

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 October 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

Decision on the amended order of witnesses to be called 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

Ms Petra Kneuer

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 in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* issues the following Decision on the amended order of witnesses to be called by the defence.

I. Background and submissions

1. On 28 September 2012, the Chamber filed its “Public redacted version of the ‘Decision on the Third Defence Submissions on the Presentation of its Evidence’ of 6 July 2012” (“6 July 2012 Decision”),¹ in which it, *inter alia*, decided upon the order of appearance of the witnesses to be called by the defence.²
2. In accordance with the order set in the 6 July 2012 Decision, the first four witnesses called by the defence, 3 experts and one crime-based witness, appeared before the Chamber between 14 August and 18 September 2012.
3. Witness D04-07, the fifth witness called by the defence, started giving testimony on 19 September 2012³ and further appeared before the Chamber on 20 and 21 September 2012.⁴ However, as this witness did not present himself to continue giving testimony on Monday 24 September 2012, the Chamber decided to suspend his testimony until further notice.⁵
4. Witness D04-11,⁶ the sixth witness to be called by the defence, was scheduled to start giving testimony at the seat of the Court on 27 September 2012. However, on the day of the scheduled commencement of

¹ Public redacted version of the “Decision on the Third Defence Submissions on the Presentation of its Evidence” of 6 July 2012, 28 September 2012, ICC-01/05-01/08-2242-Red and Conf-Exp-AnxA.

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

³ Transcript of hearing of 19 September 2012, ICC-01/05-01/08-T-248-RED-ENG-WT.

⁴ Transcript of hearing of 20 September 2012, ICC-01/05-01/08-T-249-CONF-ENG-ET; Transcript of hearing of 21 September 2012, ICC-01/05-01/08-T-250-CONF-ENG-CT.

⁵ Transcript of hearing of 24 September 2012, ICC-01/05-01/08-T-251-CONF-ENG-ET, page 4, line 25 to page 5, line 1.

⁶ Programme hebdomadaire (Estimation) de la Comparution des témoins de la Défense allant du 24 au 28 September 2012, circulated by the defence’s Case Manager via email of 21 September 2012 at 13.38.

his testimony, the Chamber was informed that Witness D04-11 had not boarded the plane that had been booked for him, and therefore, he did not present himself to give testimony before the Chamber as scheduled.⁷

5. On 28 September 2012, the Chamber convened a status conference in order to discuss issues related to the presentation of evidence by the defence,⁸ and to address, *inter alia*, possible changes in the order of appearance of defence witnesses in order to increase the efficiency of the proceedings.
6. By email of 01 October 2012,⁹ in anticipation of the status conference, the defence provided the Chamber and the Registry with a proposal for a potential change in the order for the presentation of the remaining witnesses it intends to call to testify.
7. At the public status conference of 2 October 2012, the defence submitted that in relation to 35 of the witnesses it intends to call, it does not foresee any obstacles to their timely appearance before the Chamber. According to the defence, this includes five witnesses who already possess travel documents and who are currently residing in Europe and 30 further witnesses who, according to the defence, do not face any obstacles in travelling to the seat of the Court.¹⁰
8. The order of appearance of the witnesses called by the defence was further addressed during an *ex parte*, defence and Registry only, status conference that was held following the public status conference. In this context, the Chamber held that, in principle and at least with regard to those defence witnesses residing in Europe, it would accept the amended order

⁷ See Transcript of hearing of 2 October 2012, ICC-01/05-01/08-T-252-ENG-ET, page 4, lines 12 to 16.

⁸ Order setting an agenda for a status conference on issues related to the presentation of evidence by the defence, 28 September 2012, ICC-01/05-01/08-2327.

⁹ Email from the defence's case manager to the Chamber and the Registry of 1 October 2012 at 17.30.

¹⁰ Transcript of hearing of 2 October 2012, ICC-01/05-01/08-T-252-ENG-ET, page 6, line 10 to page 8, line 5.

proposed by the defence on 1 October, save for Witness D04-50 who shall be the next witness to testify and will commence his testimony on 15 October 2012.¹¹

II. Analysis and conclusions

9. 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 of the Court (“Regulations”).

10. The present decision was preceded by a number of confidential or *ex parte* filings and transcripts. However, in light of the principle of publicity of the proceedings enshrined in Articles 64(7) and 67(1) of the Statute, the present Decision is filed publicly. To the extent that the Decision makes reference to the existence of, or, to a limited extent, the content of documents currently classified as confidential or *ex parte*, the Chamber considers that the information concerned does not warrant confidentiality or, as the case may be, *ex parte* treatment at this stage.

