

1 International Criminal Court

2 Trial Chamber III - Courtroom 1

3 Situation: Central African Republic

4 In the case of The Prosecutor v. Jean-Pierre Bemba Gombo

5 - ICC-01/05-01/08

6 Presiding Judge Sylvia Steiner, Judge Joyce Aluoch and

7 Judge Kuniko Ozaki

8 Status Conference

9 Thursday, 28 November 2013

10 (The hearing starts in open session at 2.35 p.m.)

11 THE COURT USHER: All rise. The International Criminal Court is
12 now in session. Please be seated.

13 PRESIDING JUDGE STEINER: Good afternoon.

14 Could, please, court officer call the case.

15 THE COURT OFFICER: Thank you, Madam President. The Situation in
16 the Central African Republic in the case of The Prosecutor versus Jean
17 Pierre Bemba Gombo, ICC-01/05-01/08. We are in public session.

18 PRESIDING JUDGE STEINER: Thank you very much. Good afternoon.

19 I welcome the Prosecution team, legal representative of victims,
20 Defence team, Mr Jean-Pierre Bemba Gombo, representatives of the
21 Registry. Good afternoon to our interpreters and court reporters.

22 I would like to begin with the attendees to introduce themselves
23 and their teams, starting with the Prosecution.

24 MR BADIBANGA: (Interpretation) Good afternoon, Madam President,
25 your Honours. Present with me for the OTP is Mr Fabricio Guariglia who
26

1 is the Prosecution co-ordinator; Mr Massimo Scaliotti, trial lawyer; Ms
2 Horejah Bala-Gaye, trial lawyer; Ms Sylvie Vidinha, case manager; and
3 myself Jean-Jacques Badibanga, trial lawyer. Thank you.

4 MR ZARAMBAUD: (Interpretation) Good afternoon, Madam President,
5 your Honours. My name is Maître Assingambi Zarambaud,
6 legal representative. Maître Douzima has apologised for her absence
7 because she is not feeling well. And with me is Ms Carine Pineau, case
8 manager and legal assistant; as well as Ms Virginie Roche, case manager
9 and also legal assistant.

10 PRESIDING JUDGE STEINER: Mr Haynes.

11 MR HAYNES: Your Honour, Mr Bemba is represented today by me,
12 Peter Haynes. I'm assisted in Court by Kate Gibson, Natacha Lebaindre,
13 Cécile Lecolle, and Cindy Josseran.

14 MR DUBUISSON: (Interpretation) Madam President, your Honours,
15 representing the Registry with me today is Ms Bibiana Becerra Suarez of
16 the Registry; Mr Abdoul, Mbaye, head of legal aid; and myself,
17 Marc Dubuisson, director of court services of Mr Herman von Hebel,
18 Registrar.

19 PRESIDING JUDGE STEINER: We are here today for this public
20 Status Conference, which was convened by the Chamber's decision 2907 of
21 27 November 2013, in order to address issues related to the possible
22 impact of the case ICC-01/05-01/13 on the present case. And the first
23 item on our agenda is the issue of legal representation of the accused,
24 Mr Jean-Pierre Bemba Gombo.

25 The Chamber is mindful of its duty to ensure that Mr Bemba's

1 rights are fully respected. In particular and pursuant to
2 Article 67(1)(b) and (d) of the Rome Statute, the fundamental rights of
3 the accused include the right to conduct his defence through legal
4 assistance of his choosing and to communicate freely with his chosen
5 counsel in confidence.

6 In this context and taking into account the events of last
7 weekend, the Chamber was informed yesterday by the Registry that Mr Bemba
8 had decided to release Mr Aimé Kilolo Musamba and Mr Jean-Jacques
9 Mangenda Kabongo from their mandates as lead counsel and case manager of
10 his Defence team. In addition, the Chamber was informed that it has been
11 proposed to the Registry that the current co-counsel would take over the
12 role of lead counsel and that Ms Gibson, who has also been part of the
13 Defence team since the beginning of the trial, would become co-counsel,
14 which the Chamber notes would ensure the continuity of Mr Bemba's
15 defence. Consequently, the altered composition of the Defence team would
16 be the following: Mr Peter Haynes as legal counsel; Ms Kate Gibson as
17 co-counsel; Mr Guénaél Mettraux as legal consultant; Ms Natacha Lebaindre
18 as case manager; and Ms Cecile Lecolle and Ms Cinde Josseran both as
19 assistant case managers.

