

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 1 February 2012

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

**Third order regarding the applications of the legal representatives of victims to
present evidence and the views and concerns of victims**

Order to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

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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

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Amicus Curiae

Registrar

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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 Third order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims (“Third Order”).

I. Background and submissions

1. On 21 November 2011, the Chamber issued its Order regarding applications by victims to present their views and concerns or to present evidence (“First Order”),¹ in which it specified the procedure to be followed by the legal representatives of victims (“Legal Representatives”) if they wish to present evidence or the views and concerns of individual victims in this case.
2. On 6 December 2011, Mr Zarambaud² and Ms Douzima³ filed written applications pursuant to the First Order (together, “Applications”), in which they requested authorisation to call 17 victims to testify and/or to present their views and concerns to the Chamber.
3. On 21 December 2011, the Chamber issued its “Second order regarding the applications by legal representatives of victims to present evidence and the views and concerns of victims” (“Second Order”),⁴ in which the Chamber (i) ordered the Legal Representatives to file a supplemented

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

² Requête afin d’autorisation de présentation d’éléments de preuves et subsidiairement de présentation de vues et préoccupations par les victimes, 6 December 2011, ICC-01/05-01/08-1989-Conf. A corrigendum was filed on 12 December 2011: 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, ICC-01/05-01/08-1989-Conf-Corr.

³ 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 December 2011, ICC-01/05-01/08-1990. An English translation was filed on 12 December 2011: Application by the Legal Representative of Victims for leave to call victims to appear as witnesses and present their views and concerns to the Chamber, ICC-01/05-01/08-1990-ENG.

⁴ Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims, 21 December 2011, ICC-01/05-01/08-2027.

Application or Applications containing a short list of no more than eight individuals (together, “Relevant Victims”) along with comprehensive written statements for each Relevant Victim and proposed redactions to any identifying information; and (ii) ordered the parties to provide their observations on the supplemented Application(s) no later than seven days after they are notified of the supplemented Application(s), the Relevant Victims’ written statements as well as relevant additional information to be provided by the Chamber and the Registry, including unredacted or lesser redacted versions’ of the Relevant Victims’ application forms and the relevant portions of the *ex parte* annexes to the Chamber’s victims’ participation decisions (together, “Additional Information”).

4. On 23 January 2012, Mr Zarambaud⁵ and Ms Douzima⁶ filed their supplemented Applications pursuant to the Second Order, proposing to call in total eight victims. Along with the supplemented Applications, Mr Zarambaud submitted written statements for the two victims he proposes to call,⁷ while Ms Douzima submitted written statements for four out of the six victims she proposes to call.⁸ On 26 January 2012, Ms Douzima filed the written statement for the victim registered under number a/1317/10 (“Victim a/1317/10”).⁹

⁵ Complément de la requête afin d’autorisation de présentation d’éléments de preuves et subsidiairement de présentation de vues et préoccupations par les victimes du 6 décembre 2012, 23 January 2012, ICC-01/05-01/08-2058-Conf and confidential *ex parte* annexes.

⁶ Requête de la Représentante légale de victimes concernant des informations supplémentaires à sa requête du 6 décembre 2011 afin d’autoriser des victimes à témoigner et à faire valoir leurs vues et préoccupations devant la Chambre, 23 January 2012 (notified on 24 January 2012), ICC-01/05-01/08-2061-Conf and confidential *ex parte* annexes. On 24 January 2012, Ms Douzima filed a first Addendum à la « Requête de la Représentante légale de victimes concernant des informations supplémentaires à sa requête du 6 décembre 2011 afin d’autoriser des victimes à témoigner et à faire valoir leurs vues et préoccupations devant la Chambre », 24 January 2012, ICC-01/05-01/08-2062-Conf and confidential *ex parte* annex. The first addendum contains the last page of victim a/0866/10’s written statement that was missing in document ICC-01/05-01/08-2061-Conf-Exp-Anx1.

⁷ Mr Zarambaud proposed to call two victims and submitted written statements for the victims registered under the numbers a/0511/08 and a/2475/10.

