

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 October 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***

URGENT

Confidential

**Decision on the request of the legal representative of victims to question
Witness 65**

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

Mr Assingambi Zarambaud

Ms Marie-Édith Douzima-Lawson

Legal Representatives of the 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

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, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on the request of the legal representative of victims to question Witness 65.

I. Background and submissions

1. On 19 September 2011, Maître Zarambaud filed an application to question Witness 65 ("Application").¹ The Application contains nine sets of questions.
2. On 29 September 2011, the Chamber shortened the time for the submission of observations on the Application.² Under this schedule, any observations on the Application were to be filed by 09:00 on Monday, 3 October 2011. Replies were to be filed by 14:00 on Monday, 3 October 2011. No observations on the Application were filed within the deadline set.

II. Relevant provision

3. In ruling on the Application, the Chamber has considered Rule 91(3) of the Rules of Procedure and Evidence ("Rules").

III. Analysis and conclusions

4. For the following reasons, the Chamber is satisfied that the Application is warranted pursuant to the criteria set down in Rule 91(3) of the Rules. *First*, the personal interests of the victims represented by Maître Zarambaud have the potential to be affected by the testimony of Witness 65 because his testimony mainly concerns the manner in which the MLC command

¹ Requête du Représentant légal de victimes afin d'être autorisé à interroger le témoin W065, 19 September 2011, ICC-01/05-01/08-1757-Conf.

² Email from Chamber's Legal Officer, 29 September 2011, 15:57.

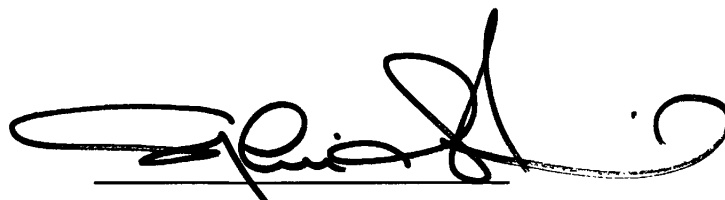
communicated with units in the field, which may bear on the personal knowledge of the accused or his effective control of MLC troops, among other matters. *Second*, granting the Application will not materially affect the expeditious conduct of proceedings because (i) Maître Zarambaud has sought permission to ask only a limited number of questions; and (ii) the Chamber has ruled that Maître Zarambaud will have an hour to ask his questions.³ *Third*, granting the Application under the conditions discussed below will not prejudice the rights of the defence because (i) the defence will have the right to examine Witness 65 itself; and (ii) the questions approved by the Chamber are not, on their face, unfairly prejudicial. *Fourth*, the Chamber is satisfied that no considerations regarding the witness' personal interests prevent the Application being granted under the conditions below.

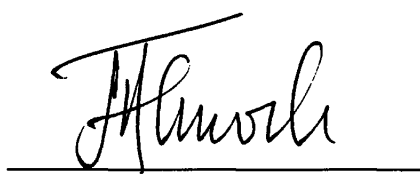
5. Turning to the proposed questions, the Majority, with Judge Ozaki dissenting in part, allows the questions presented in the Application, except for Maître Zarambaud's questions 2-1 and 2-2, which are irrelevant, and question 6, which is leading. In relation to question 1, Maître Zarambaud may ask the question but is directed not to read out the two quotes at the bottom of page three of the Application, which relate to events in 2001 and are therefore irrelevant.
6. Judge Ozaki dissents as to questions 3.1, 5.1 and 5.2, which she would not allow for the reasons explained in her partly dissenting opinion on the Order on the procedure relating to the submission of evidence.⁴

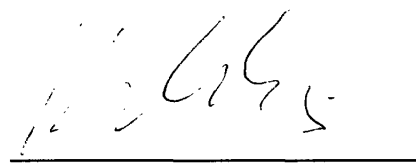
³ Transcript of hearing held on 3 October 2011, ICC-01/05-01/08-T-169-ENG RT, page 2, line 24 to page 3, line 1.

⁴ Partly Dissenting Opinion of Judge Kuniko Ozaki on the Order on procedure relating to the submission of evidence, 31 May 2011, ICC-01/05-01/08-1471, paragraph 13.

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



Judge Sylvia Steiner

Judge Joyce Aluoch

Judge Kuniko Ozaki

Dated this 3 October 2011

At The Hague, The Netherlands