20 The Chamber would therefore like to hear from Mr Bemba whether
21 this is in fact his decision. So I ask, please, Mr Bemba to address the
22 Chamber in order to confirm that this is your decision to continue with
23 the Defence team in the present case through the legal team in the
24 composition I just mentioned.

25 MR BEMBA: (Interpretation) Madam President, thank you for giving
26

1 me the floor. I'm slightly surprised. Can you give me a moment for me
2 to consult with Mr Haynes.

3 PRESIDING JUDGE STEINER: Of course. You have all the time you
4 need, Mr Jean-Pierre Bemba Gombo.

5 MR BEMBA: (Interpretation) I will not abuse of that opportunity.

6 PRESIDING JUDGE STEINER: Would you like to do it outside the
7 courtroom?

8 MR BEMBA: (Interpretation) No, your Honour, I can do it here.
9 Thank you.

10 PRESIDING JUDGE STEINER: Mr Bemba.

11 MR BEMBA: (Interpretation) Thank you, Madam President, for giving
12 me the floor again. I would like to reassure you that given the
13 upheavals that took place during the recent days, I did not yet have the
14 opportunity to discuss, I think, with Maître Kilolo who is legal counsel.
15 I don't think that it would be honourable or appropriate to take this
16 decision today without having discussed with him. If you allow,
17 Madam President, I will have the opportunity later to speak with him and
18 then come back to you with a result as quickly as possible. And I would
19 like to reassure you that the intention is not to delay the proceedings.
20 What you have proposed can be a solution, but please allow me to discuss
21 this matter with Maître Kilolo so that he should not take it in a
22 specific way. At a human level, I think it would be preferable for me to
23 do that.

24 PRESIDING JUDGE STEINER: Thank you, Mr Bemba.

25 Mr Haynes.
26

1 MR HAYNES: Your Honour -- your Honour, that is exactly what I
2 anticipated Mr Bemba would say. I think I should say at the outset, I'm
3 conscious of the fact that this hearing was probably scheduled at short
4 notice with close regard to my own and Ms Gibson's professional and
5 personal obligations, and for that I'm very, very grateful. I think that
6 was very considerate. But it might just be that that means that this
7 issue is not quite ripe to be finalised today. You may or you may not
8 know that the conditions of Mr Bemba and Mr Kilolo's detention are such
9 that they are not permitted to communicate with one another, and so this
10 matter which we hoped might have been capable of discussion between the
11 two of them before today's hearing hasn't been so capable.

12 I don't think there's anything else I can usefully add on this
13 topic at the moment.

14 Mr Dubuisson, will you please enlighten the Chamber on what
15 Mr Haynes has just mentioned.

16 MR DUBUISSON: (Interpretation) Madam President, it is true
17 indeed that the Single Judge responsible for the Article 70 proceedings
18 had, in fact, issued an order for separation and non-communication for a
19 period of 72 hours. This period has been -- had been extended right up
20 to the initial appearance yesterday and then further extended again up
21 until this morning, and an order from the same Judge was issued this
22 morning authorising contacts in the detention centre but which should be
23 actively monitored. I do not want to give any further information
24 because we are in open session.

25 PRESIDING JUDGE STEINER: Yes, Mr Haynes.
26

1 MR HAYNES: Your Honour, can I suggest we simply deal with this
2 matter by way of written filing in very short order perhaps in the next
3 day or two?

4 PRESIDING JUDGE STEINER: Give me some time -- some minutes at
5 least to deliberate with my colleagues, Mr Haynes.

6 MR HAYNES: Absolutely, your Honour. I'm sorry.

7 (Trial Chamber confers)

8 PRESIDING JUDGE STEINER: Mr Haynes, as you rightly pointed out,
9 the urgency in which this Status Conference was scheduled was exactly
10 because -- or due to your communication that as from Monday you probably
11 would not be available to appear before this Court due to other
12 professional commitments. So it was exactly in attention to the
13 difficulties in your agenda that we anticipated this Status Conference.
14 But we fully understand the reasons given by Mr Jean-Pierre Bemba Gombo.
15 As we said in the beginning, Mr Jean-Pierre Bemba Gombo has the right to
16 be represented by counsel of his choice, and since Mr Kilolo --
17 Maître Kilolo has been lead counsel for his Defence team or has been
18 until now, it's important that you communicate with your legal counsel
19 before you take any action, Mr Bemba.

