

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 10 June 2010

TRIAL CHAMBER III

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge Joyce Aluoch

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

Public Document

**Joint Submissions by the Legal Representatives of Victims
on matters which require determination prior to trial
with Confidential *Ex parte* Legal Representatives only Annex A**

Source: Legal Representatives of Victims

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

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Legal Representatives of Victims

Ms Marie Edith Douzima-Lawson

Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
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Ms Paolina Massidda

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States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Ms Silvana Arbia & Mr Didier Preira

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Procedural Background

1. On 2 June 2010, Trial Chamber III issued its "Order for the filing of submissions in preparation for the commencement of the trial" requesting the Legal Representatives of Victims a) to inform the Chamber as to whether any or all of them intend to make an opening statement, and if so, to indicate the proposed length of such statement, and b) to notify the Chamber of their views on any further issues that require determination prior to the commencement of the trial.¹

2. The Principal Counsel of the Office of Public Counsel for Victims (the "OPCV"), and Ms Marie-Edith Douzima Lawson, as Legal Representatives in the Case,² (the "Legal Representatives") hereby file their joint observations on the above matters.

II. Opening statement

3. The Legal Representatives inform the Chamber of their intention to make an opening statement on behalf of the victims they represent. The Legal Representatives propose to allocate one hour's time to be shared between the two of them.

¹ See the "Order for the filing of submissions in preparation for the commencement of the trial", (Trial Chamber III), No. ICC-01/05-01/08-785, 2 June 2010, paras. 5 and 6.

² The Office has been appointed as Legal Representative of the following victims, who have been authorised to participate at trial: a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08 and a/0467/08. Ms Douzima-Lawson represents the following victims who have been authorized to participate at trial: a/0271/08, a/0272/08, a/0273/08, a/0275/08, a/0277/08, a/0283/08, a/0284/08, a/0285/08, a/0286/08, a/0287/08, a/0288/08, a/0289/08, a/0290/08, a/0294/08, a/0390/08, a/0391/08, a/0393/08, a/0394/08, a/0395/08, a/0396/08, a/0468/08, a/0469/08, a/0470/08, a/0471/08, a/0472/08, a/0473/08, a/0474/08, a/0475/08, a/0476/08, a/0477/08, a/0478/08, a/0479/08, a/0480/08, a/0481/08.

III. Issues that require determination prior to the commencement of the trial

A) Participation of victims and modalities of participation

4. The Legal Representatives would like to inform the Chamber that, to date, several hundreds of individuals have submitted standard application forms for participation and/or reparations.³ With respect of these applicants, the Chamber has not yet issued a decision on their status as victims accorded the right to participate in the proceedings. Moreover, the Chamber has not yet issued any decision on the modalities of participation of the 54 victims already authorised to participate at trial⁴.

5. The Legal Representatives note that in the absence of the said decisions, they are not in a position to fully prepare for the commencement of the trial. Indeed, to date, they still only have access to public documents and material filed in the case record. In particular, Legal Representatives have no access to important documents, such as the Second Amended Document containing the Charges, the Prosecution's Summary of Evidence and related documents, and the Prosecution's Chart of Incriminatory Evidence. Access to said material is essential for the Legal Representatives of victims in order to be able to enforce the rights of victims they represent and who participate at trial.⁵

³ For the information of the Chamber, the OPCV alone is to date representing a total of 705 applicants. In the Office's assessment, as per 28 May 2010, 610 standard application forms for participation and/or reparations are complete and have been provided to the VPRS. They should therefore already be in the possession of the Chamber for its determination.

⁴ See the "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", (Trial Chamber III), No. ICC-01/05-01/08-699, 22 February 2010.

⁵ See the "Decision on victims' participation" (Trial Chamber I), No ICC-01/04-01/06-1119, 18 January 2008, paras. 103, 108-109; See also the "Decision on the Modalities of Victim Participation at Trial", wherein Trial Chamber II held that, in order to promote the effective participation of victims in the trial, the Legal Representatives must be able to consult all of the public and confidential decisions and documents in the record of the case, with the exception of any document classified as *ex parte*, and it ordered that the legal representatives have access to the entire case record available via the Ringtail system; No. ICC-01/04-01/07-1788-tENG, 22 January 2010, paras. 121-122.

