

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 December 2011

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 Document

**Second order regarding the applications of the legal representatives of victims
to present evidence and the views and concerns of victims**

Order 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 Nkwebe Liriss

Mr Aimé Kilolo Musamba

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

States Representatives

The Office of Public Counsel for the Defence

Amicus Curiae

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”) in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* issues the following Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims.

I. Background and submissions

1. On 21 November 2011, the Chamber issued its Order regarding applications by victims to present their views and concerns or to present evidence (“First Order”),¹ in which the Chamber specified the procedure to be followed by the legal representatives of victims (“Legal Representatives”) if they wish to present evidence or the views and concerns of individual victims in this case.
2. On 6 December 2011, Mr Zarambaud² and Ms Douzima³ filed written applications pursuant to the First Order (together, “Applications”), in which they requested authorisation to call certain victims to testify and/or present their views and concerns to the Chamber.
3. In his Application, Mr Zarambaud requests authorisation to call six victims to testify under oath, and one victim to present his views and concerns to the Chamber.⁴ Mr Zarambaud estimates that a maximum of nine hours, or two court days, will be needed to present each victim’s

¹ Order regarding applications by victims to present their views and concerns or to present evidence, 16 December 2011, ICC-01/05-01/08-1935.

² Requête afin d’autorisation de présentation d’éléments de preuves et subsidiairement de présentation de vues et préoccupations par les victimes, 6 December 2011, ICC-01/05-01/08-1989-Conf. A corrigendum was filed on 12 December 2011: Rectificatif à la justification relative à “Requête afin d’autorisation de présentation d’éléments de preuves et subsidiairement de présentation de vues et préoccupations par les victimes”, 12 December 2011, ICC-01/05-01/08-1989-Conf-Corr.

³ Requête de la Représentante légale de victimes afin d’autoriser des victimes à comparaître en tant que témoin et à faire valoir leurs vues et préoccupations devant la Chambre, 6 December 2011, ICC-01/05-01/08-1990. An English translation was filed on 9 December 2011: Application by the Legal Representative of Victims for leave to call victims to appear as witnesses and present their views and concerns to the Chamber, ICC-01/05-01/08-1990-tENG.

⁴ ICC-01/05-01/08-1989-Conf-Corr, paragraph 8.

evidence.⁵ It appears that this estimate does not include time for questioning by the parties and the Chamber, if any.

4. Ms Douzima requests authorisation to call 10 victims to testify and to present their views and concerns.⁶ She estimates that approximately six hours will be needed to present each victim's evidence, plus one and a half hours per victim for the presentation of their views and concerns.⁷ This estimate does not appear to include time for questioning by the parties and the Chamber, if any.
5. The defence⁸ and prosecution⁹ filed their observations on the Applications on 13 and 14 December 2011, respectively. Among other matters, both parties argue that the Applications contain insufficient detail regarding the victims' proposed evidence for meaningful observations to be made or for the Chamber to make a proper assessment.¹⁰ The parties also argue that the Legal Representatives' proposal to call 17 victim witnesses is "excessive", "unnecessary, and disproportionate", particularly in light of the crime-base evidence already presented by the prosecution.¹¹
6. On 16 December 2011 Mr Zarambaud¹² and Ms Douzima¹³ filed requests for leave to reply to certain points raised in the defence's observations (together, "Requests to Reply").

⁵ ICC-01/05-01/08-1989-Conf-Corr, paragraphs 12 and 24.

⁶ ICC-01/05-01/08-1990, paragraph 26.

⁷ ICC-01/05-01/08-1990, paragraphs 4 and 28.

⁸ Defence Response to the Request of the Legal Representatives of Victims for victims to present their views or concerns, or to present evidence, 13 December 2011, ICC-01/05-01/08-2004-Conf.

⁹ Prosecution's Observations on the Legal Representatives' applications by victims to present their views and concerns or to present evidence, 14 December 2011, ICC-01/05-01/08-2009.

¹⁰ ICC-01/05-01/08-2004-Conf, paragraph 12; ICC-01/05-01/08-2009, paragraph 6.

¹¹ ICC-01/05-01/08-2004-Conf, paragraphs 35-38; ICC-01/05-01/08-2009, paragraph 2.

¹² Demande d'autorisation du Représentant légal de victimes Maître Zarambaud Assingambi de répliquer à la défense conformément à la norme 24(5) du Règlement de la Cour, 16 December 2011, ICC-01/05-01/08-2020-Conf.

¹³ Demande de réplique de Maître Douzima-Lawson conformément à la norme 24(5) du Règlement de la Cour, 16 December 2011, ICC-01/05-01/08-2021-Conf.

