

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 November 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***

Public Document

**Order regarding applications by victims to present their views and concerns or
to present evidence**

Order 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

Mr Assingambi Zarambaud

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

States Representatives

The Office of Public Counsel for the Defence

Amicus Curiae

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 (“Court”) in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* issues the following Order regarding applications by victims to present their views and concerns or to present evidence.

1. Article 68 of the Rome Statute (“Statute”) and Rule 91 of the Rules of Procedure and Evidence (“Rules”) permit victims, through their legal representatives, to present “their views and concerns [. . .] 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”. In this case, Maître Marie-Edith Douzima-Lawson and Maître Assingambi Zarambaud (together, “Legal Representatives”) have been designated to represent the interests of victims who have been granted participating status.¹
2. The Appeals Chamber of this Court, confirming the jurisprudence of the Trial Chambers, has held that the above provisions may permit legal representatives of victims to present evidence at trial.² The presentation of evidence by legal representatives is not an “unfettered right”;³ it must be overseen and regulated by the Chamber, with due regard to the rights of the accused and the fairness of the trial.⁴ To the extent that legal

¹ Decision on common legal representation of victims for the purpose of trial, 10 November 2010, ICC-01/05-01/08-1005, paragraph 34; Corrigendum to Notification of designation of common legal representatives, 18 November 2011, ICC-01/05-01/08-1012-Corr.

² Appeals Chamber, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008, ICC-01/04-01/06-1432, paragraphs 86-105; Trial Chamber I, Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, paragraph 108; Trial Chamber II, Decision on the Modalities of Victim Participation at Trial, 22 January 2010, ICC-01/04-01/07-1788-tENG, paragraphs 81-83, 86, 94, 98-99; Trial Chamber III, Corrigendum to 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, paragraphs 29 to 36.

³ ICC-01/04-01/06-1432, paragraph 99.

⁴ ICC-01/04-01/06-1432, paragraphs 98-100, 104.

representatives wish to adduce evidence, they are required to make an application to the Chamber in advance.⁵

3. In light of the above principles, and pursuant to Articles 64(6)(d), 64(6)(f), 64(8)(b), 68(3) and 69(3) of the Rome Statute, Rules 86, 89 and 91 of the Rules and Regulations 43 and 54(o) of the Regulations of the Court, the Chamber hereby establishes the procedure to be followed by the Legal Representatives if they wish to seek leave to present evidence or for individual victims to present their views and concerns to the Chamber.

- a. If the Legal Representatives wish to present evidence on behalf of their clients, or wish individual victims to be permitted to present their views and concerns to the Chamber, the Legal Representatives must file a written application seeking leave from the Chamber;
- b. If the Legal Representatives wish to present evidence, their written applications are to explain:
 - i. The nature of the proposed evidence and the manner in which it is to be presented;
 - ii. The estimated time needed for the presentation of the proposed evidence;
 - iii. How the personal interests of the participating victims would be affected by the presentation of the proposed evidence;
 - iv. The relevance of the proposed evidence to the charges;
 - v. How the presentation of the proposed evidence would assist in the Chamber's determination of the truth in this case;
 - vi. Whether a victim who is proposed as a witness has relinquished his or her anonymity;

⁵ ICC-01/04-01/06-1432, paragraphs 98-100, 104; ICC-01/04-01/06-1432, paragraph 103; ICC-01/04-01/07-1788-tENG, paragraph 25.

- vii. Whether and how the presentation of the proposed evidence would affect the rights of the accused and the fairness of the trial, especially if a victim wishes to testify without relinquishing his or her anonymity;⁶
 - viii. Any disclosure issues that need to be resolved in connection with the presentation of the proposed evidence;
 - ix. Whether the Legal Representatives envisage applying for protective measures, such as redactions and/or in-court protective measures;
 - x. Whether the proposed evidence is to be presented through persons who have been authorised to participate as victims in the trial proceedings, and if so, the application numbers under which those persons are registered;
- c. If the Legal Representatives wish individual victims to present their views and concerns to the Chamber, by way of, for example, unsworn statements, the Legal Representatives' written applications are to explain:
- i. The manner in which the victims' views and concerns are to be presented, *e.g.*, in-person pursuant to Rule 89 of the Rules or in writing;
 - ii. The estimated time needed for the victims to present their views and concerns;
 - iii. How the personal interests of the participating victims would be affected by the presentation of their views and concerns to the Chamber;

⁶ Corrigendum to Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 12 July 2011, ICC-01/05-01/08-807-Corr, paragraphs 55 to 69 and 72.

- iv. Whether the victims wish their views and concerns to be presented publicly, or whether they need to be afforded in-court protective measures;
- v. Whether the victims are persons authorised to participate in the trial, and if so, the application numbers under which those persons are registered;
- d. The Legal Representatives are invited to file their written applications, if any, by 6 December 2011;
- e. The prosecution and defence are to file their observations on the Legal Representatives' applications within seven days of notification; and
- f. To the extent that the Chamber permits the Legal Representatives to submit evidence, or authorises individual victims to present their views and concerns to the Chamber, this shall take place before the defence begins its presentation of evidence, if any.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 21 November 2011

At The Hague, The Netherlands