

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **30/01/2013**

**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 Defence and VWU only*

**Defence Motion for an Order for VWU to facilitate the testimony of Witness D-56**

**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

**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**

Ms. Silvana Arbia

**Deputy Registrar**

Mr. Didier Preira

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Other  
Section**

Ms. Maria Luisa Martinod-Jacome

## A. BACKGROUND

1. In mid-2012, the Defence provided VWU with a list of Defence witnesses and their known contact details for the upcoming Defence case. Witness D-56 was included on that list.

2. Witness D-56 is currently residing in [REDACTED] He is of Central African Republic (“CAR”) nationality, and is [REDACTED]  
[REDACTED]  
[REDACTED]

3. On 9 January 2012, the Defence informed VWU that [REDACTED]  
[REDACTED]

As such, the witness requested that following his testimony [REDACTED]  
[REDACTED]<sup>1</sup>

4. On 11 January 2012, VWU replied to the Defence, informing that VWU would not be bringing Witness D-56 to the Court:<sup>2</sup>

[REDACTED]

<sup>1</sup> Email Defence to VWU “Witness D-56” sent 09 January 2013 12:07 PM.

<sup>2</sup> Email VWU to Defence, “Witness D-56” sent Fri, Jan 11, 2013 at 10:31 AM

5. On 29 January 2012, the Defence wrote again to VWU, informing that Witness D-56 had agreed to [REDACTED]

6. VWU replied to the Defence the same day, again refusing to bring Witness D-56 to the seat of the Court:<sup>3</sup>

#### D. SUBMISSIONS

7. VWU has said that it will not bring a Defence witness to testify in The Hague, on the basis that he [REDACTED]

8. The Defence has never been informed that its witness list must be restricted to witnesses who [REDACTED] Such a restriction would dramatically reduce the list of potential Defence witnesses, and would prejudice the ability of the accused to meet the case against him. The political realities of the present proceedings mean that many of witnesses who have information relevant to the Defence case have fled from hostile regimes in both the CAR and the DRC, and as such are often unlikely to have [REDACTED] They therefore stand in stark contrast to Prosecution witnesses, who almost invariably in enjoy favour with the regimes in power. Accordingly, this restriction has a far greater potential impact on the presentation of Defence evidence and, on its face, is incompatible with the right of Mr. Bemba under Article 67(1)(e) to obtain the

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<sup>3</sup> Email VWU to Defence, "Witness D-56", Tue, Jan 29, 2013 at 3:00 PM.

attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.

9. Moreover, Witness D-56 is not the only Defence witness who [REDACTED]  
[REDACTED] The majority of Defence witnesses currently [REDACTED] for example, are also [REDACTED]  
[REDACTED] The Defence drew this to the attention of the relevant offices of the Registry as early as 2011, and has been working with the Registry for a significant period in order to secure their attendance at the seat of the Court. The Defence can see no reason for VWU isolating Witness D-56, and refusing to facilitate his testimony when other Defence witnesses are in the same situation.

10. Witness D-56's testimony is critical to the presentation of the Defence case. He fought [REDACTED] in 2002/2003, and can testify as to [REDACTED]  
[REDACTED] in Bangui in October 2002, and the crimes they committed. In addition, he was previously part of the FACA, and can testify as to the recruitment and training (and languages spoken) by the FACA troops during the relevant events. These matters are directly relevant to the allegations against Mr. Bemba.<sup>4</sup> Given the current political situation in the CAR, it is extremely difficult for the Defence to find witnesses who are willing to testify from this perspective, and who will cooperate with the Defence. Witness D-56's testimony would accordingly be impossible to replace. As such, the refusal of VWU to facilitate his testimony will cause actual prejudice to Mr. Bemba in the presentation of his defence.

11. The Defence is greatly concerned that the VWU of the International Criminal Court is professing to be unable to bring a Defence witness because [REDACTED]  
[REDACTED] This cannot be an unforeseen obstacle, nor is it likely to be the last time that the ICC will require the testimony of witnesses

<sup>4</sup> See Witness D-56 summary in CAR-D04-0003-0172.

who have fled from the regime in power in their countries, and who have not managed to secure asylum in a third state. As such, the Defence respectfully requests the intervention of the Chamber to facilitate the presentation of the defence case and the testimony of this important witness.

**C. RELIEF REQUESTED**

12. For the reasons outlined above, the Defence requests that the Chamber:

**ORDER** VWU to facilitate the testimony of Witness D-56 at the seat of the Court in The Hague.

The whole, respectfully submitted.



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Aimé Kilolo Musamba  
Lead Counsel



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Peter Haynes  
Co- Counsel

Done on the 30th of January 2013  
At The Hague, The Netherlands