11. As already underlined in its 6 July 2012 Decision, 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.¹²

12. At the same time, notwithstanding the inherent power identified above, the Chamber has expressed its preference for not interfering with the

¹¹ Transcript of hearing of 2 October 2012, ICC-01/05-01/08-T-253-CONF-EXP-ENG-ET, page 21, line 18 to page 22, line 15.

¹² ICC-01/05-01/08-2242-Red, paragraph 15.

parties' presentation of evidence unless there is a compelling reason to do so.¹³

13. In the present circumstances, in view of the incidents involving Witnesses D04-07 and D04-11 and given that seven weeks have already passed since the beginning of the presentation of evidence by the defence, the Chamber is of the view that there is such a compelling reason justifying the Chamber's intervention as to a further alteration of the order of the witnesses called by the defence.

14. Accordingly, further to the consultations with the defence and the Registry during the public and *ex parte* status conferences of 2 October 2012, the Chamber decides that upon resumption of the hearings on 15 October 2012, the Chamber will first hear those witnesses who are residing in Europe and do not face any difficulties in travelling to the seat of the Court. For that purpose, the Chamber decides that the witnesses shall be heard in the following order :

- (i) Witness D04-50;
- (ii) Witness D04-52;
- (iii) Witness D04-57;
- (iv) Witness D04-64;
- (v) Witness D04- 51;
- (vi) Witness D04-55.

15. The Chamber therefore instructs the defence and the Victims and Witnesses Unit ("VWU") to liaise in order to ensure the appearance of the relevant witnesses in the above-mentioned order. In case of difficulties in

¹³ Public redacted version of the "Decision Regarding the prosecution's witness schedule", 15 November 2011, ICC-01/05-01/08-1904-Red, paragraph 25.

following this schedule or if alterations in the order appear to be necessary, the Registry shall inform the Chamber immediately and submit an alternative order for the Chamber's consideration in order to avoid gaps in the appearance of witnesses.

16. In relation to the remaining witnesses to be called by the defence, the Chamber needs to be further updated on the difficulties they may face in travelling to the seat of the Court in order to take an informed decision on the modalities and order of appearance in due course. To this end, the Chamber reminds the VWU to continue 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.¹⁴

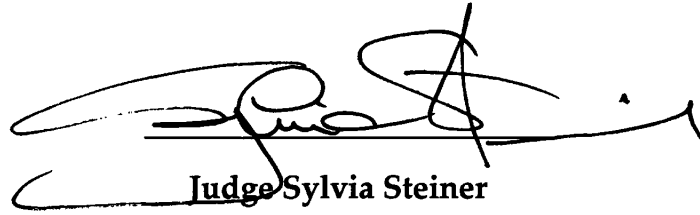
17. The Chamber further reminds the defence that, in relation to witnesses to whom Rule 74 of the Rules may apply, it shall notify the VWU and the Chamber of their identities. As regards this issue, the Chamber expects to be notified no later than 16.00 on 12 October 2012.¹⁵

18. Finally, the Chamber underlines that the modalities of presentation of evidence, including alternatives to live testimony, are to be decided upon by the Chamber, either *proprio motu* or upon the parties' requests. Therefore, in case the defence would like to request any alternatives to live testimony in The Hague in relation to particular witnesses, it shall submit to the Chamber a formal application sufficiently in advance of the proposed date for the relevant witness's testimony.

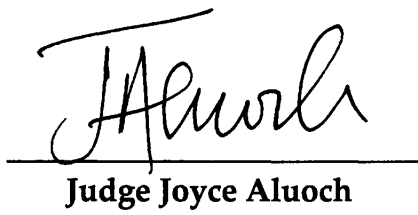
¹⁴ ICC-01/05-01/08-2242-Red, paragraph 30.

¹⁵ Decision on the "Prosecution Motion on Procedure for Contacting Defence Witnesses and to Compel Disclosure", 4 September 2012, ICC-01/05-01/08-2293-Conf, paragraph 30.

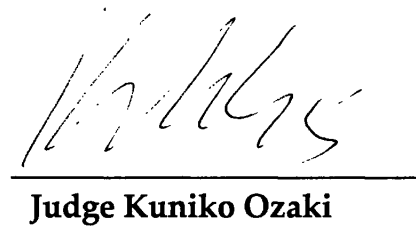
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 3 October 2012

At The Hague, The Netherlands