of Witness D04-14 and D04-44, or by 15 December 2013 at the latest.

The whole respectfully submitted.

A handwritten signature in black ink, appearing to read 'Peter Haynes', with a stylized flourish at the end.

Peter Haynes

Lead Counsel of Mr. Jean-Pierre Bemba