

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 1 November 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**

**URGENT
Public**

**Decision on the time limit for the conclusion of the defence's presentation of
oral evidence at trial**

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

The Office of the Prosecutor

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Mr Aimé Kilolo Musamba

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Legal Representatives of the Victims

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Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

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States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

Other

Victims Participation and Reparations Section

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on the time limit for the conclusion of the defence’s presentation of oral evidence at trial (“Decision”).¹

I. Background and Submissions

1. On 16 July 2013, the Chamber issued its “Decision on the timeline for the completion of the defence’s presentation of evidence and issues related to the closing of the case” (“Decision 2731”),² in which, taking into account numerous difficulties in the defence’s presentation of evidence,³ it ordered, *inter alia*, that “the presentation of evidence by the defence be concluded by 25 October 2013, at the latest.”⁴
2. On 6 September 2013, pursuant to an oral order of the Chamber,⁵ the defence filed its “Defence Submission as to the current timetable for the completion of its case” (“Submission 2796”),⁶ in which, *inter alia*, it informed the Chamber that the remaining witnesses to be called were Witnesses D04-54, D04-14, D04-41, and D04-44 and that it did not currently anticipate calling any further witnesses.⁷

¹ The Chamber underlines that, in line with 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 this Decision refers to information provided in the context of confidential or *ex parte* submissions, the Chamber considers that the information concerned does not warrant confidential or *ex parte* treatment at this stage.

² Decision on the timeline for the completion of the defence’s presentation of evidence and issues related to the closing of the case, 16 July 2013, ICC-01/05-01/08-2731.

³ ICC-01/05-01/08-2731, paragraphs 1 to 20.

⁴ ICC-01/05-01/08-2731, paragraph 38(b).

⁵ Transcript of hearing of 3 September 2013, ICC-01/05-08-T-342-CONF-ENG ET, page 32, line 20 to page 34, line 10.

⁶ Defence Submission as to the current timetable for the completion of its case, 6 September 2013, ICC-01/05-01/08-2796.

⁷ ICC-01/05-01/08-2796, paragraphs 1 to 4.

3. At an *ex parte* status conference convened at the request of the defence on 21 October 2013⁸ and attended by the defence and representatives of the Registry,⁹ the Registry submitted, *inter alia*, that in relation to Witnesses D04-44, D04-41, and D04-14, the defence had formulated inconsistent requests, which made it difficult for the Registry to take the necessary measures for them to appear.¹⁰ In addition, neither the defence nor the Registry had been able to contact Witness D04-41.¹¹

4. On 22 October 2013, the Registry filed its "Registry report on the measures taken in order to ensure the appearance of the remaining defence witnesses",¹² in which it detailed the measures taken in order to ensure the appearance of the remaining witnesses to be called by the defence.¹³ In relation to Witnesses D04-14 and D04-44, due to additional requests recently made by the witnesses, the Registry submitted that it was not in a position to facilitate their appearance before 25 October 2013.¹⁴ In relation to Witness D04-41, the Registry submitted that it was waiting for further information to be provided by the defence on his availability.¹⁵

5. On 23 October 2013, the Chamber issued its "Decision on the testimony of Witnesses D04-54, D04-14, D04-41 and D04-44" ("Decision 2842").¹⁶ Taking into account the submissions of the defence and the Registry, the Chamber decided to extend the deadline for the defence to present the testimony of

⁸ Order convening an *ex parte* defence and Registry only status conference on the remaining witnesses to be called by the defence, 18 October 2013, ICC-01/05-01/08-2836 and Email from the defence sent to the Chamber at 16.11 on 17 October 2013.

⁹ Transcript of hearing of 21 October 2013, ICC-01/05-01/08-T-346-CONF-EXP-ENG ET.

¹⁰ ICC-01/05-01/08-T-346-CONF-EXP-ENG ET, page 12, line 2 to page 14, line 11, page 17, line 9 to page 18, line 4.

¹¹ ICC-01/05-01/08-T-346-CONF-EXP-ENG ET, page 11, line 25 to page 12, line 2, page 17, lines 16 to 17, page 22, line 24 to page 23, line 4.

¹² Registry report on the measures taken in order to ensure the appearance of the remaining defence witnesses, 22 October 2013, ICC-01/05-01/08-2840-Conf.

¹³ ICC-01/05-01/08-2840-Conf, paragraphs 2 to 23.

¹⁴ ICC-01/05-01/08-2840-Conf, paragraph 20.

¹⁵ ICC-01/05-01/08-2840-Conf, paragraph 22.

¹⁶ Decision on the testimony of Witnesses D04-54, D04-14, D04-41 and D04-44, 23 October 2013, ICC-01/05-01/08-2842.