II. Analysis

7. This Order is not intended to definitively resolve the question of whether and to what extent the Legal Representatives will be permitted to present evidence or the views and concerns of individual victims in this case. Rather, it addresses certain procedural matters necessary for the Chamber to make a decision on the merits of the Applications.
8. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber has considered for the purpose of the present Order Articles 64(2), 64(3)(c), 64(6)(c), 64(6)(e), 64(6)(f), 67(1)(c), 68(1), 68(3) and 69(3) of the Statute, Rules 81(4), 87, 89(1) and 91 of the Rules of Procedure and Evidence ("Rules") and Regulations 28(1), 54(e), 54(f) and 81 of the Regulations of the Court ("Regulations").

The proposed number of victims to be called

9. While it is important for the participation of victims in trial proceedings to be meaningful,¹⁴ such participation must "not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial".¹⁵ Among the accused's statutory rights is the right "[t]o be tried without undue delay",¹⁶ the importance of which is demonstrated by the fact that the Chamber has a statutory duty to ensure that the trial proceedings are "expeditious".¹⁷ To give effect to this duty, the Chamber must seek to prevent undue delays resulting from the presentation of cumulative evidence. It is against this standard of judicial oversight that the Chamber conducts this preliminary assessment of the proposed presentation of evidence by the Legal Representatives.

¹⁴ Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008, ICC-01/04-01/06-1432, paragraph 97.

¹⁵ Article 68(1) of the Statute; *see also* ICC-01/04-01/06-1432, paragraph 96.

¹⁶ Article 67(1)(c) of the Statute.

¹⁷ Article 64(2) of the Statute.

10. The Applications identify a total of 17 victims whom the Legal Representatives propose to call to testify and/or present their views and concerns.¹⁸ The Legal Representatives estimate that they will require approximately 138 hours in total to conduct their questioning of the 17 victims.¹⁹ To this, questioning by the prosecution and defence must be added. As an extremely conservative approximation, based on the experience in the trial to date, it can be estimated that the parties may together request approximately 1.5 times the amount of questioning time as the Legal Representatives (*i.e.*, approximately 207 hours in total). Based on these assumptions, it can be estimated that approximately 345 hours of court time would be needed to hear the testimony and/or views and concerns of all 17 victims identified in the Applications. This amounts to approximately 77 sitting days, or 15 and a half weeks, assuming that there are no delays in the trial schedule.²⁰

11. Based on these rough approximations, it is apparent that even under highly conservative assumptions, hearing all 17 victims proposed by the Legal Representatives would substantially increase the length of the trial. In the Chamber's view, this may well lead to the type of undue delay proscribed by Article 67(1)(c) of the Statute, especially because it appears – based upon the limited preliminary information available – that a significant portion of the proposed evidence would be cumulative of that already presented by the prosecution. In this respect, the Chamber agrees with the parties that it would not be reasonable or appropriate for all 17 victims identified in the Applications to be called.

¹⁸ ICC-01/05-01/08-1989-Conf-Corr, paragraph 8; ICC-01/05-01/08-1990, paragraph 26.

¹⁹ Nine hours for each of Mr Zarambaud's 7 individuals (63 hours total) + 7.5 hours (6 hours for testimony + 1.5 hours for views and concerns) for each of Ms Douzima's 10 individuals (75 hours total) = 138 hours.

²⁰ 345 hours total ÷ 4.5 sitting hours per day = 76.67 days = 15.34 weeks.

12. In light of the above, the Legal Representatives are instructed to work together to narrow the list of 17 victims included in the Applications into a short list of no more than eight individuals (together, "Relevant Victims"). The Relevant Victims should be those who, in the Legal Representatives' view, are (i) best-placed to assist the Chamber in the determination of the truth in this case; (ii) able to present evidence and/or views and concerns that affect the personal interests of the greatest number of participating victims; (iii) best-placed to present testimony that will not be cumulative of that which has already been presented in this case; and (iv) willing for their identity to be disclosed to the parties in the event that they are permitted to testify and/or present their views and concerns.
13. After receiving the additional information described below and after hearing from the parties, the Chamber will make a final determination on which of the Relevant Victims, if any, should be permitted to testify and/or present their views and concerns.

The provision of additional information by the Legal Representatives

14. The Chamber agrees with the parties that the Applications contain insufficient detail regarding the proposed testimony of the victims concerned. The Chamber is unable to make an informed decision on whether it is appropriate for individual victims to testify or to present their views and concerns unless it is provided with a detailed description on the substance of the proposed testimony. The Applications do not contain such information. To remedy this, the Legal Representatives are instructed, pursuant to Regulation 28(1) of the Regulations, to provide the additional information described below.

