

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-01/05-01/08
Date: 8 February 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***

Public

**Prosecution's Observations on Defence Request to Alter the Mode of Questioning
during Video-Link Testimony**

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

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Ms. Marie-Edith Douzima Lawson

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Victims Participation and Reparations Other Section

1. On 31 January 2013, the Defence filed its “Defence Submission in Compliance with Decision ICC-01/05-01/08-2492” with Confidential *ex parte* Annex A indicating that it intends to call as a priority witness D04-19 via video-link (“Defence Request”).¹ Additionally the Defence requests “the possible presence of two members of the defence team at the location of the video-link [...]”² Trial Chamber III (“Chamber”) requested observations on the *ex parte* Annex A from the Office of the Prosecutor (“Prosecution”), the Legal Representatives of Victims and the Registry.³

2. The Prosecution is not in possession of the Defence Request, as it was filed *ex parte*. From paragraph 31 of the Chamber’s decision ICC-01/05-01/08-2500, the Prosecution understands that the Defence wishes to question the D04-19 *in situ* while the Chamber, the Prosecution, and the participants follow the proceedings via video-link. Heretofore, the practice with video-links has been for the parties and the Chamber to question the witness from The Hague. Without knowing the Defence’s particular justification, it is difficult to imagine any good reason to depart from this procedure and allow the Defence to be present with the witness while the Prosecution and the Chamber remain in The Hague. In the Prosecution’s view, the requested procedure is unnecessary and would provide a distinct advantage to the Defence during questioning. Finally, of greatest concern, it would diminish the Chamber’s ability to control and oversee the proceedings. In particular, the Chamber would be unable to observe and control events between counsel and the witness that might occur off-camera.

¹ ICC-01/05-01/08-2497, Defence Submission in Compliance with Decision ICC-01/05-01/08-2492, 31 January 2013, and ICC-01/05-01/08-2497-Conf-Exp-AnxA, Confidential *ex parte* Annex A, 31 January 2013.

² ICC-01/05-01/08-2500, Decision lifting the temporary suspension of the trial proceedings and addressing additional issues raised in defence submissions ICC-01/05-01/08-2490-Red and ICC-01/05-01/08-2497, 6 February 2013, para. 31. The Prosecution notes that the Defence request to testify via video-link was granted on an *ex parte* basis without providing the Prosecution an opportunity to be heard, if warranted, on the issue. The Prosecution is unaware of the Defence’s underlying justification(s) for video-link testimony.

³ ICC-01/05-01/08-2500, para. 34 (vi).

3. Should the Chamber wish to receive additional observations addressing the specific arguments of the Defence, the Prosecution would request the Chamber to order the Defence to file a confidential redacted version of *ex parte* Annex A to its Defence Request.



Fatou Bensouda, Prosecutor

Dated this 8th Day of February 2013

At The Hague, The Netherlands