

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 14 December 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

Public redacted version of "Decision on measures to facilitate the continued presentation of evidence by the defence"

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Aimé Kilolo Musamba

Mr Peter Haynes

Legal Representatives of the Victims

Ms Marie Edith Douzima-Lawson

Mr Assingambi Zarambaud

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”) in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* issues the following Decision on measures to facilitate the continued presentation of evidence by the defence (“Decision”).

I. Background and submissions

1. On 6 July 2012 the Chamber issued its “Decision on the ‘Third Defence Submissions on the Presentation of its Evidence’” (“6 July 2012 Decision”),¹ in which – taking into account that numerous individuals included in the defence’s list of witnesses to be called to testify did not have travel documents or would face serious obstacles in obtaining them – the Chamber, *inter alia*, (i) decided upon the order of appearance of witnesses to be called by the defence;² (ii) instructed the Registry to carry out consultations and assessments in order to determine whether it was possible to hear the testimony of certain witnesses *via* video-link or *in situ* at the seat of the International Criminal Tribunal for Rwanda in Arusha, Tanzania;³ and (iii) instructed the Victims and Witnesses Unit (“VWU”) to submit reports every two weeks to keep the Chamber informed of the situation in relation to the arrangements for witnesses’ appearance before the Court and any viable alternatives to live testimony at the seat of the Court.⁴

2. On 3 October 2012 the Chamber issued its “Decision on the amended order of witnesses to be called by the defence”,⁵ in which it, *inter alia*, (i)

¹ Decision on the “Third Defence Submissions on the Presentation of its Evidence”, 6 July 2012, ICC-01/05-01/08-2242-Conf-Exp with confidential *ex parte* Annex A and Public redacted version of the “Decision on the ‘Third Defence Submissions on the Presentation of its Evidence’” of 6 July 2012, filed on 28 September 2012, ICC-01/05-01/08-2242-Red.

² ICC-01/05-01/08-2242-Red, paragraph 31 (i) and Conf-Exp-AnxA.

³ ICC-01/05-01/08-2242-Red, paragraphs 31(v) and 31(vi).

⁴ ICC-01/05-01/08-2242-Red, paragraph 31(vii).

⁵ Decision on the amended order of witnesses to be called by the defence, 3 October 2012, ICC-01/05-01/08-2329.

decided on the six witnesses to be heard as of 15 October 2012 and their order of appearance;⁶ and (ii) instructed the defence and the VWU to liaise in order to ensure such appearance.⁷ In case of difficulties, or if alterations in the order appeared to be necessary, the Chamber instructed the defence and the VWU to inform it immediately and to submit an alternative order for the Chamber's consideration.⁸

3. Due to difficulties encountered with securing the attendance of a number of witnesses, between 15 October and 3 December 2012 the Chamber issued four oral decisions on proposed amendments to the order of witnesses to be called before the winter recess.⁹
4. On 4 December 2012 Witness D04-PPPP-0066, the 14th witness to appear before the Chamber, completed his testimony.¹⁰ Since no further witnesses were available to appear prior to the beginning of the winter recess, the public hearings scheduled for the period between 5 and 14 December 2012 were cancelled.¹¹
5. On 11 December 2012, further to a request on the part of the defence,¹² the Chamber held an *ex parte* – defence, Registry and VWU only – status conference in order to discuss issues related to the presentation of evidence by the defence in 2013.¹³ In this context, the defence informed the

⁶ ICC-01/05-01/08-2329, paragraph 14.

⁷ ICC-01/05-01/08-2329, paragraph 15.

⁸ ICC-01/05-01/08-2329, paragraph 15.

⁹ Transcript of hearing of 15 October 2012, ICC-01/05-01/08-T-254-CONF-ENG ET, page 2, line 8 to page 4, line 6; Transcript of hearing of 8 November 2012, ICC-01/05-01/08-T-269-CONF-ENG ET, page 1, line 24 to page 2, line 20; Transcript of hearing of 20 November 2012, ICC-01/05-01/08-T-271-Red-ENG ET, page 62, line 15 to page 63, line 17; Transcript of hearing of 3 December 2012, ICC-01/05-01/08-T-280-CONF-ENG ET, page 1, line 25 to page 3, line 4.

¹⁰ Transcript of hearing of 4 December 2012, ICC-01/05-01/08-T-281-CONF-ENG ET.

¹¹ See email from the Court Room Officer to the parties and participants of 7 December 2012 at 17.03.

¹² Email from the defence to the Chamber of 30 November 2012 at 13.34.

