



Original: English

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

Date: 29 June 2016

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 Version of "Decision on the 'Defence Motion for an Order for VWU to facilitate the testimony of Witness D-56'", ICC-01/05-01/08-2517 of 26 February 2013

Decision 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 Peter Haynes
Ms Kate Gibson
Ms Melinda Taylor

Legal Representatives of the Victims

Ms Marie-Edith Douzima Lawson

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

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on the “Defence Motion for an Order for VWU to facilitate the testimony of Witness D-56” (“Decision”).

I. Background and submissions

1. On 30 January 2013, the defence filed its “Defence Motion for an Order for VWU to facilitate the testimony of Witness D-56” (“Request”),¹ in which it requests the Chamber to order the Victims and Witnesses Unit (“VWU”) to facilitate the testimony of Witness D04-56 at the seat of the Court in The Hague.² Specifically, the defence submits that Witness D04-56, [REDACTED]. On 9 January 2013,³ the defence informed the VWU that [REDACTED]. According to the defence, the VWU replied that [REDACTED]. Subsequently, the defence informed the VWU that the witness had agreed [REDACTED]. The VWU then replied that [REDACTED] the VWU will do its utmost to obtain the travel documents for him to travel to the Hague for the testimony.”⁴
2. The defence interpreted the VWU’s reply as a “refusal”⁵ to facilitate the testimony of the witness on the basis that he does not have legal status in his country of residence. The defence submits that such a “refusal” is incompatible with the accused’s right under Article 67(1)(e) of the Statute to obtain the attendance and examination of witnesses on his

¹ Defence Motion for an Order for VWU to facilitate the testimony of Witness D-56, 30 January 2013, ICC-01/05-01/08-2494-Conf-Exp.

² ICC-01/05-01/08-2494-Conf-Exp, paragraph 12.

³ In view of the context of the information provided in the Request, the Chamber considers that the reference to 9 January 2012, 11 January 2012 and 29 January 2012 in ICC-01/05-01/08-2494-Conf-Exp, paragraphs 3 to 5 is the result of inadvertent error and should refer to 2013.

⁴ ICC-01/05-01/08-2494-Conf-Exp, paragraphs 1 to 6.

⁵ ICC-01/05-01/08-2494-Conf-Exp, paragraph 10

behalf under the same conditions as witnesses against him. In this respect, the defence highlights that Witness D04-56 is not the only defence witnesses who does not enjoy legal status in his country of residence and, as such, should not be treated in a different manner than other defence witnesses who are in the same situation.⁶

3. On 4 February 2013, further to the Chamber's instruction,⁷ the VWU filed its observations on the Request.⁸ The VWU submits that:

[REDACTED] the Unit had to inform the Defence team that [REDACTED] the Unit cannot undertake any travel arrangements with regard to this witness. The Unit, however, did express its commitment to discuss other ways of facilitation of the appearance of the witness should there be a change [REDACTED].⁹

4. In relation to the information provided by the defence on 29 January 2013 that the witness would agree [REDACTED], the VWU observes that the defence has previously submitted that Witness D04-56 was considered [REDACTED]. As a result, the VWU submits that the witness might [REDACTED] after his appearance at the Court on the ground that he may be [REDACTED].¹⁰

5. Finally, the VWU specifies that the situation of Witness D04-56 is not similar to the situation of defence witnesses currently residing [REDACTED]. In particular, the VWU submits that Witness D04-56 is [REDACTED].¹¹

⁶ ICC-01/05-01/08-2494-Conf-Exp, paragraphs 7 to 11.

⁷ Decision asking for observations on the "Defence Motion for an Order for VWU to facilitate the testimony of Witness D-56", 31 January 2013, ICC-01/05-01/08-2496-Conf-Exp.

⁸ Victims and Witnesses Unit's Observations in Connection with the "Decision asking for observations on the "Defence Motion for and Order for VWU to facilitate the testimony of Witness D-56"" (ICC-01/05-01/08-2496-Conf-Exp), 4 February 2013 (notified on 5 February 2013), ICC-01/05-01/08-2499-Conf-Exp.