⁸ Ms Douzima proposed to call six victims registered under the numbers a/0866/10, a/0555/08, a/0543/08, a/0394/08, a/1317/10 and a/1356/10 and she filed written statements for victims a/0866/10, a/0555/08, a/0542/08 and a/0394/08.

⁹ Second Addendum à la « Requête de la Représentante légale de victimes concernant des informations supplémentaires à sa requête du 6 décembre 2011 afin d’autoriser des victimes à témoigner et à faire valoir leurs

5. By emails of 26 and 27 January 2012,¹⁰ the Chamber instructed the Legal Representatives to submit, by 31 January 2012, confidential *ex parte* versions of the written statements, along with proposed redactions to any information that could identify the victims, to their addresses and contact details and to the names of third parties that might be mentioned in the written statements.
6. Accordingly, on 31 January 2012, Mr Zarambaud¹¹ and Ms Douzima¹² filed proposed redacted versions of the written statements for seven victims.¹³

II. Analysis

7. The purpose of this Third Order is to address various procedural issues necessary for the Chamber to take a decision on the merits of the supplemented Applications. To that end, the Chamber will address in turn (i) the request by Ms Douzima for an extension of time; (ii) the reclassification of the proposed redacted versions of the Relevant Victims' written statements; (iii) the provision to the parties of unredacted or lesser redacted versions of the Relevant Victims' application forms and the relevant portions of the *ex parte* annexes to the Chamber's decisions on

vues et préoccupations devant la Chambre », 26 January 2012, ICC-01/05-01/08-2066-Conf and confidential *ex parte* annex. The Second Addendum contains the written statement of victim a/1317/10.

¹⁰ Email from the Assistant Legal Officer of the Chamber to the Legal Representatives' case manager on 26 January 2012, at 17.39 and email from the Assistant Legal Officer of the Chamber to the Legal Representatives' case manager on 27 January 2012, at 15.42.

¹¹ Expurgations des annexes du Représentant légal de victimes, Maître Assingambi Zarambaud, conformément à l'Ordonnance de la Chambre du 21 décembre 2011, 30 January 2012 (notified on 31 January 2012), ICC-01/05-01/08-2083-Conf and ICC-01/05-01/08-2058-Conf-Exp-AnxA-Red and AnxB-Red.

¹² Expurgations des annexes de la Représentante légale de victimes, Maître Douzima-Lawson, conformément à l'Ordonnance de la Chambre du 21 décembre 2011, 30 January 2012 (notified on 31 January 2012), ICC-01/05-01/08-2090-Conf and ICC-01/05-01/08-2061-Conf-Exp-Anx1-Red to Conf-Exp-Anx5-Red.

¹³ Redacted versions were filed in relation to the two written statements submitted by Mr Zarambaud in his filing of 23 January 2012 (a/0511/08 and a/2475/10), the four written statements submitted by Ms Douzima in her filing of 23 January 2012 (a/0866/10; a/0555/08; a/0542/08; a/0394/08) and the written statement submitted with the Second Addendum filed on 26 January (a/1317/10).

victims' applications; and (iv) the deadline for the submission of the parties' observations.

8. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber has considered Articles 64(2), 64(3)(c), 64(6)(c), (e) and (f), 67(1)(c), 68(1), 68(3) and 69(3) of the Statute, Rules 81(4), 87, 89(1) and 91 of the Rules of Procedure and Evidence ("Rules") and Regulations 35, 41, 54(e), 54(f) and 81 of the Regulations of the Court ("Regulations").

