

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/08
Date: 6 February 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**

**Public Redacted Document
With
Public Redacted Annex A**

Prosecution request to hear Witness CAR-OTP-PPPP-0036's testimony via video-link

Source: The Office of the Prosecutor

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 of Jean-Pierre Bemba Gombo

Mr. Nkwebe Liriss

Mr. Aimé Kilolo Musamba

Legal Representatives of Victims

Ms. Marie-Edith Douzima Lawson

Mr. Assingambi Zarambaud

Legal Representatives of 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

Counsel Support Section

Deputy Registrar

Mr. Didier Preira

Victims and Witnesses Unit

Ms. Maria-Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations Section

Other

I. Introduction

1. Pursuant to Article 69(2) of the Rome Statute (“Statute”) and Rule 67 of the Rules of Procedure and Evidence, the Office of the Prosecutor (“Prosecution”) requests that Witness CAR-OTP-PPPP-0036 (“Witness 36”)’s testimony be heard via video-link from Kinshasa, Democratic Republic of the Congo (“DRC”). Witness 36 should avoid travelling unless medically necessary due to [REDACTED].

II. Request for confidentiality

2. The Prosecution requests that this application be received by Trial Chamber III (“Chamber”) as “Confidential” due to the nature of the information related to Witness 36’s identity contained herein.

III. Prosecution’s submissions

3. On [REDACTED], Witness 36 [REDACTED].¹ Witness 36 [REDACTED]. [REDACTED] and, more importantly, [REDACTED]. [REDACTED] require that he avoid travelling and in particular avoid flying unless medically necessary.² Testimony by video-link would allow Witness 36 to remain in the DRC during his testimony and would prevent the inevitable pain and suffering he would endure by travelling to The Hague.

4. Article 69(2) of the Statute allows for the testimony of a witness by video-link. This measure has already been implemented once in this case, albeit under different

¹ [REDACTED].

² ICC-01/05-01/08-1874-Conf, Prosecution’s Response regarding the Witness Schedule, 2 November 2011, para. 6 (informing the Chamber that “Witness 36 [REDACTED]”).

circumstances.³ The Chamber granted the request of the Office of Public Counsel for Victims (“OPCV”) for Witness CAR-OTP-PPPP-0108 (“Witness 108”) to testify by video-link.⁴ As established by the Chamber, one of the relevant factors in determining whether a witness should be allowed to testify by video-link is the witness’ personal circumstances.⁵ In the case of Witness 108, his professional commitments, namely his particular role in the judicial system and the presidential election process of the Central African Republic, were considered to be exceptional personal circumstances that sufficed to overcome the preference that witnesses testify in person.⁶ This witness’ circumstances are equally, or even more, compelling: [REDACTED] render him unwilling to travel and unable to do so without the possibility of [REDACTED].

5. Article 68(1) of the Statute underlines the Court’s duty to “take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses [...]” so long as they are not “prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”. The use of video-link testimony is not in any way prejudicial to or inconsistent with the Accused’s rights; the Defence will have the opportunity to observe and question the witness and test his credibility the same way it would have if the witness would appear physically in the courtroom. Nor will the proposed video-link testimony detrimentally affect the fairness of the trial. Indeed, because Witness 36, [REDACTED] is an important percipient witness, his unavailability would deny the Prosecution its right to a fair opportunity to present its case and would also deprive the Chamber of evidence essential for determining the truth.

³ ICC-01/05-01/08-947-Conf, Decision on the “Request for the conduct of the testimony of witness CAR-OTP-WWWW-0108 by video-link”, 12 October 2010.

⁴ *Id.*, para. 13.

⁵ *Id.*

⁶ *Id.*, para. 14.

6. Moreover, Article 68(2) of the Statute specifies that “the Chambers of the Court may, to protect victims and witnesses or an accused, [...] allow the presentation of evidence by electronic or other special means”. In the *Lubanga* case, Trial Chamber I explained that the “personal circumstances of the witness lead to a strong prima facie conclusion that requiring her to travel to The Hague to give evidence would be inimical to her psychological well-being and her dignity.”⁷ When addressing the merits of the application by the Defence, the Chamber found that the destabilizing change of environment could lead up to significantly detrimental consequences for the witness and allowed the use of video-link in the particular case.

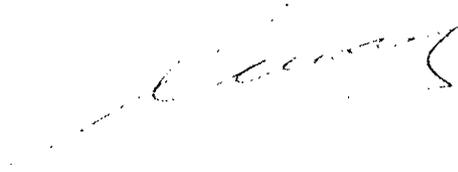
7. In the view of the exceptional nature of the personal circumstances of Witness 36, the authorisation from the Chamber to proceed with his testimony via video-link would be in accordance with its duty to protect “physical and psychological well-being” of the witness.⁸ Accordingly, the Prosecution respectfully submits that the Chamber grant its request for video-link testimony.

⁷ ICC-01/04-01/06-2285-Red, Redacted Decision on the Defense request for a witness to give evidence via video-link, 9 January 2010, para. 16.

⁸ Article 68(1) of the Rome Statute.

IV. Conclusion

8. For the above reasons the Prosecution requests that the Chamber approve its request for Witness 36 to testify via video-link.



Luis Moreno-Ocampo, Prosecutor

Dated this 6th Day of February 2012
At The Hague, The Netherlands