20 Therefore, we will leave aside the issue related to the legal
21 representation of the accused for the time being. Mr Haynes has still
22 power of attorney, that is valid and untouched. And we will wait,
23 therefore, for a filing on the record of the case of power of attorney
24 pursuant to Rule 22, paragraph 2, of the Rules, and by which
25 Mr Jean-Pierre Bemba Gombo should grant power of attorney to lead counsel
26

1 and co-counsel, as it was done in the beginning of the present trial.

2 So, Mr Dubuisson, you will be please in charge of ensuring that
3 the Chamber receives as soon as the issue is decided by Mr Bemba, the
4 Chamber receives notification of the filing of the power of attorney.

5 Has the Prosecution anything to say in this respect?

6 Mr Guariglia?

7 MR GUARIGLIA: Thank you so much, your Honours. And I know this
8 is my first appearance before this Honourable Chamber, so I welcome this
9 opportunity to address your Honours on these issues. Your Honour, I'm
10 reluctant to raise an issue that is uncomfortable for the Office of the
11 Prosecutor, but I think that is an important issue that has to be raised,
12 you know, for your Honours to be alerted of this potential problem but
13 also to include it in the measures that will have to be taken by the
14 Defence in the coming days.

15 As your Honours are well aware of, there is an Article 70 case
16 ongoing against former -- or still actual members of the Defence team.
17 The Office of the Prosecutor has almost completed its investigation. Our
18 conclusion has been that neither Mr Haynes nor Ms Gibson are involved in
19 the criminal activity underlying that case. The investigation is not yet
20 completed, but our conclusion is that this assessment is unlikely to
21 change with the pending investigative steps. However, there is a
22 potential conflict of interest which should be addressed. We have not -
23 this is not our role - looked into any arguable violations of the Code of
24 Conduct by neither Mr Haynes nor Ms Gibson, and I'm not suggesting that
25 this have happened, I'm just saying that this is not something we have
26

1 evaluated. And I note, for instance, that under Article 32(1)(b) of the
2 Code of Conduct for Defence counsel: Counsel is liable for misconduct of
3 his or her staff when counsel knows or has information suggesting that
4 violations may be committed and takes no reasonable remedial action.

5 This could in theory lead to responsibility under the Code of
6 Conduct for at least Mr Haynes for the conduct attributable to
7 Mr Mangenda as case manager of the Defence team. I repeat, I am not
8 suggesting that this is the case. What I'm saying is this is an inquiry
9 that may have to be undertaken by Registry - certainly not by the Office
10 of the Prosecutor - but it is a situation that can create a potential
11 conflict of interest, at least for Mr Haynes. Now, we think this can be
12 solved and we think this can be easily solved by a waiver made by
13 Mr Bemba in relation to this particular aspect of the potential conflict
14 of interest. That waiver may be done with the assistance of independent
15 counsel appointed by the Registry, if needed, but we think that it is
16 imperative that Mr Bemba understands that there is a problem there, a
17 potential problem there, and that he nonetheless wishes to retain
18 Mr Haynes as leading counsel.

19 I also note that in theory both Mr Haynes and Ms Gibson are
20 witnesses to the crimes being -- or potential witnesses to the crimes
21 being prosecuted in the Article 70 case. Now, I can say for the Office
22 of the Prosecutor that we have no intention of calling either Mr Haynes
23 or Ms Gibson as witnesses, but the suspects may or the Trial Chamber may
24 decide to call of them as witnesses *proprio motu*. This can also create a
25 potential for a conflict of interest situation, which again, we think,
26

1 may be waived by Mr Bemba. But in any case, what we think is important
2 that Mr Bemba again be informed of this situation and then be in a
3 position to decide that whether regardless of the situation he still
4 wishes to retain Mr Haynes and Ms Gibson as counsel.

5 We raise this as I say reluctantly, but we think it is critical
6 that the authority of these proceedings be preserved and that there are
7 no uncertain situations that could affect your Honours' judgement in the
8 future in the context of a final appeal, for instance. So this is the
9 spirit with which the Prosecution is raising these issues. Thank you,
10 your Honours.