6. Since the Prosecution and the Defence did not oppose the applicability of the previous jurisprudence established in the *Lubanga* case on matters related to the participation of victims, the Legal Representatives have been provided by the Prosecution with some documents and material pertaining to dual status individuals represented by them. However, the Legal Representatives assume that such documents and material represent a very limited part of the material the Prosecution intends to rely upon at trial.

7. In this respect, the Legal Representatives recall their observations during the status conference held on 7 October 2009, during which the Principal Counsel of the OPCV informed the Chamber that the Legal Representatives will need between 6 to 12 weeks after all material will have been made available to them to prepare for trial.⁶ Indeed, without having been served with all documents and material pertaining to the personal interests of their clients, they are unable to assess the need for 1) the submission of a request to participate regarding a specific piece of evidence (i.e. questioning of witnesses); 2) the presentation of evidence on behalf of the victims participating in the proceedings⁷, as well as 3) informing the Chamber whether victims would like to appear in person.

8. Specifically in relation to the modalities of participation of victims at trial, and in accordance with the practice established in the *Lubanga* and *Katanga & Ngudjolo Chui* cases, the Legal Representatives would like to respectfully request that the Chamber order the notification to the Legal Representatives, as soon as possible, of the following documents:

⁶ See the Transcripts of the hearing held on 7 October 2009, (Trial Chamber III), No. ICC-01/05-01/08-T-14-ENG ET, pp. 24-25.

⁷ See *supra* footnote 5, paras. 103, 108-109.

- Redacted version of the standard application forms of their clients as notified to the Prosecution and the Defence for the purposes of Rule 89 of the Rules of Procedure and Evidence⁸;
- Unredacted version of the Second Amended Document containing the charges (Document No. ICC-01/05-01/08-593-Conf-Exp-AnxA dated 4 November 2009)⁹;
- Prosecution Summary of its presentation of evidence and related documents (Document No. ICC-01/05-01/08-592-AnxA dated 4 November 2009; Document No. ICC-01/05-01/08-595-Conf-Exp-Anx A and B dated 4 November 2009)¹⁰;
- Updated Consolidated Version of the In-Depth Analysis Chart of Incriminatory Evidence (Document No. ICC-01/05-01/08-781-Conf-Exp-Anx A dated 27 May 2010 and previous versions Documents No. ICC-01/05-01/08-710-Conf-AnxA dated 1 March 2010; No. ICC-01/05-01/08-395-Conf-Exp-Anx2E dated 30 March 2009; and No. ICC-01/05-01/08-278-Conf-Exp-AnxA dated 24 November 2008)¹¹;

⁸ The fact that Legal Representatives are not notified of the redacted versions of the documents pertaining to their clients has already proven to be damaging in the course of the defence of the interests of the individuals concerned during the proceedings in the *Lubanga* trial. Indeed, when the Defence seeks the lifting of the said redactions, the Legal Representatives are not in a position to provide their observations in the matter, simply because they do not know which redactions have been applied and therefore are unable to advise whether such redactions need to be maintained or can be lifted. Such appreciation can only be made by the Legal Representative who has direct contact with his/her clients and who knows the interests at stake. Furthermore, when Legal Representatives request the lifting of the anonymity of some of their clients, they are not in a position to verify whether part of the original redactions should be maintained or lifted. The Legal Representatives recall the submission filed in the matter by the legal representatives in the *Lubanga* case (see the "Observations of the legal representatives of victims on the access to standard applications forms for victims' participation and related documents", No ICC-01/04-01/06-1882, 18 May 2009). Following such submission, the Chamber ordered the notification of redacted versions of application forms to the concerned counsel; see the Trial Chamber I's Oral Decision delivered at the hearing of 12 June 2009, (Trial Chamber I), No ICC-01/04-01/06-T-191-CONF-ENG ET, pp. 48-60.

⁹ The Legal Representatives recall the practice established in the *Lubanga* case; See the transcripts of the hearing of 22 January 2009, (Trial Chamber I), No ICC-01/04-01/06-T-105-ENG ET, pp. 43-44.

¹⁰ *Idem*.

