

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 07/12/2012

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

Defence Submissions on the "Registry report to the Chamber on the feasibility of the modalities of the specific arrangements in relation to witness testimony"

Source: Defence for Mr. Jean-Pierre Bemba Gombo

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

(Participation/Reparation)

Applicants

The Office of Public Counsel for
Victims

The Office of Public Counsel for the
Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Deputy Registrar

Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

A. SUBMISSIONS

1. The Defence files these submissions responding to the *Registry report to the Chamber on the feasibility of the modalities of the specific arrangements in relation to witness testimony*, filed on 28 November 2012,¹ in accordance with the *Decision shortening time for observations on the 'Registry report to the Chamber on the feasibility of the modalities of specific arrangements in relation to witness testimony'*² of 30 November 2012

2. Given the confidentiality of the Registry Report, the Defence files these submissions confidentially.

(a) Trials in Situ

3. The overriding priority of the Defence is to ensure the completion of the Defence case in the shortest possible period of time. The Defence notes that Mr. Bemba has been incarcerated for over four and a half years, and recalls his right to an expeditious trial. The Defence also reiterates its preference for its witnesses to be heard at the seat of the court in The Hague,³ as has been arranged in the trials of other accused before the ICC. The Defence reserves its right to make further submissions of the impact of any inability to safely bring Defence witnesses to the seat of the Court, and the current submissions should not be seen as a waiver of the Defence right to address this issue.

4. Article 63 of the Statute enshrines the accused's absolute right to be present during his trial. The limited circumstances in which that right can be abrogated do not arise in this case. The Registry report is silent on the arrangements to be made to

¹ICC-01/05-01/08-2447-Conf ("Registry Report")

²ICC-01/05-01/08-2448

³ICC-01/05-01/08-2238-Conf-Exp, Third Defence Submissions on the Presentation of its Evidence, 29 June 2012, para. 32: "the Defence expresses an overriding preference for the presentation of live evidence from its witnesses in The Hague, and notes that the Prosecution was never ordered to present any of its witnesses other than through live testimony, although it was authorised to do so upon its own election."

facilitate the appearance of the Accused at an *in situ* hearing. Mr. Bemba does not consent to, and indeed opposes being transferred to and incarcerated in Tanzania. The Defence, moreover, has serious doubts as to whether, absent, for example, an application for provisional or custodial release to a particular nation state by the Accused, the Court has the power under its Statute and Rules to transfer the accused to the custody of another country.⁴

5. The preferred solution on the part of the Defence would be the establishment of a secure, reliable and realtime link between Mr. Bemba in United Nations Detention Facility (UNDU) in The Hague, and his Defence team in Arusha. However, the Defence notes the Registry position that “in situ hearings from Arusha with no connection to the courtroom in The Hague may be a better solution.”⁵ In the absence of a secure, reliable, and realtime link between Arusha and The Hague, the Defence proposes that arrangements be made for Mr. Bemba to be housed in a secure safehouse in Arusha, under the surveillance and protection of the UN, with appropriate arrangements being made to provide the same standards as those in place at the UNDU in The Hague, particularly in terms of health, security, and family visitation, in order to facilitate a trial in his presence, and his ability to provide instructions to counsel. If neither of these arrangements is possible, the Defence requests further consultation with the Registry as to other possible solutions which would be in keeping with the Accused’s rights under the Statute of the ICC.

6. The Defence reiterates its position communicated to the Counsel Support Section of the Registry by email on 4 October 2012, that the Defence should be represented in Arusha by Lead Counsel, Co-Counsel, Legal Assistant and a Case Manager, in order to ensure efficient management of the day-to-day conduct of the trial. This is particularly so, given the Registry’s statement that due to technical constraints, “in situ hearings from Arusha with no connection to the courtroom in The

⁴ See articles 3, 62, 63, 67, 89, 90, 91, and 92; Rules 100, 117, 118, and 119

⁵ ICC-01/05-01/08-2447-Conf, para. 3.

Hague may be a better solution.”⁶ A restriction on the presence of Defence team members would impact the ability of the Defence adequately to represent the accused.

(b) Video-Link

7. The Defence maintains its position that video-link is a generally undesirable alternative to live testimony, and should only be used on an exceptional basis, and reiterates its stated concerns about the quality of the link which has so far been demonstrated in the trial.⁷ The Registry report is silent as to the proposed locations for video-link, but the Defence notes with concern the Registry’s statement that “video links from the two locations in which the Court has never operated before **might entail a certain level of risk with respect to witnesses**, and technical aspects such as disruptions”.⁸ On this point, the Defence notes that giving testimony by video-link does not resolve the concerns raised with VWU regarding serving members of the *Forces Armées de la République Démocratique du Congo* who do not wish the authorities in the DRC to be informed about their participation in the proceedings.⁹ These same witnesses would also be obliged to seek authorization to leave their post and testify via video-link or risk being sanctioned, giving rise to the same concerns about their safety.

8. The Defence also notes the interference with Defence team members while on official ICC mission, and adds its voice to the Registry concerns regarding the risks of operating in states where privileges and immunities have not been secured.

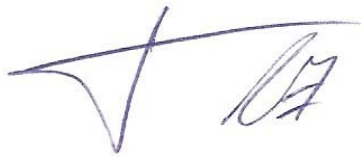
The whole respectfully submitted.

⁶ICC-01/05-01/08-2447-Conf, para. 3.

⁷See, for example: ICC-01/05-01/08-T-213-CONF-ENG ET 13-03-2012, pp. 9, 13, 17, 19. See also ICC-01/05-01/08-2238-Conf-Exp, Third Defence Submissions on the Presentation of its Evidence, 29 June 2012, para. 33.

⁸ICC-01/05-01/08-2447-Conf, para. 16.

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Peter Haynes
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Done on the 7th of December 2012
At The Hague, the Netherlands