

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 16 December 2008

**PRE-TRIAL CHAMBER III**

**Before: Judge Hans-Peter Kaul, Single Judge**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC  
IN THE CASE OF  
THE PROSECUTOR  
*v. JEAN-PIERRE BEMBA GOMBO***

**Public**

**Fifth Decision on Victims' Issues Concerning Common Legal Representation of Victims**

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

**The Office of the Prosecutor**

Fatou Bensouda, Deputy Prosecutor  
Petra Kneuer, Senior Trial Lawyer

**Counsel for the Defence**

Nkwebe Liriss  
Karim A. A. Khan  
Aimé Kilolo-Musamba

**Legal Representatives of the Victims**

Nganatouwa Goungaye Wanifiyo  
Marie Edith Douzima-Lawson

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for Victims**

Paolina Massidda

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Fiona McKay

**Other**

1. Judge Hans-Peter Kaul, acting as Single Judge on behalf of Pre-Trial Chamber III (the “Chamber”) of the International Criminal Court (the “Court”) with respect to victims’ issues in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*,<sup>1</sup> hereby renders the decision concerning common legal representation of victims at the stage of pre-trial proceedings.

2. On 12 September 2008 the then Single Judge Fatoumata Dembele Diarra<sup>2</sup>, acting on behalf of the Chamber, issued the “Decision on Victim Participation”, deciding, *inter alia*, that

“d) (...) the Registry shall assist the victims for the purpose of ensuring their legal representation, and that where no legal representative has been appointed by the victims, the Office of Public Counsel for Victims shall, as assigned by the Registry, act as legal representative of the victims from the time they submit their applications for participation.”<sup>3</sup>

3. The Single Judge notes article 68 of the Rome Statute (the “Statute”), rule 90 of the Rules of Procedure and Evidence (the “Rules”) and regulations 79(2), 80 and 81 of the Regulations of the Court (the “Regulations”).

4. The Single Judge recalls article 68(3) of the Statute which reads:

“3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered *at stages of the proceedings determined to be appropriate by the Court* and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims *where the Court considers it appropriate*, in accordance with the Rules of Procedure and Evidence” (emphasis added).

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<sup>1</sup> ICC-01/05-01/08-204.

<sup>2</sup> ICC-01/05-01/08-86.

<sup>3</sup> ICC-01/05-01/08-103-tENG-Corr, pp 5 and 6.

5. The Single Judge further recalls rules 90(2), 90(3) and 90(4) of the Rules which stipulate:

“2. Where there are a number of victims, *the Chamber may, for the purpose of ensuring the effectiveness of the proceedings, request the victims or particular groups of victims, if necessary with the assistance of the Registry, to choose a common legal representative or representatives.* In facilitating the coordination of victim representation, the Registry may provide assistance, *inter alia*, by referring the victims to a list of counsel, maintained by the Registry, or suggesting one or more common legal representatives (emphasis added).

3. If the victims are unable to choose a common legal representative or representatives within a time limit that the Chamber may decide, *the Chamber may request the Registrar to choose one or more common legal representatives* (emphasis added).

4. The Chamber and the Registry shall take all reasonable steps to ensure that in the selection of common legal representatives, the distinct interest of the victims, particularly as provided in article 68, paragraph 1, are represented and that any conflict of interest is avoided.”

6. Pursuant to article 68(3) of the Statute, the Single Judge considers it appropriate at this stage of proceedings that views and concerns of victims recognised as participants in the present case are presented by their legal representatives.

7. The Single Judge is of the view that, in application of rule 90(2) of the Rules, and considering the number of victims recognised as participants in the present case,<sup>4</sup> a presentation of their views and concerns by a single common legal representative is deemed appropriate<sup>5</sup> in order to ensure effectiveness of pre-trial proceedings.

8. The Single Judge is aware that in the selection of common legal representatives, following rule 90(4) of the Rules, the distinct interests of the

<sup>4</sup> Pre-Trial Chamber III, “Fourth Decision on Victims’ Participation”, ICC-01/05-01 08-320.

