

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 September 2010

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

Decision on three issues related to victims' applications for participation in the proceedings

Decision 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

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Ms Fiona McKay

Other

Trial Chamber III ("Trial Chamber" or "Chamber") of the International Criminal Court ("Court" or "ICC"), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, ("Bemba case") issues the following decision on the request by the Office of Public Council for Victims ("OPCV") for leave to respond to the observations of the parties on the 192 victims' applications for participation in the proceedings,¹ on the request by the defence for disclosure of further information on the victims' applications,² and, on the deadline for submission of observations by the defence on victim application a/0666/09.

I. Background and submissions

1. On 14 June 2010 the Registrar filed, *ex parte* (only available to the Registry), its "Second report to Trial Chamber III on applications to participate in the proceedings", along with the applications of 192 individuals wishing to participate in the current proceedings.³ Pursuant to the order of the Chamber, the Victims Participation and Reparations Section ("VPRS") transmitted redacted copies of the relevant applications to the parties on 15 July 2010.⁴
2. On 16 July 2010 the Chamber ordered the parties to submit their observations on these applications by 20 August 2010.⁵ It also noted that the legal representatives of applicants would need to seek the permission of the Chamber if they wished to file a reply to the parties' observations.⁶

¹ Demande du Bureau du conseil public pour les victimes en tant que représentant légal des demandeurs de répondre aux observations du Bureau du Procureur et de la Défense concernant les 192 nouvelles demandes de participation de victimes aux procédures, 23 August 2010, ICC-01/05-01/08-860.

² Observations de la Défense sur les 192 demandes de participation à la procédure en qualité de Victimes, 20 August 2010, ICC-01/05-01/08-859.

³ Second report to Trial Chamber III on applications to participate in the proceedings, 14 June 2010, ICC-01/05-01/08-796-Conf-Exp.

⁴ Transmission to the parties of redacted versions of 192 applications for participation in the proceedings, 15 July 2010, ICC-01/05-01/08-824-Conf-Exp.

⁵ Order inviting the parties' observations on 192 victims' applications, 16 July 2010, ICC-01/05-01/08-833.

⁶ ICC-01/05-01/08-833, paragraph 4; see also Corrigendum Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 12 July 2010, ICC-01/05-01/08-807-Corr, paragraph 18.

3. The Office of the Prosecutor ("prosecution") and the defence submitted their observations on 191 applications on 19⁷ and 20⁸ August 2010 respectively.
4. In its observations, the defence submitted, *inter alia*, that the representatives of victims have not provided the defence with the dates and locations of the alleged events described in the applications, and, that the defence has suffered such prejudice that the overall fairness of the proceedings has been impaired.⁹
5. On 23 August 2010 the Registry filed a report on the notification of the 192 applications in which it informed the Chamber that it had inadvertently transmitted only 191 of the 192 redacted applications to the parties due to an incorrect stamping procedure in numbering the applications. The Registry transmitted a separate redacted version of the omitted application concerning applicant a/0666/09 in a confidential annex available only to the parties.¹⁰
6. On the same date the OPCV requested leave to submit its views on the parties' observations concerning the applications of the applicants that it represents.¹¹ The OPCV filed an addendum to its application on 30 August 2010.¹²

⁷ Prosecution's Observations on the 192 Applications for Victim's Participation in the Proceedings, 19 August 2010, ICC-01/05-01/08-858.

⁸ ICC-01/05-01/08-859.

⁹ ICC-01/05-01/08-859, paragraphs 6 – 8.

¹⁰ Report on an incorrect notification to the parties of 192 applications for victim participation, 23 August 2010, ICC-01/05-01/08-861 with *ex parte* confidential annex, prosecution and defence only, page 6. Application a/0666/09 is stamped ICC-01/05-01/08-796-Conf.

¹¹ ICC-01/05-01/08-860.

¹² Demande supplémentaire du Bureau du conseil public pour les victimes en tant que représentant légal des demandeurs de répondre aux observations du Bureau du Procureur et de la Défense concernant les 192 nouvelles demandes de participation de victimes aux procédures, 30 August 2010, ICC-01/05-01/08-870.

7. On 27 August 2010 the prosecution filed its observations on application a/0666/09.¹³
8. During the status conference held on 30 August 2010 to hear submissions by the parties and participants on fixing a new trial date, the defence made oral submissions on an alleged breach of the Chamber's order of 7 October 2009¹⁴ concerning the request for disclosure of the dates and locations of the alleged events described in the victims' applications.¹⁵

II. The OPCV's request for leave to respond to the parties' observations on the 192 applications for participation

9. In its request of 23 August 2010, the OPCV observed that it is in the personal interests of the applicants to be given an opportunity to respond to the parties' observations at the present stage of the proceedings in which the Chamber will decide on their procedural status. It was submitted that, given that the Chamber's decision will affect their capacity to participate and present their views and concerns on the proceedings, their request should be granted so as to enable their effective participation.¹⁶
10. Having regard to Rule 89(1) of the Rules of Procedure and Evidence ("Rules"), the Chamber considers that the requested additional submissions by the OPCV are not necessary for the Chamber's proper determination of the applications. The Chamber is of the view that should any clarification or additional information on the applications be required, it will take such steps as are necessary at the appropriate time.