11 PRESIDING JUDGE STEINER: I think it's not up to the Chamber to
12 address any of the issues just raised by Mr Guariglia. It is on the
13 record of the case and nobody better than, until now, co-counsel
14 Mr Haynes to discuss such issues with his client; if need be, with the
15 assistance of the counsel section within Registry or even with the
16 appointment of independent counsel if Mr Haynes deems it necessary. I
17 will leave it totally in the hands of Mr Haynes and Mr Jean-Pierre Bemba
18 Gombo to discuss such issues as raised by Mr Guariglia. Unless Mr Haynes
19 would like to address any of them in this Status Conference.

20 MR HAYNES: No. Thank you, your Honour.

21 PRESIDING JUDGE STEINER: Thank you very much.

22 Independently of any further decision on the composition of the
23 Defence team and since, according to the power of attorney that was given
24 to -- by Mr Jean-Pierre Bemba Gombo to Mr Peter Haynes, Mr Peter Haynes
25 continues for the purpose of the present hearing representing -- formally
26

1 representing Mr Jean-Pierre Bemba Gombo.

2 And for the public record, it should be noted that
3 Chamber Witness 01, the witness called by the Chamber pursuant to its
4 powers under Article 64(6)(b) and (d) and 69(3) of the Statute, concluded
5 presenting his testimony on 22nd November 2013. Consequently and subject
6 to Chamber's decisions on the applications pending before the Chamber,
7 and here I'm referring to confidential Defence filings 2872 and 2901, the
8 presentation of oral evidence in the present case has in principle been
9 completed.

10 In this context, the only dead-lines currently pending are those
11 imposed by decision 2898, that is, for the parties and participants to
12 submit by tomorrow, 29 November 2013, any applications for the admission
13 into evidence of material relevant to the testimony of Chamber Witness 01
14 and the subsequent seven-days' time-limit for any responses. The Chamber
15 would therefore like to know whether the current Defence team,
16 considering any possible changes in its composition, will be able to
17 comply with these dead-lines.

18 Mr Haynes.

19 MR HAYNES: Your Honour, yes.

20 PRESIDING JUDGE STEINER: Thank you, Mr Haynes.

21 The Chamber would also like to inform parties and participants
22 that a decision declaring the presentation of evidence in the case to be
23 closed pursuant to Rule 141 of the Rules will only be taken once the
24 Chamber has decided on the admissibility into evidence of all materials
25 submitted by the parties or participants or by the Chamber.
26

1 Consequently, the time-frames set out in decision 2731 of 16 July 2013
2 for the parties and participants to submit their closing briefs will only
3 start running as from the date the Chamber issues its decision declaring
4 the presentation of evidence to be closed pursuant to Rule 141 of the
5 Rules.

6 Any comment from parties and participants in that respect?

7 Mr Badibanga?

8 MR BADIBANGA: (Interpretation) No. We await the decisions taken.

9 MR HAYNES: Nor from the Defence, your Honour.

10 MR ZARAMBAUD: (Interpretation) No problem for us either.

11 PRESIDING JUDGE STEINER: And finally, Mr Haynes, as the Chamber
12 was informed that you not be available for hearings during the month of
13 December 2013, the Chamber would like to hear from you whether this will
14 have any impact on any possible dead-lines for filings or submissions
15 that may be due during that time?

16 MR HAYNES: No, it won't, your Honour.

17 PRESIDING JUDGE STEINER: Thank you, Mr Haynes.

18 (Trial Chamber confers)

19 PRESIDING JUDGE STEINER: Judge Joyce Aluoch, very attentive to
20 the English transcript, noticed that the answer given by Mr Haynes to the
21 question put by the Chamber is not registered.

22 MR HAYNES: Yes, it's -- it should have interposed between
23 Mr Badibanga's answer at page --

24 PRESIDING JUDGE STEINER: 11 --

25 MR HAYNES: -- 11, line 10, and Mr Zarambaud's answer at line 11,
26

1 and I confirmed that we had no difficulty with that suggestion either.