<sup>5</sup> See for this determination by Trial Chamber I, “Decision on victims’ participation”. ICC-01/04-01 06-1119, para. 123.

victims participating in the present proceedings must be taken into consideration and that any conflict of interest should be avoided.

9. In order to appoint a common legal representative, criteria adapted to the circumstances of the case in question may be envisaged, such as (i) the language spoken by victims, (ii) links between them provided by time, place and circumstances, (iii) the specific crimes of which they allege to be victims, (iv) the views of victims, and (v) respect of local traditions.

10. To this end, the Single Judge notes that victims recognised as participants to participate in the present case allege to have suffered of mainly similar crimes, which occurred on the territory of the Central African Republic (the "CAR") and were allegedly committed by the same group of perpetrators. Under these circumstances the Single Judge holds that one common legal representative, preferably from the CAR, should be chosen by all victims recognised as participants in the present case with the assistance of the Registry pursuant to rule 90(2) of the Rules.

11. In case the victims participating in the present case are unable to choose a common legal representative, the Single Judge requests, pursuant to rule 90(3) of the Rules, the Registrar to choose one common legal representative from the CAR.

12. In case some of the victims participating in the present case object to being represented by the common legal representative appointed by the Registrar, or a conflict of interest is shown by the common legal representative, the Single Judge wishes to appoint the Office of Public Counsel for Victims (the "OPCV") as legal

representative of those victims not represented by the common legal representative, if need be.

13. Concerning the role of OPCV, the Single Judge notes that this office is established for the main purpose of providing assistance and support to victims and their legal representatives in proceedings before this Court pursuant to regulation 81(4) of the Regulations, which includes (a) legal research and advice, and (b) appearing before a Chamber in respect of specific issues. In addition, counsel of this office may act as legal representative of victims pursuant to regulation 80(2) of the Regulations.

14. In the present case the OPCV has been appointed by the Chamber as legal representative for those victims “where no legal representative has been appointed by the victims”.<sup>6</sup> Thus, the Single Judge wishes to point out that the OPCV had been appointed by the Chamber only in case and for the time where victims could not organise their timely legal representation. The Single Judge finds it appropriate that at this stage of proceedings, where victims have been recognised to participate in the present case, be represented by a counsel from their country, unless those victims object to such legal representation.

15. In case all victims participating in the present case agree to be represented by one common legal representative from the CAR, the OPCV will fulfil its mandate as provided in regulation 81 of the Regulations of the Court. In case, one or more victims object to being represented by a counsel from the CAR, the OPCV will continue to act as legal representative for those victims, in addition to its mandate pursuant to regulation 81 of the Regulations.

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<sup>6</sup> Pre-Trial Chamber III, ICC-01/05-01-08-103-tENG-Corr, pp 5 and 6.

**FOR THESE REASONS, THE SINGLE JUDGE**

- a) **requests** all victims recognised as participants in the present case to choose one common legal representative from the Central African Republic to present their views and concerns and to confirm this choice in writing;
- b) **orders** the Registry to provide assistance to the victims recognised as participants in the present case by suggesting one common legal representative from the Central African Republic;
- c) **orders** the Registrar to choose one common legal representative from the Central African Republic, in case the victims participating in the present case are unable to make such choice by no later than **Monday, 5 January 2009**;
- d) **appoints** the Principal Counsel from the Office of Public Counsel for Victims to represent the views and concerns of all those victims recognised as participants in the present case who objected to be represented by the common legal representative from the Central African Republic.

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

A handwritten signature in black ink, reading "Hans Peter Kaul". The signature is written in a cursive style with a large initial 'H' and 'K'. Below the signature is a horizontal line.

Judge Hans-Peter Kaul  
Single Judge

Dated this Tuesday, 16 December 2008

At The Hague, the Netherlands