

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 14/10/2013

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**

Confidential
Ex Parte Registry and Defence only

Defence Submissions in response to the Trial Chamber's email of 10 October 2013

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

Counsel for the Defence

Mr. Aimé Kilolo-Musamba

Mr. Peter Haynes QC

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

Applicants

(Participation/Reparation)

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Defence Support Section

Deputy Registrar

Mr. Didier Priera

Victims and Witnesses Unit

Mr. Patrick Craig

Detention Section

**Victims Participation and Reparations
Section Other**

A. BACKGROUND

1. During the course of 10 October 2013, the Defence and VWU were communicating via email with a view to finalizing the arrangements for the presentation of evidence of the remaining witnesses to be called by the Defence, namely Witness D04-54, D04-44, D04-41 and D04-14.

2. In an email sent at 13.35, the Registry raised a number of follow-up queries, which the Defence was in the process of addressing ("VWU Email").

3. Less than three hours after the Defence received the VWU Email, it received the following order from the Chamber, issued pursuant to Regulation 28 of the Regulations of the Court ("Chamber's Order"):

Further to the below email exchange and pursuant to Regulation 28 of the Regulations of the Court, the Chamber orders the defence to provide its observations on the matters raised by the VWU.

In particular, the Chamber wishes the defence to provide clarification in relation to (i) the [REDACTED] and (ii) the apparent inconsistencies in relation to the defence's position as to the [REDACTED]

These observations shall be provided by way of a formal filing, *ex parte* defence and Registry only, to be submitted by 16.00 tomorrow, 11 October 2013.

4. After working overnight to contact these remaining witnesses, who are located in the field and in some cases in theatres of war in the Democratic Republic of Congo, and without easy communication access, in order to seek to obtain the necessary information requested in the VWU Email, the Defence responded at 9.08am, 11 October 2013. Further clarifications were provided in an email at 13.06pm the same day.

5. During the course of the morning of 11 October 2013, the Defence contacted the Chamber to explain that in its respectful submission, all the information requested in the Chamber's Order had now been provided to VWU. The Defence was informed orally that it could ask for leave to be released from the Chamber's Order via email. This email was sent at 15.50:

Further to your email of 10 October 2013, and your telephone conversations today with Mr. Haynes, please advise the Chamber that the Defence would wish to be released from the order contained in your email. The basis for this request is that the Defence respectfully submits that all the information requested by the Chamber has now been provided to VWU in the emails of 9.06am and 13.08pm.

6. The Defence received the following response from the Chamber at 16.41:

Further to your email below and on behalf of the Chamber, I would like to convey the following decision. In order to place the relevant information on the record of the case, the Chamber maintains its order transmitted via email on 10 October. However, in view of the time and to allow the defence to include the most recent information available in this filing, the report may be filed by 16.00 on Monday, 14 October.

7. As such, the Defence files the present filing in compliance with the Chamber's Order.

B. SUBMISSIONS

8. The Defence has sought, over a period of many months, to provide all information in its possessions to assist VWU in the process of facilitating the presentation of the testimony of its witnesses. On 10 October 2013, VWU asked for confirmation and clarification of certain items of information, which the Defence provided within 24 hours. By emails on 11 October at 9.08am and 13.06pm, the Defence provided VWU and the Registry with all information in its possession concerning the language of testimony, current location, phone numbers and

availability of the remaining Defence witnesses. Concerning the specific questions raised in the Chamber's Order:

- (i) **"Provide clarification in relation to the request formulated by Witness D04-44 [REDACTED]"**

9. As stated in the Defence email of 9.08 on 11 October 2013:

[REDACTED]

10. The Defence pauses to note that [REDACTED] [REDACTED] is an alarming development, coming as it does on the eve of his attendance as a witness. In the submission of the Defence the obvious inference to be drawn is that not only do [REDACTED] [REDACTED] The Defence regrets to note that this is not the first occasion on which Defence witnesses [REDACTED] [REDACTED] despite this information being confidential. The Defence refers to the testimony of Witness D04-49, [REDACTED] who noted that [REDACTED] [REDACTED]¹ and also to Lead Counsel's submissions in a Status Conference on 27 June 2013 concerning the [REDACTED] [REDACTED]²

¹ T-271-ENG, page 36, line 23 – page 37, line 5; T-241-ENG, page 13, line 22 - page 14, line 4

² ICC-01/05-01/08-T-331-CONF-ENG ET 27-06-2013 p. 32

(ii) Provide clarification in relation to the apparent inconsistencies in relation to the defence's position as to [REDACTED]

11. At all times, the Defence considers the security of its witnesses as a priority and has endeavored to transmit their wishes to VWU as and when they are conveyed to the Defence. Should these wishes change over time given the changing situation of witnesses, the Defence does not consider it fair to characterize these changes as "inconsistencies", either on the part of the witnesses or on the part of the Defence. The Defence advises that the last information provided to VWU or the Registry should always be considered the most current.

Witnesses D04-14, D04-41 and D04-44 no longer object to [REDACTED]

The whole respectfully submitted.



Aimé Kilolo Musamba
Lead Counsel



Peter Haynes
Co- Counsel

Done on the 14th of October 2013

At The Hague, The Netherlands