2 PRESIDING JUDGE STEINER: Thank you very much, Mr Haynes.

3 (Trial Chamber confers)

4 PRESIDING JUDGE STEINER: These were the issues that the Chamber
5 would like to address in the present Status Conference. So now the
6 Chamber will ask parties and participants whether they have any other
7 issues that they would like to address before we adjourn, starting by the
8 Prosecution?

9 MR BADIBANGA: (Interpretation) Thank you, your Honour. I merely
10 wished to make reference to a decision made by the Chamber on the 26th of
11 April, 2013. This was a confidential ruling, *ex parte*, for the OTP and
12 the Registry. In that decision, the Bench encouraged us -- I'll read the
13 English: (In English) "... invite the Prosecution to inform the Chamber
14 when the present decision can be issued in redacted form."

15 PRESIDING JUDGE STEINER: Mr -- okay. No, I was afraid that you
16 were going to reveal the content of an *ex parte* filing, but I apologise.

17 MR BADIBANGA: (Interpretation) Not at all, your Honour. I wished
18 merely to point out that it would appear that the current circumstances
19 would justify this document being made available to the parties and that
20 it might be reclassified for the benefit of the parties and participants.
21 It could be reclassified confidential, not public of course. That could
22 be done.

23 PRESIDING JUDGE STEINER: The request as made is on the record.
24 I don't think it's necessary for a filing to be made in that sense. My
25 question is the Prosecution intends the reclassification as confidential
26

1 without redactions?

2 MR BADIBANGA: (Interpretation) Yes, your Honour. It would appear
3 to us that indeed at this stage that might be the case, indeed.

4 PRESIDING JUDGE STEINER: Thank you, Maître Badibanga.

5 Maître Zarambaud, would you like to address any further issue?

6 MR ZARAMBAUD: (Interpretation) I have nothing in particular, your
7 Honour, except I am a bit puzzled by the possible repercussions of the
8 proceedings relating to false documents on this particular -- these
9 particular proceedings. I am somewhat preoccupied --

10 PRESIDING JUDGE STEINER: Maître Zarambaud, for the time being,
11 the only -- the only wish of the Chamber that parties and participants
12 comply with the dead-lines already assigned for the submission of
13 evidence and eventual responses, if need be. The Chamber cannot
14 anticipate any other issue in relation to this or the other case that is
15 ongoing - cannot and will not.

16 Mr Haynes, any other issue you would like to address the Chamber?
17 And if you think there is any issue you would like to address in *ex parte*
18 or in closed session, please feel free to request.

19 MR HAYNES: At the present point in time, there is nothing we
20 wish to address. The situation develops daily and we will apprise the
21 Chamber of any difficulties we may face as soon as we do, if we do. But
22 at the moment, no, thank you.

23 PRESIDING JUDGE STEINER: Mr Dubuisson.

24 MR DUBUISSON: (Interpretation) Thank you, your Honour. Just for
25 the record and fairness being the concern, when mention is made of a
26

1 potential conflict of interest for Mr Haynes, I would say that the same
2 potential conflict of interest in the case of Mr Kilolo. In the
3 Article 70 case, he may have another defence than that of a co-accused
4 who is currently a client. I wish to raise that point so that things
5 will be perfectly fair and that the point will be shown on the case
6 record.

7 PRESIDING JUDGE STEINER: Mr Haynes, Defence always has the last
8 word. Is there anything else you would like to address to the Chamber
9 before we adjourn?

10 MR HAYNES: No, thank you, your Honour, only to say how grateful
11 I am again for your scheduling of this hearing at my convenience.

12 PRESIDING JUDGE STEINER: At the last hearing you said I was
13
14 being so kind with you, Mr Haynes, so I continue being kind. This is my
15 nature.

16 MR HAYNES: It's becoming a habit, your Honour.

17 PRESIDING JUDGE STEINER: It's on my nature, I can assure you.

18 So I thank -- if there are no other issues to be addressed, I
19 just would like to thank very much the Prosecution team, the legal
20 representatives of victims team, and I wish that the problem with
21 Maître Douzima Lawson is nothing serious and that she recovers very soon.

22 I thank very much the Defence team. I thank the presence of the
23 representatives of the Registry. Thank you very much,
24 Mr Jean-Pierre Bemba Gombo. Our interpreters, thank you, again; our
25 court reporters.

- 1 And I declare that the hearing is adjourned.
- 2 (The hearing ends in open session at 3.10 p.m.)