Ms Douzima's request for an extension of time

9. In her supplemented Application, Ms Douzima specifies that she submits written statements for four out of the six victims she proposes to call. With regard to the two remaining victims, Ms Douzima claims that due to "difficulties in terms of communication encountered in the field", she was not in a position to provide the required written statements on time and therefore requests an extension of the deadline for their submission.¹⁴
10. On 26 January 2012, Ms Douzima filed her Second Addendum, in which she provides one of the remaining written statements. Acknowledging the late submission of this document, Ms Douzima recalls the difficulties in terms of communication encountered in the field and leaves it to the Chamber to decide whether or not this written statement should be admitted.¹⁵
11. The Chamber notes that for the purpose of her request for an extension of time, Ms Douzima failed to comply with the requirements set out in the Regulations. Firstly, Ms Douzima failed to indicate the legal basis for her

¹⁴ ICC-01/05-01/08-2061-Conf, paragraph 5.

¹⁵ ICC-01/05-01/08-2066-Conf, paragraphs 2 to 3.

request as required by Regulation 23(1)(d) of the Regulations. As the extension of the deadline was sought after the actual lapse of the time limit, pursuant to Regulation 35(2), second part, of the Regulations, Ms Douzima should have demonstrated that “she was unable to file the application within the time limit for reasons outside [...] her control”. However, Ms Douzima submits that the delay is the result of “difficulties in terms of communication encountered in the field” without providing any specifics in relation to the nature of the difficulties she experienced. Accordingly, in the view of the Chamber, this justification is too vague to comply with the above-quoted requirement.

12. However, the Chamber notes that the written statement relating to Victim a/1317/10, one of the two remaining victims, was submitted three days after the deadline and the redacted version was submitted by 31 January 2012, in accordance with the Chamber’s instruction. Accordingly, the Chamber is of the view that the Chamber and the parties did not suffer any prejudice as a result of the document’s delayed submission.

13. The Chamber further observes that Victim a/1317/10 was not included in Ms Douzima’s original Application while the fact that this victim is included in the supplemented Application is not explained. Despite this, the Chamber notes that Ms Douzima complied with the Second Order, which instructed the Legal Representatives to “work together to narrow the list of 17 victims in the Applications into a short list of no more than eight individuals.”¹⁶ In addition, the Chamber acknowledges that the necessary selection of victims that was to be carried out by the Legal Representatives might have revealed that a victim not included in the

¹⁶ ICC-01/05-01/08-2027, paragraph 12.

original Applications is best-placed to meet the criteria recalled in the Chamber's Second Order.¹⁷

14. Under these circumstances and on an exceptional basis, the Chamber therefore accepts to consider Victim a/1317/10 for the purpose of the selection of victims to be authorised to testify and/or to present their views and concerns to the Chamber. Accordingly, the parties shall submit their observations and the Chamber will rule upon the seven victims for whom redacted written statements were provided on 31 January 2012 (together, "Seven Victims"). However, the Chamber will not consider the request of the victim registered under the number a/1356/10 and for whom no written statement has been filed to date.

Reclassification of the Seven Victims' written statements for the purpose of disclosure

15. In its Second Order, the Chamber, while confirming that permission for victims to present evidence or their views and concerns is conditional upon their agreement to relinquish their anonymity *vis-à-vis* the parties, emphasised that "the identity of victims need not be disclosed to the parties unless and until the Chamber grants them permission to testify and/or present their views and concerns."¹⁸

16. Further, according to the Second Order, "[i]f the Relevant Victims' written statements contain identifying information that should not be disclosed prior to the Chamber's ruling on the merits of their applications, the Legal Representatives are to file the victims' written statements on an *ex parte* basis, with proposed redactions to the identifying information. Subject to

¹⁷ See ICC-01/05-01/08-2027, paragraph 12.

¹⁸ ICC-01/05-01/08-2027, paragraph 19.

any changes ordered by the Chamber, the redacted versions will be notified to the parties.”¹⁹

17. Having reviewed the proposed redacted versions of the written statements filed by the Legal Representatives, the Chamber concludes that the proposed redactions comply with the Chamber’s instructions as detailed in the email of 27 January 2012.²⁰ Accordingly, the Chamber decides that the redacted written statements can be reclassified as confidential redacted and be notified to the parties to enable them to provide observations.