¹³ Order convening an *ex parte* status conference, 7 December 2012, ICC-01/05-01/08-2471. The Chamber notes that the present decision refers to matters addressed in the context of an *ex parte* status conference. While some of these matters should remain *ex parte* at this stage, the Chamber is of the view that in light of the principle of publicity of the proceedings enshrined in Articles 64(7) and 67(1) of the Statute, and the need to

Chamber that two witnesses, Witness D04-PPPP-0021 (“D04-21”) and Witness D04-PPPP-0063 (“D04-63”) would be available to appear before the Chamber without delay after the winter recess.¹⁴ In relation to all other remaining witnesses to be called by the defence, it was submitted that their appearance is subject to the resolution of a number of administrative difficulties. [REDACTED].¹⁵

6. [REDACTED].¹⁶

7. On 13 December 2012 the Chamber issued its Decision on the temporary suspension of the proceedings pursuant to Regulation 55(2) of the Regulations of the Court and related procedural deadlines,¹⁷ in which it decided to suspend the hearings until 4 March 2013 in order to give the accused sufficient time for the effective preparation of his defence pursuant to Regulation 55 of the Regulations of the Court (“Regulations”).

II. Analysis and conclusions

8. In accordance with Article 21(1) of the Statute, the Chamber, in making its determination, has considered Articles 64(2), (7), (8)(b) and (9)(b), 67(1), and 68 of the Statute and Regulations 43 and 54 of the Regulations.

Order of appearance of witnesses upon resumption of hearings

enable the prosecution and the legal representatives to make the necessary preparations, the bulk of the information addressed in this decision may be made public. Accordingly, the present decision is filed on an *ex parte* basis together with a public redacted version. To the extent that the public redacted version of the Decision makes reference to the existence of, or, to a limited extent, the content of documents or transcripts currently classified as *ex parte*, the Chamber considers that the information concerned does not warrant *ex parte* treatment at this time.

¹⁴ Transcript of hearing of 11 December 2012, ICC-01/05-0/08-T-282-CONF-EXP-ENG ET, page 4, lines 17 to 20; page 16, lines 16 to 20; page 17, line 23 to page 18, line 4.

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ Decision on the temporary suspension of the proceedings pursuant to Regulation 55(2) of the Regulations of the Court and related procedural deadlines, 13 December 2012, ICC-01/05-01/08-2480.

9. The Chamber has already underlined that under the Court's legal framework, in the interests of justice and in order to ensure the efficient presentation of evidence and that the trial is fair and expeditious, the Trial Chamber and its Presiding Judge are fully empowered to decide upon, *inter alia*, the order of witnesses to be called by the parties.¹⁸ At the same time and notwithstanding the inherent power identified above, the Chamber has expressed its preference for not interfering with the parties' presentation of evidence unless there is a compelling reason to do so.¹⁹
10. In the present circumstances, in view of the difficulties encountered with the appearance of a number of witnesses proposed to be called by the defence, the Chamber is of the view that there exists such a compelling reason justifying the Chamber's renewed intervention in relation to the order of appearance of defence witnesses.
11. Accordingly, further to the latest information on the availability of witnesses provided by the defence during the *ex parte* status conference of 11 December 2012,²⁰ the Chamber is of the view that the first two witnesses to be heard upon the resumption of hearings on 4 March 2013 should be Witnesses D04-21 and D04-63.
12. In order to decide on the order of appearance of the remaining witnesses, the Chamber considers it necessary for the VWU to provide it with an individualised update as to the administrative situation, ability to travel and availability of all remaining witnesses proposed to be called by the defence, by 4 February 2013.

¹⁸ ICC-01/05-01/08-2329, paragraph 11; ICC-01/05-01/08-2242-Red, paragraph 15.

¹⁹ ICC-01/05-01/08-2329, paragraph 12; Decision Regarding the prosecution's witness schedule, 11 November 2011, ICC-01/05-01/08-1904-Red, paragraph 25.

²⁰ Transcript of hearing of 11 December 2012, ICC-01/05-01/08-T-282-CONF-EXP-ENG ET, page 4, lines 18 to 20; page 16, lines 16 to 20; page 17, line 23 to page 18, line 4.

Arrangements in relation to witness testimony

13. The Chamber has received a series of submissions on the specific arrangements in relation to witness testimony.²¹ A decision on this matter will be taken in due course, taking into account the parties' and participants' submissions and the Registry's individualised update referred to in paragraph 12 above. The present Decision only addresses the schedule of witnesses upon the resumption of hearings after the suspension of hearings pursuant to Regulation 55.

14. At this stage, in view of the information that Witnesses D04-21 and D04-63 are available to give evidence at the seat of the Court without delay after the winter recess, the Chamber decides that these two witnesses shall be heard in person at the seat of the Court in The Hague.