¹³ Prosecution's Observations on Application a/0666/09 for Victims' Participation in the Proceedings, 27 August 2010, ICC-01/05-01/08-865.

¹⁴ Transcript of hearing of 30 August 2010, ICC-01/05-01/08-T-24-ENG ET WT, page 27, lines 2 – 5.

¹⁵ ICC-01/05-01/08-T-24-ENG ET WT, page 7, lines 13 – 14.

¹⁶ ICC-01/05-01/08-860, paragraph 6.

11. Accordingly, the Chamber rejects the OPCV's request for leave to respond to the parties' observations on the 191 individual applications.

III Defence submission concerning the non disclosure of dates and exact locations of alleged events described in victims' applications

12. The defence has submitted both in the context of its observations on the 191 applications for participation¹⁷ as well as in the course of the status conference of 30 August 2010¹⁸ that it has been deprived of the possibility to sufficiently respond to the applicant victims' allegations given the non-disclosure of the dates and locations of the alleged events they describe in their applications. In addition, during the status conference, the defence argued that the Chamber had previously ordered the legal representatives of victims to provide it with the dates and locations of the alleged facts and that the legal representatives had failed to comply with such an order.¹⁹
13. The Chamber observes that the above submissions by the defence are inaccurate. During the status conference of 7 October 2009 the defence applied for an order for disclosure of the dates of the alleged events described by victims that had been granted leave to participate in the proceedings during the pre-trial stage.²⁰ On the same date, the Chamber ordered the legal representatives of victims to reflect on that request and submit their observations by 12 October 2009.²¹ Accordingly, the legal representatives filed their response stating, *inter alia*, that they did not object to the defence's request.²² Subsequently, on 4 November 2009 the Chamber

¹⁷ ICC-01/05-01/08-859, paragraphs 5 – 9.

¹⁸ ICC-01/05-01/08-T-24-ENG ET WT, page 7, lines 13 – 14.

¹⁹ ICC-01/05-01/08-T-24-ENG ET WT, page 7, lines 7 – 13. See also ICC-01/05-01/08-859, paragraph 9.

²⁰ Transcript of hearing on 7 October 2009, ICC-01/05-01/08-T-14-ENG ET WT, page 26, lines 22 – 25 and page 27, line 1.

²¹ ICC-01/05-01/08-T-14-ENG ET WT, page 27, lines 2 – 5.

²² Response to the Defence's Oral Request for disclosure of the dates of the events alleged by victims in their applications for participation, 12 October 2009, ICC-01/05-01/08-557.

rejected the request as moot given that the defence had been duly notified of the date of the alleged events approximately a year before their submissions of 7 October 2009.²³

14. The Chamber notes that in any event, the above request concerned the dates of the alleged events described by victims that had already been authorised to participate in the proceedings at the pre-trial stage.
15. In addition, the Chamber notes that in its 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 of 22 February 2010, it instructed the Registry, and not the victims' legal representatives, to transmit applications for participation to the parties in an appropriate redacted form. In accordance with the Chamber's guidelines as set out in that Decision, any information which could lead to the identification of the applicants and their whereabouts had to be redacted.²⁴
16. In so far as the defence submissions can be treated as a general request for disclosure of the precise dates and locations of the alleged events described in all the individual applications for participation by victims, the request must be refused. The Chamber considers that the defence has been provided with sufficient information on the dates and locations of the alleged events for most of the applications. In the few applications where such information is redacted the redactions were the only available measures to protect the applicants concerned, and the disclosure of any further information would unnecessarily compromise their safety and security.

²³ Decision on the Defence Oral Request for disclosure of the dates of the events alleged by victims in their applications for participation, 4 November 2009, ICC-01/05-01/08-589, paragraph 4.

²⁴ 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, paragraphs 33 and 39 (iii).

17. For these reasons, the defence request for disclosure of dates and locations of alleged events described in victims' applications for participation is rejected.

IV Defence Observations on application a/0666/09

18. Lastly, and since the Registry has already transmitted to the defence a separate redacted version of the omitted application concerning applicant a/0666/09, the Chamber instructs the defence to submit their observations on application a/0666/09 for victim participation in the proceedings by 13 September 2010.

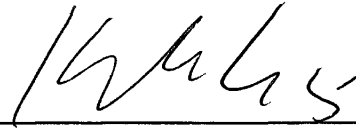
Done in both English and French, the English version being authoritative.

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Judge Sylvia Steiner

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Judge Joyce Aluoch

A handwritten signature in black ink, appearing to be 'K. Ozaki' in a cursive style.

Judge Kuniko Ozaki

Dated this 6 September 2010

At The Hague, The Netherlands