¹¹ By order of Trial Chamber II, a similar document was notified to the legal representatives in the *Katanga and Ngudjolo Chui* case; See the Transcripts of the Hearing of 1 December 2009, No. ICC-01/04-01/07-T-88-Red-ENG WT, p. 1 line 24 - p. 2 lines 1-7.

- Prosecution's Witnesses Statements and attached documents/material, if any, to be used at trial¹².

9. In light of the practical difficulties encountered by counsel representing victims in the *Lubanga* trial, the Legal Representatives also respectfully request the Chamber to instruct the parties that counsel for victims shall be informed of any matters related to the proceedings and therefore shall be copied in any exchange of information between the parties dealing with issues regarding the conduct of such proceedings.¹³ Moreover, the Legal Representatives request the Chamber to instruct the VWU that 1) counsel for victims shall be included in the familiarisation process and that courtesy meetings shall be organised for them when they request to question witnesses, regardless of whether or not authorisation for such questioning has already been granted by the Chamber¹⁴; 2) individuals enjoying the dual status of victims and witnesses have the right to maintain contact with their legal representative, if any, during the entire period of their testimony.¹⁵

B) Legal Representation of Victims at trial

10. The Legal Representatives would also like to draw the attention of the Chamber to the matter of the legal representation of victims at trial.

11. At the request of the Victims Participation and Reparations Section (VPRS), the Legal Representatives have recently provided said Section with an Internal

¹² The Legal Representatives recall the practice established in the *Lubanga* case; See the transcripts of the hearing of 8 April 2009, (Trial Chamber I), No ICC-01/04-01/06-T-167-ENG ET WT, pp. 9-13.

¹³ The Legal Representatives recall the practice established in the *Lubanga* case; See the transcripts of the hearing of 31 May 2010, (Trial Chamber I), No ICC-01/04-01/06-T-295-ENG ET WT, p. 2.

¹⁴ The Legal Representatives recall the practice established in the *Lubanga* case; See the Trial Chamber I's instructions notified by emails of 2 and 3 March 2010.

¹⁵ See the "Decision on certain practicalities regarding individuals who have the dual status of witness and victim" (Trial Chamber I), No ICC-01/04-01/06-1379, 5 June 2008, par. 61.

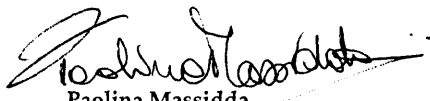
Memorandum explaining their position in the matter¹⁶. The Memorandum is attached to this submission as Confidential *Ex parte* Legal Representatives only. This classification is justified by the fact that the said memorandum is an internal document exchanged between counsel and the VPRS. However, the Legal Representatives have no objection in changing the classification into public should the Chamber so request.

12. Briefly summarising the content of said memorandum, the Legal Representatives contend that victims participating at trial should continue to be represented by the two counsel already representing them for the reasons explained below.

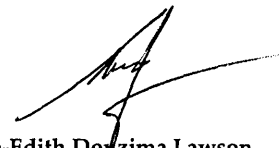
13. Indeed, taking into account the necessary balance amongst the rights of all participants in the proceedings, the needs linked to judicial economy, the good administration of justice, and the personal interests of each victim, the Legal Representatives submit that this solution seems to be the most efficient. This approach will also preserve the independence of the external legal representative as well as that of the OPCV. Another factor militating in favour of this proposal for counsel representation is that the Legal Representatives involved in the case so far are fully familiar with the proceedings, have met with all the victims already authorised to participate at trial and with hundreds of individuals asking to participate, thus a trust relationship has been created between each of them and their respective counsel. Finally, the Legal Representatives have developed a work method which facilitates the exchange of information and experiences gathered by counsel having expertise in different and complementary areas at the national and international level. This method of work will allow the Legal Representatives to represent in an effective and efficient way the interests of the potentially-high number of victims who might participate at trial.

¹⁶ See the Confidential *Ex parte* Legal Representatives only Annex A attached to the present submission.

FOR THE FORGOING REASONS, the Legal Representatives hereby respectfully request that the Trial Chamber take this submission into consideration when deciding on opening statement and on matters which require determination prior to trial.



Paolina Massidda



Marie-Edith Douzima Lawson

Dated this 10 June 2010

At The Hague (The Netherlands) and Bangui (Central African Republic)