The provision of Additional Information by the Registry and the Chamber

18. Pursuant to the Second Order, “[o]nce the supplemented Applications and written statements have been filed and the Chamber has decided on any proposed redactions, the Chamber will (i) instruct the [VPRS] to provide the parties with unredacted or lesser redacted versions of the victims’ application forms for the Relevant Victims; and (ii) provide the parties with the relevant portions of the *ex parte* annexes to the Chamber’s victims’ participation decisions in which the Relevant Victims were granted participating status in this case.”²¹

19. Nevertheless, having reviewed the redacted versions of the Seven Victims’ applications forms that had already been provided to the parties for the purpose of their observations on applications by victims to participate in the proceedings and the redacted versions of the Seven Victims’ written statements, the Chamber is of the view that the parties have been provided with sufficient information to provide meaningful observations on the

¹⁹ ICC-01/05-01/08-2027, paragraph 20.

²⁰ Email from the Assistant Legal Officer of the Chamber to the Legal Representatives’ case manager on 27 January 2012, at 15.42.

²¹ ICC-01/05-01/08-2027, paragraph 21.

supplemented Applications. Accordingly, the Chamber finds that the communication of lesser redacted versions of the relevant application forms is not warranted at this stage. In addition, providing the parties with unredacted versions of the relevant portions of the *ex parte* annexes to the Chamber's victims' decisions would defeat the purpose of the redactions applied to the victims' application forms. Accordingly, unredacted or lesser redacted versions of the Relevant Victims' applications and the relevant portions of the *ex parte* annexes to the Chamber's decisions will only be provided once the Chamber has decided which victims will be authorised to present evidence or their views and concerns and when the identities of these victims can be disclosed to the parties.

Deadline for the submission of additional observations by the parties

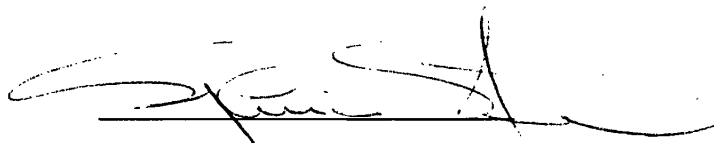
20. According to the Second Order, the parties were instructed to file their observations on the supplemented Application(s) no later than seven days after they are notified of the supplemented Applications, the written statements and the Additional Information to be provided by the Chamber and the Registry. Further to the filing of the supplemented Applications and given the Chamber's decision that the Additional Information will be provided once a decision as set out above has been taken, the seven-days time limit for the filing of the parties' observations will start running as soon as the confidential redacted versions of the written statements are notified to the parties.

III. Conclusion and Orders of the Trial Chamber

21. In light of the foregoing, the Chamber hereby:

- a. grants Ms Douzima's request for an extension of time for the submission of the written statement for the victim registered under the number a/1317/10;
- b. rejects Ms Douzima's request for an extension of time for the submission of the written statement for the victim registered under the number a/1356/10;
- c. reclassifies as confidential redacted the following documents and instructs the Registry to implement the reclassification by 16.00 on 1 February 2012:
 - ICC-01/05-01/08-2058-Conf-Exp-AnxA-Red;
 - ICC-01/05-01/08-2058-Conf-Exp-AnxB-Red;
 - ICC-01/05-01/08-2061-Conf-Exp-Anx1-Red;
 - ICC-01/05-01/08-2061-Conf-Exp-Anx2-Red;
 - ICC-01/05-01/08-2061-Conf-Exp-Anx3-Red;
 - ICC-01/05-01/08-2061-Conf-Exp-Anx4-Red;
 - ICC-01/05-01/08-2062-Conf-Exp-Anx1-Red; and
 - ICC-01/05-01/08-2066-Conf-Exp-Anx5-Red.
- d. orders the parties to file their observations on the supplemented Applications and the Seven Victims' written statements in accordance with paragraph 20 above by 12.00 on 9 February 2012.

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



Judge Sylvia Steiner

Judge Joyce Aluoch

Judge Kuniko Ozaki

Dated this 1 February 2012

At The Hague, The Netherlands