15. [REDACTED].²² With this in mind and having considered the Registry's submissions on the feasibility of alternatives to live testimony, the Chamber decides to hear the testimony of the [REDACTED] witnesses referred to in paragraph 6 above *via* video-link from an appropriate location. [REDACTED].

Additional measures to expedite the proceedings

²¹ Registry report to the Chamber on the feasibility of the modalities of specific arrangements in relation to witness testimony, 28 November 2012, ICC-01/05-01/08-2447-Conf; 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", 30 November 2012, ICC-01/05-01/08-2448; Defence Submissions on the "Registry report to the Chamber on the feasibility of the modalities of the specific arrangements in relation to witness testimony", 7 December 2012, ICC-01/05-01/08-2472-Conf; Prosecution's Observations on the "Registry report to the Chamber on the feasibility of the modalities of specific arrangements in relation to witness testimony", 7 December 2012, ICC-01/05-01/08-2474; Observations sur le rapport du Greffe relatif au projet de transfert du procès le Procureur contre Jean-Pierre Bemba à Arusha, 7 December 2012, ICC-01/05-01/08-2475-Conf; Requête afin d'être relevé d'une forclusion, 12 December 2012, ICC-01/05-01/08-2478-Conf.

²² [REDACTED].

16. Based on the questioning of the 14 defence witnesses that have appeared before the Court thus far, the Chamber notes that, in addition to delays resulting from gaps in the appearance of witnesses, the proceedings have been further prolonged by the length of questioning by the Office of the Prosecutor ("prosecution"). As previously underlined,²³ the Chamber acknowledges that the prosecution's and legal representatives' ability to effectively prepare for an efficient and focused examination of the witnesses called by the defence has been impaired by the lack of detail provided in the summaries of witnesses disclosed by the defence.²⁴

17. Accordingly, with a view to expediting the proceedings, the Chamber considers that in relation to the remaining witnesses, the defence should submit more detailed summaries, containing additional information and sufficient detail as to allow the prosecution and the legal representatives of victims to prepare more focused questions to pose to the upcoming witnesses. These comprehensive summaries shall be uploaded into the eCourt system of the Court together with a formal filing indicating their respective Evidence Reference Number ("ERN"). The comprehensive summaries shall be uploaded in separate batches on a rolling basis, and each comprehensive summary must be available at least two weeks prior to the scheduled appearance of the relevant witness.

18. In light of the above, the Chamber hereby

- (i) ORDERS the defence and the VWU to make all necessary arrangements to ensure the appearance at the seat of the Court of Witnesses D04-21 and D04-63 upon the resumption of hearings on 4

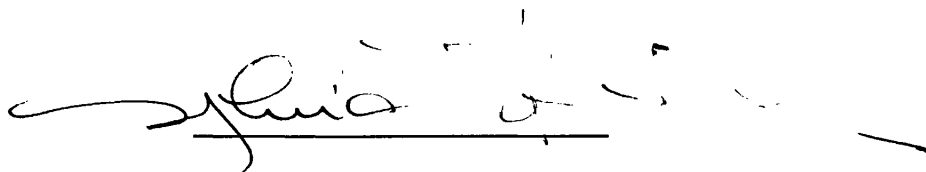
²³ See Transcript of hearing of 2 October 2012, ICC-01/05-01/08-T-252-ENG ET, page 16, line 17 to page 17, line 6; See also Transcript of hearing of 31 October 2012, ICC-01/05-01/08-T-266-CONF-ENG ET, page 46, line 18 to page 47, line 23.

²⁴ See Annex A to Defence Disclosure of its List of Witnesses and the Factual and Legal Elements of its Case, 13 July 2012, ICC-01/05-01/08-2243-Conf-AnxA.

March 2013;

- (ii) ORDERS the VWU to provide the Chamber, by 4 February 2013, with an individualised update as to the administrative situation, ability to travel and availability of all remaining witnesses proposed to be called by the defence;
- (iii) ORDERS the VWU to make the necessary arrangements for the testimony of Witnesses [REDACTED] to be given *via* video-link from an appropriate location [REDACTED] and to report back to the Chamber on the arrangements made in this respect by 4 February 2013;
- (iv) ORDERS the defence to submit comprehensive summaries for the remaining witnesses in accordance with the instructions set out in paragraph 17 above.

Done in both English and French, the English version being authoritative.


Judge Sylvia Steiner

Judge Joyce Aluoch

Judge Kuniko Ozaki

Dated this 14 December 2012

At The Hague, the Netherlands