

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **25 November 2008**

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Mauro Politi

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

Confidential

**Defence Observations on a Second Batch of Applications to Participate in the
Confirmation of Charges Hearing (1 to 34)**

Source: The Defence

Document 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 Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 17 November 2008, Pre-Trial Chamber III issued its “Third Decision on the question of victim’s [sic] participation requesting observations from the parties”¹, ordering that 34 applications to participate be provided to the Prosecution and the Defence in the present case and granting leave for observations to be filed no later than 25 November 2008, on the following issues:
 - a. on the possibility of granting the applicants the status of victims in the proceedings before the Chamber in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, and
 - b. on the question whether it is, in the view of the Prosecutor and the Defence, appropriate and not prejudicial to or inconsistent with the rights of the accused and a fair trial that those among the 34 additional applicants, who are granted the status of victim in the present case, present during the stage of confirmation of charges their views and concerns, where their personal interests as victims are affected.
2. On the same date, the Victims Participation and Reparations section of the Registry filed the 34 redacted applications to participate in the present proceedings.²
3. As a result of the above, the defence is being given eight (8) days within which to respond to applications consisting of over 900 pages, including difficult to read handwritten narratives setting out the facts which are alleged to form the basis for allowing the participation of the applicants in these proceedings.
4. The hearing on the confirmation of charges is scheduled to begin on 8 December 2008, two weeks from today’s date.
5. The Bemba Defence hereby responds to the applications set out in Annexes 1 to 34 by
 - a. Objecting to all the applications due to the timing of the observations being requested only three weeks before the start of the confirmation of charges hearing.

¹ ICC-01/05-01/08-253.

² ICC-01/05-01/08-256-Conf + Anxs 1 to 33. Annex 34 was transmitted the following day. ICC-01/05-01/08-256-Conf-Anx34.

- b. Objecting to specific applications which do not relate to events falling within the time period covered by the Charges in this case.
- c. Reminding the Court of our request that dates be disclosed in the first batch of applications for participation;
- d. Requesting that any participation by victims be limited to written submissions on issues pertaining to the confirmation of charges which have not been already presented by the prosecution. Irrelevant matters and repetitive matters raised by participating victims create an unfair drain on Mr. Bemba's resources and will negatively impact on his right to a fair and unbiased trial.

APPLICABLE LAW

Article 67

Rights of the accused

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

...

(b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;

(c) To be tried without undue delay;

...

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence

admissible under this Statute;

...

(i) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.

Article 68

Protection of the victims and witnesses and their participation in the proceedings

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. **These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. ...**

...

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.

...

5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures **shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.** (Emphases added).

Rule 85

Definition of victims

For the purposes of the Statute and the Rules of Procedure and Evidence:

(a) 'Victims' means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court; ...

LEGAL ARGUMENT

6. The legal arguments concerning redactions presented in paragraphs 4 to 14 of the observations in relation to the first batch of applications are incorporated herein by reference.³

³ ICC-01/05-01/08-205-Conf.

7. In addition, the timing of these applications are inconsistent with the rights of the accused to have adequate time and facilities for trial. It is clear from Article 68 that the participation of victims may only be permitted "in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial". Indeed, Article 68 repeats this language no less than three times.
8. Once the thirty day time period begins following the full disclosure of evidence and preceding the hearing on confirmation of charges, it should be considered *per se* unfair to impose the distraction of victims applications upon a person defending against charges.

OBJECTIONS AND OBSERVATIONS:

9. The application in Annex 1 appears to contain exculpatory information. The assailants announce that they are acting on behalf of a particular individual, but that person's name is redacted. The name of the individual in whose name the assailants acted should be disclosed.
10. Objection is made to all of the applications on the basis that their descriptions of assailants fail to include a minimum level of information to establish that the perpetrators of the crimes had any connection with Mr. Bemba.
11. Objection is made to the following applications which fail to allege events which necessarily come within the time period covered by the charges: 9, 13, and 34.
12. Objection is made to the following applications which fail to allege events occurring in a place which can be connected to perpetrators having any connection with Mr. Bemba: 2 and 3.
13. Objection is made to applications containing internal inconsistencies which raise questions about the events alleged in the applications: 2 and 5.
14. The objections to any anonymous participation by victims which were raised in relation to the first set of applications⁴ are likewise raised in relation to this second set of

⁴ ICC-01/05-01/08-140-Conf-Exp + Anxs1-24 (redacted version).

applications, and the legal arguments raised in paragraphs 4 to 14 are incorporated herein by reference.⁵

15. As to specific redactions, objection is made to application 15, which has all dates redacted. Unlike the first batch of applications, this is the only one of the 34 applications contained in this second batch to have the dates redacted. A meaningful response is impossible in the absence of such information. We also reiterate our request for disclosure of the dates contained in the first 24 applications to participate.

16. Because of the timing of these applications, we are unable to devote sufficient time to fully review these applications. For that reason, we respectfully request that we be allowed to supplement our observations following the hearing on the confirmation of charges.

CONCLUSION

17. For the foregoing reasons, the Bemba Defence respectfully asks that a decision on participation by these 34 applicants be post-poned until after the hearing on the confirmation of charges, so that the Bemba defence can devote the necessary resources for a thorough review of these applications.

18. In the alternative, we request that standing be denied in relation to each of the 34 applications because they fail to allege facts which would establish a connection to Mr. Bemba.

19. In addition, it is respectfully requested that:

- a. the dates in application 15 be disclosed so that a meaningful response can be made,
- b. that the exculpatory information contained in application 1 be disclosed,
- c. any participation in the confirmation hearing process be limited to the submission of written observations which must be both relevant to the issues which are material to the confirmation of charges and which are not repetitive of points already raised by the prosecution.

⁵ ICC-01/05-01/08-205-Conf.

Sincerely,



Nkwebe Liriss
Co-Lead Counsel



Karim A.A.Khan
Co-Lead Counsel

Dated this 25th day of November, 2008

At The Hague, The Netherlands