⁹ ICC-01/05-01/08-2499-Conf-Exp, paragraph 6.

¹⁰ ICC-01/05-01/08-2499-Conf-Exp, paragraph 7.

¹¹ ICC-01/05-01/08-2499-Conf-Exp, paragraph 11.

6. Under these circumstances, the VWU recommends that once the schedule for the witness's appearance is known, the VWU could organise his appearance by way of video-conference from [REDACTED]; or (c) at another location in case the witness is located elsewhere.¹²

7. The issue was further addressed at the confidential *ex parte* status conference of 11 February 2013. In this context, the defence clarified that Witness D04-56, [REDACTED], had agreed to [REDACTED] after his testimony but that the only reason he is not yet there is because he is lacking the financial means to pay for the flight ticket [REDACTED].¹³ The Registry replied that if the witness accepts to [REDACTED] and if the problem is just a question of paying the ticket, this is not a problem and the witness could travel [REDACTED] before coming to The Hague.¹⁴

II. Analysis and conclusions

8. In deciding on the Request, in accordance with Article 21 of the Rome Statute ("Statute"), the Chamber has considered Articles 43(6) and 64(2) of the Statute, Rules 17 and 18 of the Rules of Procedure and Evidence and Regulation 81 of the Regulations of the Registry.

9. On the basis of the information provided during the status conference, the Chamber concludes that (i) according to the defence, Witness D04-56 is willing to travel to [REDACTED] before being brought to the seat of

¹² ICC-01/05-01/08-2499-Conf-Exp, paragraph 10.

¹³ Status conference of 11 February 2013, ICC-01/05-01/08-T-283-CONF-EXP-ENG ET, page 41, lines 6 to 7; page 43, lines 18 to 19.

¹⁴ ICC-01/05-01/08-T-283-CONF-EXP-ENG ET, page 46, lines 5 to 9.

the Court to testify subject to provision of the necessary funding for travel expenses; and (ii) the Registry has no objection to providing the funding for the witness's travel [REDACTED] to The Hague and is prepared to make the necessary arrangements. The Chamber considers that this proposed course of action is appropriate to ensure the appearance of Witness D04-56 at the seat of the Court and, as such, addresses the issues raised in the Request in a satisfactory manner.

10. Finally, the Chamber stresses once more that the defence and the VWU should cooperate so as to ensure the timely appearance of witnesses and that the intervention of the Chamber should be limited to those situations where such involvement is strictly necessary.¹⁵ In relation to the Request dealt with in the present Decision, the Chamber is of the view that the matter could have been resolved with proper communication between the defence and the VWU, without the Chamber's intervention being necessary.

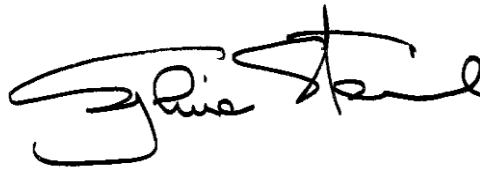
11. In view of the foregoing, the Chamber hereby

ORDERS the VWU and the defence to coordinate with a view to ensuring the appearance of Witness D04-56 at the seat of the Court as soon as practicable and to propose a schedule for his appearance in the next bi-monthly report to be filed by 4 March 2013.¹⁶

¹⁵ See, *inter alia*, Decision on the "Submission on Defence Evidence", 7 June 2012, ICC-01/05-01/08-2225, paragraph 19 and ICC-01/05-01/08-T-283-CONF-EXP-ENG ET, page 3, lines 14 to 15.

¹⁶ See Public redacted version of Decision on the "Third Defense Submissions on the Presentation of its Evidence" of 6 July 2012, 28 September 2012, ICC-01/05-01/08-2242-Red, paragraph 31 (vii) and Decision on issues related to the testimony of Witness D04-19 *via* video-link, 15 February 2013, ICC-01/05-01/08-2509, paragraph 20(f).

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 29 June 2016

At The Hague, The Netherlands