Witness D04-54 and ordered that it be concluded by 1 November 2013 at the latest.¹⁷ As to Witnesses D04-14, D04-41, and D04-44, the Chamber ordered the Registry to continue making the necessary arrangements to facilitate their voluntary appearance and to report back to the Chamber on 30 October 2013 on their availability and the feasibility of hearing their testimonies as soon as practicable.¹⁸ The Chamber further stressed that, on the basis of this report, it would decide whether a further extension of the deadline in order to allow the defence to present the testimony of Witnesses D04-14, D04-41, and D04-44 would be appropriate.¹⁹

6. On 30 October 2013, the Registry filed its "Registry report on the remaining Defence Witnesses in compliance with Decision ICC-01/05-01/08-2842" ("Registry Report"),²⁰ in which it informed the Chamber that the final arrangements for hearing Witnesses D04-44 and D04-14's testimony, according to the defence's most recent request, made on 11 October 2013, had not yet been concluded.²¹ In relation to Witness D04-41, the Registry informed the Chamber that it had not been able to establish contact with the witness through the contact details provided by the defence, and therefore, it could not confirm the availability of the witness.²² Consequently, the Registry submitted that it was not in a position to provide any estimate as to the feasibility of having the witnesses appear before the Court.²³

II. Analysis

7. For the purpose of the present Decision, the Chamber has considered, in accordance with Article 21(1) of the Rome Statute ("Statute"), Articles 64(2),

¹⁷ ICC-01/05-01/08-2842, paragraphs 9 and 11(i).

¹⁸ ICC-01/05-01/08-2842, paragraphs 10 and 11(ii) and (iii).

¹⁹ ICC-01/05-01/08-2842, paragraph 10.

²⁰ Registry report on the remaining Defence Witnesses in compliance with Decision ICC-01/05-01/08-2842, 30 October 2013, ICC-01/05-01/08-2856-Conf.

²¹ ICC-01/05-01/08-2856-Conf, paragraphs 1 and 2.

²² ICC-01/05-01/08-2856-Conf, paragraph 4.

²³ ICC-01/05-01/08-2856-Conf, paragraph 5.

67(1)(c) and (e), and 93(1)(e) of the Statute, Rules 134(3) and 140 of the Rules of Procedure and Evidence, and Regulations 43 and 54 of the Regulations of the Court.

8. Taking into account that the Registry has not been able to establish contact with Witnesses D04-41, and that the defence has not provided additional contact details, in spite of repeated requests made by the Registry in that regard,²⁴ the Chamber considers that the witness is not willing or available to testify.²⁵ The Chamber therefore no longer expects Witness D04-41 to provide testimony in the present case and instructs the Registry to desist from taking any further measures to contact this witness.

9. As to Witnesses D04-14 and D04-44, the Chamber firstly notes that the delay in completing the necessary arrangements for their appearance appears to be attributable to the continuous additional requests made by the witnesses and the defence in relation to the conditions for their appearance,²⁶ some of which required the Registry to seek the intervention of third parties and which required further administrative steps to be taken. As an example, the Chamber notes that the last such request was submitted on 11 October 2013, two weeks before the original deadline for the defence to conclude with the presentation of its oral evidence.²⁷

10. Nonetheless, and taking into account the Registry's continuous efforts to secure the appearance of the Witnesses D04-14 and D04-44, the Chamber considers it appropriate to grant an additional limited extension to the

²⁴ ICC-01/05-01/08-T-346-CONF-EXP-ENG ET, page 11, line 25 to page 12, line 2, page 17, lines 16 to 17, page 22, line 24 to page 23, line 4; ICC-01/05-01/08-2840-Conf, paragraph 22; and ICC-01/05-01/08-2856-Conf, paragraph 4.

²⁵ Decision on the timeline for the completion of the defence's presentation of evidence and issues related to the closing of the case, 16 July 2013, ICC-01/05-01/08-2731, paragraph 25.

²⁶ ICC-01/05-01/08-T-346-CONF-EXP-ENG ET, page 12, line 2 to page 14, line 11, page 17, line 9 to page 18, line 4; ICC-01/05-01/08-2840-Conf, paragraph 20; and ICC-01/05-01/08-2856-Conf, paragraphs 1 and 2.

²⁷ ICC-01/05-01/08-2856-Conf, paragraph 1.

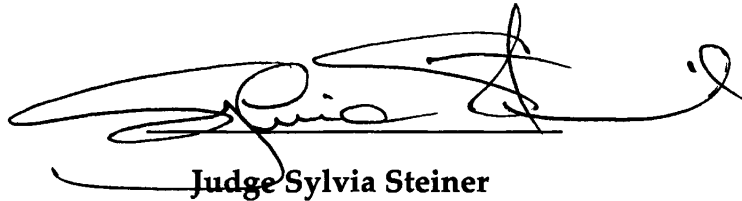
deadline for the defence to conclude with its presentation of oral evidence. Consequently, the Chamber extends the deadline in order to allow the defence to present the testimony of Witnesses D04-14 and D04-44, provided that they both complete their testimony by 15 November 2013, at the latest.

III. Conclusions

11. For the above reasons, the Trial Chamber hereby:

- (i) CONSIDERS that Witness D04-41 is not willing and available to appear as witness, and therefore, DECIDES that it no longer expects him to provide testimony in the present case and instructs the Registry to desist from taking any further measures to contact this witness; and
- (ii) EXTENDS the deadline for the defence to present the testimony of Witnesses D04-14 and D04-44, provided that they both complete their testimony by 15 November 2013, at the latest.

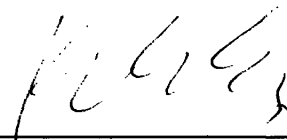
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 1 November 2013

At The Hague, the Netherlands