

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 14 December 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

**Prosecution's Observations on the Legal Representatives' applications by victims
to present their views and concerns or to present evidence**

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

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Mr. Assingambi Zarambaud

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

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Victims Participation and Reparations Other Section

I. Introduction

1. On 21 November 2011, Trial Chamber III (“Chamber”) issued an order requesting the Legal Representatives to file their applications for the victims to present evidence and/or to present their views and concerns in the current proceedings by 6 December 2011 (“Order”).¹ On 6 December 2011, the Legal Representatives filed their respective applications.² On 12 December 2011, Maître Zarambaud filed a corrigendum withdrawing the applications of two victims.³ Maître Zarambaud, acting for victims from Bangui and its surroundings, requests that six victims may appear before the Court to present evidence in the case and that one victim may present his views and concerns.⁴ In the alternative, should the Chamber not grant the six victims’ request to present evidence, the Legal Representative requests the victims to be allowed to present their views and concerns.⁵ Maître Douzima-Lawson, acting for victims from Damara, Sibut, Boali, Bossangoa, Bozoum, Mongoumba and surroundings, requests ten victims to be allowed to present evidence as well as their views and concerns in the proceedings.⁶

2. The Office of the Prosecutor (“Prosecution”) respectfully submits its observations on the Legal Representatives’ applications. In light of the provisions of the Rome Statute and the Rules of Procedure and Evidence, and the jurisprudence to

¹ ICC-01/05-01/08-1935, Order regarding applications by victims to present their views and concerns or to present evidence, 21 November 2011, para. 3 (d).

² ICC-01/05-01/08-1989-Conf, *Requête afin d’autorisation de présentation d’éléments de preuves et subsidiairement de présentation de vues et préoccupations par les victimes*, 6 Décembre 2011; ICC-01/05-01/08-1990, *Requête de la Représentante légale de victimes afin d’autoriser des victimes à comparaître en tant que témoin et à faire valoir leurs vues et préoccupations devant la Chambre*, 6 Décembre 2011.

³ In an email to the Chamber on 9 December 2011, Maître Zarambaud had withdrawn the application for two of the victims as they had been erroneously been mentioned in the previous application. The related corrigendum ICC-01/05-01/08-1989-Conf-Corr was filed on 12 December 2011.

⁴ ICC-01/05-01/08-1989-Conf-Corr, *Rectificatif à la justification relative à “Requête afin d’autorisation de présentation d’éléments de preuves et subsidiairement de présentation de vues et préoccupations par les victimes”*, 12 December 2011, para. 8.

⁵ *Ibid.*, para. 28.

⁶ ICC-01/05-01/08-1990, paras. 2, 26 and 27.

that effect,⁷ the Prosecution in principle does not oppose the testimony of victims where their evidence is necessary to the determination of the truth.⁸ In this instance, however, and in light of the length of the witnesses' testimony estimated by the Legal Representatives, it suggests that calling 17 *viva voce* victims to give evidence and/or views and concerns may be excessive. The Prosecution also notes that the requests themselves should better illustrate how the proposed witness testimony might be necessary to the Chamber's discovery of the truth. Accordingly, the Prosecution proposes that the Chamber invite the Legal Representatives to resubmit narrowly tailored requests that each identifies no more than two or three witnesses and specifies with greater precision what their proposed in-court testimony would add to the evidence in the case. The Chamber and the parties can then evaluate the proposed contribution of the witnesses based upon a more concrete and fact-specific showing.

3. The Prosecution does not oppose the submission of the 17 victims' views and concerns in writing.

II. Observations

a. Procedure established by the Chamber

4. In its Order, the Chamber outlined 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. It requested that the applications explain, *inter alia*, the nature of the evidence to be presented, the manner in which evidence, views and concerns would be presented and how the personal

⁷ ICC-01/04-01/06-1432 OA9 OA10, 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, paras. 86-105.

⁸ ICC-01/04-01/07-2288 OA11, Judgment on the Appeal of Mr. Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled "Decision on the Modalities of Victim Participation at Trial", 16 July 2010, para. 40.

interests of the victims would be affected. In particular, the Chamber required that the evidence be relevant and assist the Chamber's determination of the truth. Furthermore, the application needs to explain if the rights of the Accused and the fairness of the trial would be affected.⁹

b. Applications by the Legal Representatives

5. Maître Zarambaud and Maître Douzima-Lawson provided the applications of 16 victims who have been granted victim status by the Chamber and argue that these victims' testimony as well as their views and concerns (plus the views and concerns of a 17th victim) conform to the criteria set by the Chamber. The Prosecution agrees that victims represented by Maître Douzima-Lawson in particular, who come from areas outside of Bangui, may be able to shed additional light on the case before this Chamber, such as the patterns of the crimes and the consequences of the attacks on the civilian population. In that sense, their evidence presumably will complement rather than duplicate the evidence presented by the Prosecution.

6. Neither submission, however, provides sufficient detail about the victims' proposed evidence to state with certainty that their evidence will be necessary for the finding of the truth. In order to facilitate and expedite the conduct of the proceedings, to enable the Chamber to better assess the application and the parties to better respond, the Prosecution suggests that the Legal Representatives be invited to resubmit applications with greater detail (which can include summaries and/or statements) regarding the facts to be elicited and how those facts are relevant and would assist the Chamber's determination of the truth.

⁹ ICC-01/05-01/08-1935, para. 3.

7. The Prosecution does not oppose that all the proposed witnesses be allowed to present their views and concerns in writing, which the Chamber may consider and give such weight as it determines is appropriate. This would reduce the testimony of any victims called as witnesses and would further expedite the proceedings.

II. Conclusion

8. For the foregoing reasons, the Prosecution submits that the Chamber should request the Legal Representatives to submit more precise applications and that each Legal Representative identify no more than two or three victims as proposed witnesses. The resubmitted applications should explain with more detail the nature of the evidence to be presented and how that evidence is relevant and would assist the Chamber's determination of the truth. The Prosecution does not oppose the submission, in writing, of the views and concerns of the identified 17 victims.



Luis Moreno-Ocampo, Prosecutor

Dated this 14th Day of December 2011

At The Hague, The Netherlands