15. For each Relevant Victim, the Legal Representatives shall provide a comprehensive written statement laying out the facts about which the victim proposes to testify and/or present his or her views and concerns.²¹ The statements shall be signed by the victim and shall be provided to the Chamber and the parties in one of the working languages of the Court.
16. If requested by the Legal Representatives, the Office of Public Counsel for Victims is to provide appropriate support and assistance to the Legal Representatives in compiling the written statements described above, in accordance with Regulation 81 of the Regulations.
17. In addition to the written statements described above, for each Relevant Victim, the Legal Representatives shall explain (i) the estimated time needed for the presentation of the victim's testimony and/or views and concerns; (ii) whether the victim is willing for his or her identity to be disclosed to the parties in the event that he or she is permitted to testify and/or present views and concerns; (iii) how the presentation of the victim's testimony and/or views and concerns would affect the overall interests of the participating victims in this case; (iv) the relevance of the victim's testimony to the charges; (v) how the victim's testimony would assist in the Chamber's determination of the truth in this case; and (vi) the reasons why the victim's testimony would not be cumulative of evidence that has been presented to date. These matters are to be addressed on a victim-by-victim basis.

²¹ For a similar approach, *see* Decision on the request by victims a/ 0225/06, a/0229/06 and a/0270/07 to express their views and concerns in person and to present evidence during the trial, ICC-01/04-01/06-2002, paragraph 43; Directions for the conduct of the proceedings and testimony in accordance with rule 140, 1 December 2009, ICC-01/04-01/07-1665-Corr, paragraph 26.

18. The Legal Representatives are to provide the additional information described above by way of supplemented Applications, no later than 16:00 on 23 January 2012.

Confidentiality and the modalities of providing the written statements

19. In line with previous practice at this Court and for reasons of fairness, the Chamber will not permit victims to testify as witnesses or to present their views and concerns unless they relinquish their anonymity *vis-à-vis* the parties.²² However, the identity of victims need not be disclosed to the parties unless and until the Chamber grants them permission to testify and/or present their views and concerns. This approach reflects the security concerns expressed by victims²³ and the fact that certain victims appear to have consented to their identities being disclosed *only if* the Chamber grants them permission to appear.²⁴

20. If the Relevant Victims' written statements contain identifying information that should not be disclosed to the parties prior to the Chamber's ruling on the merits of their applications, the Legal Representatives are to file the victims' written statements on an *ex parte* basis, with proposed redactions to the identifying information. Subject to any changes ordered by the Chamber, the redacted versions will be notified to the parties.

The provision of further information by the Registry and the Chamber

21. Once the supplemented Applications and written statements have been filed and the Chamber has decided on any proposed redactions, the

²² See ICC-01/04-01/07-1665-Corr, paragraph 22; Decision on the Modalities of Victim Participation at Trial, 22 January 2010, ICC-01/04-01/07-1788-tENG, paragraph 92.

²³ Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants, 22 February 2010, ICC-01/05-01/08-699, paragraph 28.

²⁴ Email from Legal Representative's Case Manager to Chamber's Legal Officer, 9 December 2011 at 15:48.

Chamber will instruct the Victims Participation and Reparations Section to provide the parties with unredacted or lesser redacted versions of the victims' application forms for the Relevant Victims. In addition, the Chamber will provide the parties with the relevant portions of the *ex parte* annexes to the Chamber's victims' participation decisions in which the Relevant Victims were granted participating status in this case.

Additional observations of the parties

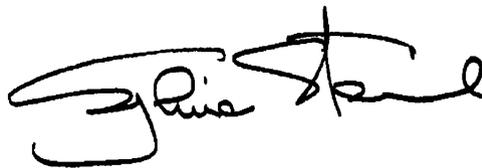
22. The parties may provide observations on the supplemented Applications. The parties will have seven days to provide their observations once notified of all of the following documents: (i) the supplemented Applications; (ii) the Relevant Victims' written statements, in redacted or unredacted form as the case may be; and (iii) the relevant additional information to be provided by the Chamber and the Registry pursuant to paragraph 21, above.

III. Conclusion

23. In light of the foregoing, the Chamber ORDERS that:
- a. The Legal Representatives shall file, no later than 16:00 on 23 January 2012, a supplemented Application or Applications containing the additional information described above in paragraphs 15 and 17, together with any proposals for redactions to the Relevant Victims' written statements;
 - b. The parties shall file their observations on the supplemented Application(s) no later than seven days after they are notified of all of the documents described above in paragraph 22; and

c. The Requests to Reply are denied as moot.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 21 December 2011

At The Hague, The Netherlands